

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6291 / April 24, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21393

In the Matter of

**JOSHUA DAVID
NICHOLAS,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Joshua David Nicholas (“Nicholas” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 and III.4 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Nicholas, 28 years old, is a resident of Sumterville, Florida. Nicholas was the head trader at Empires Consulting Corp. (dba "EmpiresX"), a Florida corporation with its principal place of business formerly in Fort Myers, Florida. For brief periods in 2016 and 2020, Nicholas was a registered representative and investment adviser representative associated with broker-dealers and investment advisers.

2. On April 19, 2023, a final judgment was entered by consent against Nicholas, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Empires Consulting Corp., et al., 1:22-cv-21995-CMA, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that Nicholas and others fraudulently raised at least \$40 million of investor funds in EmpiresX investments by falsely claiming that EmpiresX could earn an expected investment return through a proprietary trading "bot" or by manual trading performed by Nicholas. In reality, the bot was fake, Nicholas and others traded only a fraction of the funds they took from investors, and that limited trading failed to earn the purported return. Nicholas and others further lied to investors to provide assurances of the safety of their investment, including by falsely telling investors that EmpiresX had filed SEC registration paperwork. Instead, Nicholas and others misappropriated that investor money for personal uses such as cars, real estate, and travel. The complaint also alleged that Nicholas and others sold unregistered securities.

4. On September 8, 2022, Nicholas pled guilty to one count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5, before the United States District Court for the Southern District of Florida, in United States v. Joshua David Nicholas, 1:22-cr-20296-JEM.

5. In connection with that plea, Respondent admitted that he conspired with others to commit securities fraud by offering EmpiresX investments through devices, schemes, and artifices to defraud, and materially false statements and omissions. Specifically, Respondent admitted that the purported EmpiresX bot was not real, and that EmpiresX was instead a Ponzi scheme that paid earlier investors with money obtained from later investors. Respondent further admitted that in marketing EmpiresX investments, he misrepresented himself as another individual in order to conceal from investors and potential investors his prior disciplinary history.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Nicholas's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Nicholas be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Vanessa A. Countryman
Secretary