ADMINISTRATIVE PROCEEDING
FILE NO. 3-18422

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

JOSHUA D. MOSSHART,

Respondent.

Chief Administrative Law Judge
Brenda P. Murray

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

May 21, 2018

Division of Enforcement
Gary Y. Leung
444 S. Flower Street, Suite 900
Los Angeles, California 90071
(323) 965-3998 (*telephone*)
(213) 443-1904 (*facsimile*)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

I.e INTRODUCTIONe

In 2011, respondent Joshua D. Mosshart was working as a registered representative ate LPL Financial LLC ("LPL"), a securities brokerage firm. That May, and unbeknownst to LPL, Mosshart began raising money for Enviro Board Corporation ("Enviro Board"). He eventually referred 18 individuals, including several of his existing LPL brokerage and advisory clients, to the purported "green technology" company, where they purchased nearly $5 million in Enviro Board securities. For his efforts, Mosshart was paid hundreds of thousands of dollars in transaction-based compensation. Because he was "selling way" from LPL, Mosshart was barred, in a 2014 FINRA disciplinary action, from associating with any FINRA member in any capacity.

In 2016, the Commission charged Enviro Board with engaging in a fraudulent and unregistered securities offering; in light of his role in that course of events, the Commission also sued Mosshart for violations of the securities and broker-dealer registration provisions of the federal securities laws. Mosshart never answered the SEC's complaint, and after considering and denying a spate of serial motions from Mosshart seeking to avoid the consequences of his default – specifically, a motion to set aside default, a motion for reconsideration, a motion for relief under Rule 59(e) of the Federal Rules of Civil Procedure, and a request for extension for legal representation – the district court enjoined Mosshart from future violations of the federal securities laws, ordered disgorgement, and imposed a civil penalty on March 21, 2018.

The Division of Enforcement now requests that Mosshart be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. The Commission's Civil Injunctive Action

On August 26, 2016, the Commission filed a civil injunctive action against Mosshart, Enviro Board, and two other Enviro Board principals in the U.S. District Court for the Central District of California, charging Mosshart with violations of Section 5 of the Securities Act of 1933 ("Securities Act") and Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"). *See SEC v. Enviro Board Corporation, et al.*, Case No. 2:16-cv-06427 (C.D. Cal.); Declaration of Gary Y. Leung In Support of the Division of Enforcement's Motion for Summary Disposition ("Leung Decl.") at ¶ 3, Ex. 1 (SEC Complaint).

Once Mosshart failed to answer the Commission's complaint, the clerk entered a default against him on October 7, 2016. Leung Decl. at ¶ 4, Ex. 2 (civil injunctive action docket). The Commission then moved for a default judgment; in response, Mosshart opposed the Commission's motion and affirmatively moved the district court to set aside his default. *Id.* On May 10, 2017, the district court granted the Commission's default judgment motion, finding that "Mosshart fails to meet his burden to show a meritorious defense," and that Mosshart was culpable for his failure to respond to the Commission's complaint. *Id.* at ¶ 5, Ex. 3 (5/10/17 district court order).

On June 16, Mosshart filed a motion for reconsideration that the district judge denied on August 16. *Id.* at ¶ 6, Ex. 4 (8/16/17 district court order). On August 23, Mosshart filed another motion, styled as one seeking relief under Rule 59(e) and also requesting that the district court grant him additional time to secure representation. *Id.* at ¶ 4, Ex. 2 (docket). The district court denied Mosshart's August 23 motion on October 11. *Id.* at ¶ 7, Ex. 5 (10/11/17 district court order). After the SEC moved for monetary remedies against Mosshart on December 19, the district court entered a final judgment against Mosshart on March 22, 2018 permanently

enjoining Mosshart from future violations of the federal securities laws, ordering Mosshart to disgorge ill-gotten gains of $293,655 together with prejudgment interest, and imposing a civil penalty in the amount of $293,655. *Id.* at ¶¶ 8-9, Ex. 6 (3/22/18 district court order); and Ex. 7 (final judgment).

