UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19515

In the Matter of **PATRICK S. CARTER,** **Respondent.**	**DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS**

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Pursuant to the Order to Show Cause, AP Rulings Rel. No. 92732 (August 23, 2021), the Division of Enforcement ("Division") submits this motion for default and sanctions against Respondent Patrick S. Carter ("Carter" or "Respondent").

I. INTRODUCTION

This is a follow-on administrative proceeding based on entry of a permanent injunction. Respondent was properly served with the Order Instituting Proceedings ("OIP") in this matter on June 24, 2021, and was required to file an answer within 20 days (July 14, 2021). (*Id.*). Respondent has not filed an answer, and thus is in default. The Division of Enforcement moves, pursuant to Rules 155(a)(2) and 220(f) of the Securities and Exchange Commission ("SEC")'s Rules of Practice, for a finding that Respondent is in default and for the imposition of remedial sanctions. The Division specifically requests that Respondent be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

II. BACKGROUND

A. Underlying Action

On November 20, 2018, a judgment was entered against Respondent, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. Patrick S. Carter*, *et al.*, Civil Action Number 8:16-cv-02070-JVS-DFM, in the United States District Court for the Central District of California. *See* Declaration of Douglas M. Miller *filed concurrently herewith* ("Miller Decl."), Ex. 1 (ECF Dkt. No. 70) (Bifurcated Judgment).

The Commission's complaint alleged that from 2009 through at least 2014, Respondent, along with 808 Renewable, 808 Investments, LLC (Respondent's solely-owned and controlled company), Martin J. Kinchloe, Peter J. Kirkbride, and others conducted fraudulent offerings of unregistered shares of 808 Renewable stock, raising over $30 million from more than 500 investors nationwide. *See* Miller Decl., Ex. 2 (ECF Dkt. No. 1) (Complaint). The complaint

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further alleged that investors were led to believe that they would earn a return on their investment and that their funds would be used to expand 808 Renewable's business. *Id.* The complaint alleged that Respondent misused and misappropriated investor funds to, among other things, pay commissions to himself, Kinchloe, and other sales representatives who helped him defraud investors. *Id.* The complaint further alleged that Respondent used the funds he misappropriated from 808 Renewable to support his lifestyle and to pay commissions to the sales representatives who helped him defraud investors. The complaint further alleged that Respondent participated in the unregistered sale of 808 Renewable securities. *Id.*

On October 29, 2018, Respondent consented, without admitting or denying the allegations in the complaint, to the entry of a judgment against him on all claims, including that he had participated in an unregistered offering, in violation of Section 5 of the Securities Act, 15 U.S.C. §§ 77e(a) & (c), had defrauded investors, in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q, and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j, and Rule 10b-5, 17 C.F.R. § 240.10b-5, and had acted as an unregistered broker, in violation of Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a)(1) *See* Miller Decl., Ex. 3 (ECF Dkt. No. 69) (Carter Consent). On November 21, 2018, the Court entered judgment against Respondent on all of the SEC's claims and permanently enjoined the Respondent from further violations of those provisions. *See* Miller Decl., Ex. 1 (ECF Dkt. No. 70) (Bifurcated Judgment). The Court further ordered Respondent be prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, and barred from participating in an offering of penny stock including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. *Id.*

B. The Institution of this Proceeding, the Service of the OIP and Respondent's Failure to Answer

On September 25, 2019, the Commission instituted this matter pursuant to Section 15(b) of the Exchange Act. The Order Instituting Proceeding ("OIP") was served on Respondent on

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June 24, 2021 in accordance with Rule 141(a)(2). *See* Division of Enforcement's Supplemental Declaration of Service of the Order Instituting Proceedings (Aug. 10, 2021). In an order dated August 23, 2021, the Office of the Secretary found that the Division had established that service on Respondent was properly effected and gave Respondent twenty days from the time of service to answer. Order to Show Cause, AP Rulings Rel. No. 92732 (August 23, 2021). No answer was filed or served by Respondent. Miller Decl. ¶ 10.

