UNITED STATES OF AMERICA Before the SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS Release No. 6795/November 2, 2020

ADMINISTRATIVE PROCEEDING File No. 3-18422

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In the Matter of

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JOSHUA D. MOSSHART : ORDER

The Securities and Exchange Commission instituted proceedings against Respondent Joshua D. Mosshart with an Order Instituting Proceedings, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, on April 5, 2018. The proceeding is a follow-on proceeding based on *SEC v. Enviro Board Corp.*, No. 2:16-cv-6427 (C.D. Cal.), in which he was enjoined, on default, from violating the registration provisions of the federal securities laws. The parties filed motions for summary disposition, pursuant to 17 C.F.R. § 201.250(b) (Rule 250(b)). The Division of Enforcement requested that Mosshart be barred from the securities industry, arguing that his conduct underlying the injunction was egregious and recurrent. Mosshart requested that the proceeding be dismissed, arguing that he did not engage in conduct that violated the registration provisions. On September 10, 2020, the undersigned ruled on the motions for summary disposition. *Joshua D. Mosshart*, Admin. Proc. Release No. 6787, 2020 SEC LEXIS 4145 (A.L.J.) (Order). The Order concluded that neither party's request could be granted on the current record, but that there is no genuine issue with regard to a number of material facts within the meaning of Rule 250(b).

The Order concluded that there is no genuine issue with regard to these material facts: Mosshart was enjoined from violating Section 5 of the Securities Act of 1933, which makes unlawful the offer or sale of securities not registered with the Commission for which no exemption is available, and from violating Section 15(a) of the Exchange Act, which makes it unlawful for a person not associated with a registered broker or dealer to effect transactions in or induce the purchase or sale of any security. Mosshart was associated with several registered broker-dealers between 1999 and 2012, most recently, LPL Financial LLC, which is also a Commission-registered investment adviser, from July 2, 2004, until November 13, 2012, and was not so associated thereafter. Enviro Board securities were not registered with the Commission and no exemption was available. Mosshart provided information concerning Enviro Board securities to several investors, referred them to the company's founders, and was compensated when at least one made an

¹ The proceeding was reassigned on September 12, 2018, in light of *Lucia v. SEC*, 138 S. Ct. 2044 (2018), and again, on March 18, 2019, to the undersigned. *Joshua D. Mosshart*, Admin. Proc. Release Nos. 5955, 2018 SEC LEXIS 2264 (C.A.L.J.); 6505, 2019 SEC LEXIS 512 (C.A.L.J.).

investment. These proven activities occurred in 2011 and 2012, and the proven amount of such compensation was \$40,000. The loss of \$400,000 by one customer is also proven. The proven activities occurred during Mosshart's association with LPL; still at issue is whether or not LPL knew of and approved them such that they were within the scope of his association with LPL during the time he was so associated. Mosshart, who was employed as president of Enviro Board as of January 1, 2012, for an annual salary of \$120,000, also engaged in other activities on behalf of the company, such as public relations, lobbying, and sales. Enviro Board paid a total of \$553,355 for Mosshart's services between May 2011 and May 2013.

The Order also concluded that whether Mosshart also violated Exchange Act Section 15(a) may depend on the scope of his association with LPL, which is disputed on the current record. Further, even if it is established that he was not acting within the scope of that association, it must be established that he was acting as an unregistered broker to conclude that he violated Section 15(a). Additionally, the Order noted that, although Securities Act Section 5 is a strict liability provision, Mosshart's belief that the Enviro Board securities were exempt from registration is relevant to the determination of sanctions, including consideration of the *Steadman* factors.² The Order noted that the Commission rarely imposes an industry bar in a litigated administrative proceeding for violating registration provisions absent an antifraud violation and that those few cases in which a respondent was suspended or barred in the absence of fraud involved conduct that was much more serious, long-running, and otherwise harmful to the markets than Mosshart's conduct as found in the Order.

In light of the above, the parties were ordered to confer with an eye to reaching agreement on further procedures, which may include: agreeing that the undersigned may decide this proceeding, including disputed issues, based on the current record; supplementing the current record with additional filings and documentary evidence; video or audio testimony; or settlement. Mosshart's September 26, 2020, response requests the undersigned to decide the proceeding based on the current record. The Division's September 30, 2020, status report requested the opportunity to make a further evidentiary submission, including evidence from LPL and sworn testimony and exhibits from Mosshart's FINRA proceeding. Accordingly, the Division may submit such further evidence by November 16, 2020. Mosshart may file a response by November 30, 2020.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

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² Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), aff'd on other grounds, 450 U.S. 91 (1981).