B. Mosshart's Securities Law Violations

Enviro Board is a Delaware corporation formed on March 27, 1997, that has been controlled by Camp and Peiffer from its inception. *Id.* at ¶ 10, Ex. 8 (Camp Inv. Test.) at 96:22-25.eMosshart was hired to raise capital for Enviro Board. *Id.* at ¶¶ 10-11, Ex. 8 (Camp Inv.e Test.) at 110:10-115:24; Ex. 9 (Peiffer Inv. Test.) at 258:1-23. From 2011 to 2014, Enviro Board, Camp and Mosshart offered and sold investments to nearly 40 investors residing in several states. *Id.* at ¶¶ 11-12, Ex. 9 (Peiffer Inv. Test.) at 553:1-19, 565:9-568:6; Group Ex. 10 (EBC investor lists). These investments took the form of common stock, secured or unsecured bonds, and promissory notes that at times called for interest to be paid in the form of Enviro Board stock. *Id.* In all, Enviro Board raised approximately $6 million from investors from 2011 to 2014. *Id.* Yet, Enviro Board's mill technology has never advanced past the prototype stage and no significant progress has been made to commercialize the technology. *Id.* at ¶¶ 13-14, Ex. 11 (Peiffer Depo. Tr.) at 23:20-33:16, 33:17-34:15; Ex. 12 (Camp Depo. Tr.) at 15:2-24:23

Mosshart referred to Enviro Board at least 18 individuals who purchased nearly $5 million of the company's securities, beginning in May 2011. *Id.* at ¶ 15, Ex. 13 (12/19/16 Fiske Decl.) at ¶¶ 10-12. Mosshart solicited Enviro Board investors, provided those investors with Enviro Board offering materials, and/or participated in taking investors' orders. *Id.* Mosshart and Camp engaged in direct solicitation via e-mail, by telephone, and through in-person meetings. *See, e.g., id.* at ¶ 16, Ex. 14 (Declaration of Tina P. Brodie). Mosshart provided prospective investors with copies of Enviro Board's private placement memorandum, business

plan, a subscription agreement, an investor questionnaire, and/or other marketing materials, including brochures, corporate updates, and PowerPoint presentations on Enviro Board's business. *See, e.g., id.* at ¶ 17, Group Ex. 15 (Mosshart investor communications). For his efforts, Mosshart was paid transaction-based compensation in the form of commissions. *Id.* at ¶¶ 10-11, Ex. 8 (Camp Inv. Test.) at 110:10-115:24; Ex. 9 (Peiffer Inv. Test.) at 258:1-23. Enviroe Board's securities, however, were not registered with the Commission.

In addition, during the relevant period, Mosshart was associated with LPL Financial LLC ("LPL"), a registered broker-dealer. *Id.* at ¶ 15, Ex. 13 (Fiske Decl.) at Ex. 4. He was not, however, acting within the scope of his employment at LPL when he participated in the offer and sale of Enviro Board securities. *Id.* at ¶ 18, Ex.16 (1/7/14 FINRA finding). LPL was unaware of and did not approve of Mosshart's conduct, and was not supervising him for purposes of his sale of Enviro Board's securities. *Id.* Mosshart consequently engaged in the offer and sale of unregistered securities.

C. Mosshart's Follow-On Administrative Proceeding

The Division instituted this proceeding with an Order Instituting Proceedings ("OIP") on April 5, 2018, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, Mosshart timely answered the OIP on April 25, and at the April 30 prehearing conference, Mosshart acknowledged service of the OIP. On May 7, the Presiding Judge issued an order granting the Division leave to file the instant Rule 250 motion for summary disposition.

III. ARGUMENT

A. Summary Disposition Is Warranted Here

This matter is ripe for summary disposition. Rule 250(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(b), provides that after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying, a party may

move for summary disposition of any or all allegations of the OIP. A hearing officer may grant the motion for summary disposition if the "undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." SEC Rule of Practice Rule 250(b), 17 C.F.R. § 201.250(b).

Summary disposition is "generally proper in 'follow-on' proceedings like this one, where the administrative proceeding is based on a criminal conviction or a civil injunction." *George Charles Cody Price*, Initial Dec. Rel. 1018, 2016 WL 3124675 (June 3, 2016); *accord Omar Ali Rizvi*, Initial Dec. Rel. No. 479, 2013 WL 64626 (Jan. 7, 2013) (the "Commission has repeatedly upheld use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction."), *notice of finality*, 105 S.E.C. Docket 3126, 2013 WL 772514 (Mar. 1, 2013); *Daniel E. Charboneau*, Initial Dec. Rel. No. 276, 84 S.E.C. Docket 3476, 2005 WL 474236 (Feb. 28, 2005) (summary disposition granted and penny stock bar issued based on injunction), *notice of finality*, 85 S.E.C. Docket 157, 2005 WL 701205 (Mar. 25, 2005); *Currency Trading Int'l Inc.*, Initial Dec. Rel. No. 263, 83 SEC Docket 3008, 2004 WL 2297418 (Oct. 12, 2004) (same), *notice of finality*, 84 S.E.C. Docket 440, 2004 WL 2624637 (Nov. 18, 2004).