III. ARGUMENT

A. Respondent Is in Default and the Allegations of the OIP May Be Deemed to Be True

Because Respondent has not responded to the OIP, he is in default. Rule 155(a) of the Commission's Rules of Practice states:

> A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: . . .
>
> (2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . . .

Moreover, the OIP itself provides: "If Respondent fails to file the directed answer . . . . the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true . . . ." (OIP at p. 3).

The Office of the Secretary's finding that Respondent was properly served with the OIP is amply supported by the record. *See* Division of Enforcement's Supplemental Declaration of Service of the Order Instituting Proceedings (Aug. 10, 2021). Under Rule 155(a), the allegations of the OIP may thus be deemed to be true and the hearing officer may determine the proceedings against the party upon consideration of the record, including the order instituting proceedings.

B. The Findings in the Underlying Case Are Binding on Respondent

Where, as here, Respondent has agreed as a part of his consent that the facts alleged in the Division's complaint are to be deemed true, those facts may not be revisited in a subsequent

administrative proceeding. *See Peter J. Eichler, Jr.*, Initial Dec. Rel. No. 1032, 2016 WL 4035559 (July 8, 2016) ("It is well-established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial") (collecting cases); *accord Robert Burton*, Initial Dec. Rel. No. 1014, 2016 WL 3030850 (May 27, 2016); *James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713 & n.13, 2007 WL 2974200, *petition for review denied*, 285 F. App'x 761 (D.C. Cir. 2008); *In the Matter of Gunderson*, Exchange Act Release No. 61234, 2009 SEC LEXIS 4322 *15-16 (Dec. 23, 2009).

C. Imposition of a Permanent Bar Is Warranted

Based on the record here and in the underlying action, the Division respectfully requests that sanctions be imposed under Section 15(b)(6) of the Exchange Act. That section provides in relevant part:

> With respect to any person who is associated, . . . or, at the time of the alleged misconduct, who was associated . . . with a broker or dealer, . . . the Commission, by order, shall censure, place limitations on the activities or functions of such a person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and an opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person – . . .
>
> has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph . . . (D) . . . of paragraph (4) of [Section 15(b)]
>
> ***
>
> is enjoined from any action, conduct or practice specified in subparagraph (C) of such paragraph (4)" of Section 15(b).

Thus, Section 15(b)(6) authorizes the Commission to impose an associational bar against a respondent if: (1) at the time of the alleged misconduct, he was associated with a broker; (2) he has *either* (a) committed any act, or is subject to an order or finding that he committed any act

enumerated in Section 15(b)(4)(D), ***or*** (b) is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C); and (3) a bar is in the public interest.

1. At the time of the misconduct, Respondent was acting as an unregistered broker and was associated with an unregistered broker

Each of these factors is easily met here. First, the Division's complaint alleges that, at the time of the misconduct here, Respondent was acting as an unregistered broker. Specifically, the Division's complaint alleges – and the district court found that it shall be deemed true – that:

> Carter conducted a fraudulent and unregistered offer and sale of securities through co-defendant 808 Renewable Energy Corporation ("808 Renewable"), a company that he founded and managed. Compl. ¶ 4. Specifically, from 2009 to 2014, Carter engaged in a scheme that raised over $30 million from over 500 investors nationwide in fraudulent and unregistered offerings. *Id*. ¶ 5.
>
> Through the use of private placement memoranda ("PPMs") and oral statements, Carter made four key misrepresentations as part of his campaign to raise capital. *Id.* ¶ 6. Carter represented that investor funds would be used to acquire new equipment and expand 808 Renewable's business, that commissions paid in connection with the sale of 808 Renewable securities would not exceed 10% and go only to registered brokers, that 808 Renewable was generating positive cash flow that would be used to pay monthly or quarterly dividends, and that the company's shares had been pre-approved by the New York Stock Exchange for listing on the American Stock Exchange. *Id*. In fact, Carter used investor money to support a lavish lifestyle, pay sales commissions of up to 25%, and pay out Ponzi-like "dividends" to previous investors. *Id*. ¶ 7. 808 Renewable was also never pre-approved for listing on the American Stock Exchange. *Id.*

Miller Decl. Ex. 4 (ECF Dkt. No. 119) (Order Regarding Renewed Motion for Monetary Remedies, p. 1-2). As previously discussed, Respondent is bound by the district court's finding here. Administrative proceedings for sanctions against unregistered broker dealers are properly instituted under Section 15(b)(6), and the Commission regularly issues against unregistered brokers pursuant to that section. *See, e.g., Hector J. Garcia*, Exch. Act Rel. No. 54116, (July 10, 2006); *James Joseph Conway*, Exch. Act Rel. No. 53722 (Apr. 25, 2006).