B.e Mosshart Should Be Permanently Barrede

The sole sanction the Division seeks here – a permanent bar from the securities industry – is well justified. Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, as amended by Section 925(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 925(b), 124 Stat. 1376 (2010) [codified at 15 U.S.C. § 80b-3(f)] ("Dodd-Frank"), provide that the Commission may bar a person from being associated with a "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer

agent, or nationally recognized statistical rating organization," if the Commission finds, on the record after notice and opportunity for a hearing, that such a bar "is in the public interest" and that the person is enjoined from certain violations of the federal securities laws, including, for the purposes of this proceeding, violations of the antifraud provisions. *See* 15 U.S.C. § 78o(b); 15 U.S.C. § 80b-3(f). Accordingly, to prevail on this proceeding, the Division must establish that: (i) Mosshart has been enjoined from violating the federal securities laws; and (ii) it is in the public interest to impose a bar against him.

1. Mosshart has been permanently enjoined

The first requirement of this test is easily satisfied. On March 22, 2018, the district court entered an order and final judgment against Mosshart in the case, *SEC v. Enviro Board Corporation, et al.*, permanently enjoining him from violations of Section 5 of the Securities Act and Section 15(a) of the Exchange Act. Mosshart cannot dispute the entry of these injunctions.

2. An associational bar is in the public interest

Second, permanently barring Mosshart from the securities industry would advance the public interest. Whether an administrative sanction based upon an injunction is in the public interest turns on the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, recognition of the wrongful conduct, and the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Lonny S. Bernath*, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (April 4, 2016) (*Steadman*) factors used to determine whether a bar is in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation,

and the deterrent effect of administrative sanctions. *Id.* at **4, 11. "[N]o one factor is dispositive." *Michael C. Pattison, CPA*, No. 3-14323, 2012 WL 4320146, at *8 (Comm. Op. Sept. 20, 2012); *ZPR Investment Management, Inc.*, No. 3-15263, 2015 WL 6575683, at *27 (Comm. Op. Oct. 30, 2015) (inquiry into the public interest is "flexible"). Here, every one of the considerations articulated in *Steadman* weighs in favor of a permanent industry bar.

a. Mosshart's actions were egregious

To begin with, Mosshart acted with scienter when he either deliberately or recklessly disregarded the securities and broker-dealer registration requirements. Because he was long-associated with a registered broker-dealer and investment adviser, Mosshart was a sophisticated market participant who was well aware of the federal securities laws' registration requirements. Mosshart nonetheless referred 18 individuals to Enviro Board who made a combined investment of nearly $5 million in unregistered securities – a group that included several of his brokerage and/or advisory clients at LPL – and was paid more than half a million dollars for that work. Mosshart never told LPL that he was selling away, and so LPL could neither approve of nor supervise his conduct in soliciting investments in Enviro Board. Indeed, in January 2014, Mosshart consented to a FINRA bar for his conduct. There should be little doubt that Mosshart acted in deliberate or reckless disregard of the federal securities laws.

b. Mosshart's misconduct was not isolated, it was recurrent

Mosshart's violations were not isolated; they were recurrent. His conduct spanned a multi-year period and impacted the lives of more than a dozen investors. As just one example, a recently-widowed mother of two hired Mosshart to act as her financial advisor. Leung Decl., Ex. 14 (Brodie Decl. at ¶¶ 2-4. She had received about $450,000 in life insurance proceeds upon her husband's death. *Id.* at ¶ 3. Mosshart urged her to invest all $450,000 of those proceeds in Enviro Board securities, assuring his client that the investment was safe, stable, and appropriate

for her needs as a recent widow, someone who now needed a fixed income stream to meet her family's financial obligations. *Id.* at ¶¶ 3, 15. The client decided to invest $400,000 in a collaterally-secured bond instrument issued by Enviro Board. *Id.* at ¶ 5. She was never told that LPL hadn't given Mosshart permission to market Enviro Board investments to his advisory clients, nor did Mosshart disclose to her the fact that he was being paid a 10% commission on her $400,000 investment. *Id.* at ¶ 6. In time, Enviro Board defaulted on the bond and Mosshart's client has never recovered all $400,000 of her investment. *Id.* at ¶ 14. That Mosshart's violations of the federal securities laws had a concrete, tangible, and lasting harm on the investing public is not subject to serious dispute.

c. Mosshart does not recognize his wrongful conduct

Mosshart will no doubt provide a *mea culpa* and assurances against future violations. But even if this Court were to find them sincere, this factor should not outweigh the Commission's concern that Mosshart will present a threat if he returns to the securities industry. *See In the Matter of Gary Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, *7 (finding that sincere expressions of remorse and assurances against future violations insufficient to preclude permanent bar given need for high ethical standards in securities industry); *Batemen Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 315 (1985) ("The primary objective of the federal securities laws [is the] protection of the investing public and the national economy through the promotion of 'a high standard of business ethics ... in every facet of the securities industry.") (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186-87 (1963)).

Most significantly, Mosshart has exhibited no remorse for his conduct, nor offered any sincere assurances against future violations. In the district court action alone, Mosshart claimed that he "never handled monies of investors," "only provided arms[-]length referrals," "did not sell securities," and lied about his failure to answer the SEC's complaint as owing to the fact that

he has never been in a lawsuit before. Compare *SEC v. Enviro Board Corp., et al.*, Case No. 2:16-cv-06427-R-SS (C.D. Cal.) at Dkt. No. 27 at 3 with Dkt. No. 24-1, Ex. 1 at 8, ¶15. Having committed no wrong in his own mind, Mosshart instead complains of "experiencing defamation of character due to SEC and FINRA disclosures." *Id.* at Dkt. No. 27 at 3. These assertions aree all inconsonant with the notion that Mosshart has any appreciation of the consequences of hise misconduct, or any commitment to not violating the law in the future.e

d.e It is likely that if employed in the industry, Mosshart will havee future opportunities for violationse

The final *Steadman* factor also supports this Court's imposition of a permanent associational bar. "The securities industry presents continual opportunities for dishonest and abuse and depends heavily on the integrity of its participants and on investors' confidence." *Kornman*, 2009 WL 367635, *7. "The securities business is 'a field where opportunities for dishonesty recur constantly.'" *In the Matter of Evelyn Litwok*, Advisers Act Release No. 3838, 2011 WL 3345861, *5 (quoting *Ahmed Mohamed Soliman*, 52 S.E.C. 227, 231 (1995) (imposing permanent bar based on misdemeanor conviction for submitting false documents to the IRS)). Mosshart is in his forties and remains in the prime of his professional career. Consequently, there is a strong likelihood that any employment by Mosshart in the securities industry will present future opportunities for violations.

* * *

On the balance of the *Steadman* factors, Mosshart should be permanently barred from the industry. *See, e.g., In the Matter of Gregory John Tuthill*, Admin. Proc. File No. 3-18421, SEC Rel. No. 83090, 2018 WL 1907133 (Apr. 23, 2018) (ordering associational bar against respondent enjoined from violating Section 5 and Section 15(a) registration provisions); *In the Matter of Robert L. Baker, et al.*, Admin. Proc. File No. 3-17716, SEC Rel. No. 10471, 2018 WL

1419478 (Mar. 22, 2018) (same); *In the matter of Wilfred R. Blum, et al.*, Admin. Proc. File No. 3-14961, SEC Rel. No. 30269, 2012 WL 5936761 (Nov. 19, 2012) (same).

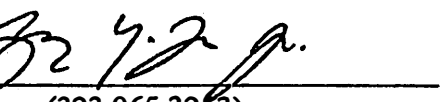
IV. CONCLUSION

For all the reasons stated, the Division respectfully requests that its motion for summary disposition be granted, and that Mosshart be permanently barred pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

Dated: May 21, 2017

Respectfully submitted,

DIVISION OF ENFORCEMENT



Gary Y. Leung (323.965.3213)
Securities and Exchange Commission
444 S. Flower St., 9th Floor
Los Angeles, CA 90071
(323) 965-3998 (*telephone*)
(323) 965-3908 (*facsimile*)

Counsel for the Division of Enforcement

Certificate of Service

I certify that on May 21, 2018, I caused the foregoing to be served on the following persons by the method of delivery indicated below.

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, D.C. 20549

(by facsimile to (703) 813-9793 and United Parcel Service)

(original and three copies)

Honorable Brenda P. Murray
Chief Administrative Law Judge
100 F Street, N.E., Mail Stop 2557
Washington, D.C. 20549-2557

(by United Parcel Service and email)

Joshua D. Mosshart
[redacted]
Malibu, CA [redacted]
[redacted]@gmail.com
Pro Se Respondent

(by United Parcel Service and email)

Gary Y. Leung