2. The District Court enjoined Respondent against future violations of the antifraud provisions of the securities laws

The second element under Section 15(b)(6) is also established by the record in the underlying action because Respondent was enjoined from conduct specified in Section

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15(b)(4)(C). Respondent is enjoined from conduct specified in Section 15(b)(4)(C), which provision includes permanent and temporary injunctions against "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security." Here, the district court permanently enjoined Respondent from, violating, directly or indirectly, Section 10(b) [of the Exchange Act] and Rule 10b-5 thereunder in connection with the purchase or sale of any security, and also enjoined Respondent from violating Section 15(a) of the Exchange Act and Sections 5(a) & (c) and 17(a) of the Securities Act. *See* Miller Decl., Ex. 1 (Dkt. No. 70) (Bifurcated Judgment).

3. A bar is in the public interest

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) 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. 81 (1981); *Lonny S. Bernath*, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (Apr. 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest).

As to whether a permanent bar is appropriate in a follow-on proceeding, precedents hold that, "[v]iolations involving the antifraud provisions of the federal securities laws are especially serious and merit the severest of sanctions." *Vinay Kumar Nevatia*, Initial Dec. Rel. No. 1021, 2016 WL 3162186, at *5 (June 7, 2016), citing *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *accord Eichler*, 2016 WL 4035559, at *6 ("The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions ... Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on antifraud injunctions in which the Commission issued opinions, and all of the respondents were

barred ... ") (internal citations omitted). Moreover, "[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin and Joshua Shainberg*, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006); *Notice of Finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

4. Respondent's violations were egregious, intentional, recurrent and he acted with a high degree of scienter

As previously noted, in the underlying district court action, Respondent agreed and the district court found that the allegations in the Division's complaint shall be deemed true and the violations it lays out are egregious. For example, the complaint alleges that Respondent represented to investors and prospective investors that the company was engaged in the renewable and efficient energy business. *See* Miller Decl., Ex. 2 (Complaint, Dkt. No. 1.at ¶ 6.) As part of their campaign to raise capital, Respondent and his co-defendants circulated private placement memoranda, or "PPMs," and made oral statements representing that investor funds would be used to acquire new equipment, to expand 808 Renewable's business, and for other business-related expenditures. (*Id.*) They also represented that if any commissions were paid in connection with the sale of 808 Renewable securities, they would not exceed 10% and would be paid only to registered brokers. (*Id.*) In addition, they represented that 808 Renewable was generating positive cash flow that would be used to pay monthly or quarterly dividends to investors. (*Id.*) Respondent also told prospective investors that the company's shares had been pre-approved by the New York Stock Exchange ("NYSE") for listing on the American Stock Exchange ("AMEX"). (*Id.*)

Contrary to these representations, Respondent misappropriated about half of the money raised from investors to support his lavish lifestyle and to pay substantial sales commissions of up to 25% to the sales agents who helped Respondent perpetrate the fraud. (*Id.* at ¶ 7.) Respondent personally authorized these misuses of company funds. Respondent also authorized the use of investor funds for other undisclosed and improper purposes, including the payment of

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Ponzi-like "dividends" to existing investors with funds invested by new investors. (*Id.*) In addition, contrary to Respondent's representations to investors, 808 Renewable had never been approved or pre-approved for listing on AMEX. (*Id.*) Respondent and his co-defendants raised over $30 million from over 500 investors nationwide by offering and selling five different types of securities in 808 Renewable. (*Id.* at ¶ 21.)

Further, Respondent's fraud spanned several years (2009-2014) and thus was not an isolated incident. Instead, he engaged in the scheme to defraud over a number of years that involved many millions of dollars and over 500 nationwide investors. Respondent's conduct also shows a high degree of scienter. This is evidenced by the fact that he used the funds he misappropriated from 808 Renewable to support his lifestyle and to pay commissions to the sales representatives who helped him defraud investors. (*Id.* at ¶ 92.) For example, in 2009, 808 Investments paid over $220,000 for boats and cars for Respondent, $246,000 to pay Respondent's personal credit card bills, and over $40,000 to cover additional personal expenses of Respondent's, including trips, jewelry, art, and gambling. (*Id.* at ¶ 93.) Respondent's 2009 personal expenses were largely paid by funds traced to 808 Renewable investors. (*Id.*) In 2014, 808 Renewable remained unprofitable and its independent auditor issued a "going concern" qualification when it completed the company's most recent audit. (*Id.* at ¶ 94.) Despite this, Respondent continued to misappropriate funds from the company, using over $3 million of 808 Renewable's funds for his benefit: $2.2 million was used to redeem Respondent's shares, approximately $600,000 was used to repay a purported loan made by Respondent to 808 Renewable Energy, and $360,000 was used to pay Respondent's 2014 salary. (*Id*.)

In early 2015, when company funds were largely depleted and no additional investor funds were being raised, 808 Renewable paid Respondent a bonus of $360,000 and a salary of $125,000. (*Id*. at ¶ 95.) Respondent reviewed bookkeeping reports that were generated during this period reflecting the improper use of 808 Renewable funds, and helped approve these improper uses. (*Id.* at ¶ 96.)

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Although Respondent entered into a cooperation plea agreement in his parallel criminal case with the United States Attorney's Office and agreed to bifurcated settlement in the Division's underlying district court action, he still vigorously contested the Division's efforts to obtain any monetary relief for his victims, claiming he should only be ordered to disgorge the $2,976,023.15 in loss he admitted to causing in his criminal case, which encompassed only a portion of the fraud alleged in the Division's complaint, and nothing else. *See* Miller Decl., Exs. 3, 5 and 6 (Dkt. No. 69 (Consent); Dkt. No. 3 (Criminal Plea Agreement Crim.); and Dkt. No. 113 (Opposition to Renewed Monetary Relief Motion). The district court rejected this and ultimately sided with the Division and imposed the full amount of its requested disgorgement $14,628,767.87 together with prejudgment interest of $1,317,461.04. *See* Miller Decl., Exs. 4 and 7 (ECF Dkt. No. 119) (Order Granting Monetary Relief.) and (ECF Dkt. No. 120) (Final Judgment). The Division did not seek a civil penalty given that Respondent was still awaiting sentencing in his criminal case and is anticipated to receive a sentence of imprisonment.

In sum, virtually all of the factors favor a permanent bar under *Steadman*. The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. *Jonathan D. Havey, CPA*, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow on proceeding to civil injunction, that, "[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct"); *Delsa U. Thomas and The D. Christopher Capital Management Group, LLC*, Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181, at 24 (Nov. 4, 2014) (imposing permanent bar and revoking adviser's registration on summary disposition following civil fraud injunction, noting that "Respondents do not recognize the wrongful nature of their conduct. Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission's witnesses of bias or lying"); *Terrence O'Donnell*, Initial Dec. Rel. No. 334, 2007 SEC LEXIS

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2148, at *14 (Sept. 20, 2007) (weighing in favor of bar respondent's "protest" that the securities laws were not sufficiently clear, finding this "evidence that [respondent] still seeks to minimize his misconduct"); *Steadman*, 603 F.2d at 1140.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that Respondent be barred from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

September 30, 2021

Respectfully submitted,

/s/ Douglas M. Miller

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In the Matter of Patrick S. Carter
Administrative Proceeding File No. 3-19515
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. §201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS

was served on September 30, 2021, upon the following parties as follows:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

(By eFAP only)

Patrick S. Carter
[redacted]
Respondent

(By UPS and U.S. Mail)

Dated: September 30, 2021

/s/ Douglas M. Miller
DOUGLAS M. MILLER