UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21220

In the Matter of **HUNG WAI "HOWARD"** **SHERN,** **Respondent.**	**DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AGAINST RESPONDENT HUNG WAI "HOWARD" SHERN AND MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Rule 155(a) of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice, the Division of Enforcement ("Division") respectfully moves for entry of default and the imposition of sanctions against Respondent Hung Wai "Howard" Shern ("Shern" or "Respondent").

This is a follow-on proceeding arising from civil securities broker-dealer registration and anti-fraud injunctions imposed by the United States District Court for the Eastern District of New York against Shern after granting summary judgment against him. Because Shern has been enjoined and the sole issue in this proceeding concerns the appropriate sanction against him under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and because Shern has not answered the Order Instituting Administrative Proceedings ("OIP") against him and has not responded to the Commission's February 22, 2024 Order to Show Cause why he should not be deemed to be in default, this motion for entry of default should be granted, and an associational bar should be imposed against him.

OS Received 04/04/2024

I. Procedural History and Factual Background

A. The District Court Case

On October 9, 2013, the Commission filed a complaint against Respondent and others in the civil action entitled *SEC v. CKB168 Holdings Ltd., et al.*, 13-cv-5584, in the United States District Court for the Eastern District of New York. The Commission's complaint alleged that from at least May 2012 through October 2013, Respondent and others defrauded investors into investing in a business venture called CKB. OIP Section II, ¶ 2; Exh. 1, SEC Complaint ("Compl.").[1] According to the complaint, Respondent was an architect of a scheme whereby Respondent and other promoters falsely presented CKB as a profitable multi-level marketing company that sold web-based children's educational courses when it was, in fact, a pyramid scheme. OIP Section II, ¶ 2; Exh. 1, Compl. at ¶¶ 2-7, 20, 37. The complaint alleged that there were virtually no legitimate sales of any CKB products to retail purchasers, and that the only way to earn money in the venture was to bring in new investor funds. *Id*. The complaint also alleged that Respondent, in addition to being an architect of the scheme, was also a promoter and acted

[1] Under Rule 323, notice may be taken in this proceeding of "any material fact which might be judicially noticed by a district court of the United States…." 17 C.F.R. § 201.323. Thus, official notice may be taken of the Commission's public official records and of the docket reports, court orders, official trial transcripts, admitted trial exhibits, and other court filings by the parties in the civil action. The Division respectfully requests that judicial notice be taken of the following exhibits to this motion:

- Exhibit 1 – SEC Complaint, *SEC v. CKB168 Holdings Ltd., et al.*, 13-cv-5584 (E.D.N.Y October 9, 2013) (Dkt. No. 1);
- Exhibit 2 – Summary Judgment Order, *SEC v. CKB168 Holdings, Ltd., et al.,* 210 F. Supp. 3d 421 (E.D.N.Y. 2016);
- Exhibit 3 – Final Judgment, *SEC v. CKB168 Holdings Ltd., et al.,* (E.D.N.Y. Aug. 12, 2022) (Dkt. No. 467);
- Exhibit 4 – Division's Service on Shern Pursuant to the Commission's Order granting the Division's Motion for Leave to Serve by Alternative Means; and
- Exhibit 5 – Division's Service of the Order to Show Cause.

as an unregistered broker-dealer. OIP Section II, ¶ 2; Exh. 1, Compl. at ¶¶ 28, 49, 61-65, 116-117.

On September 28, 2016, the District Court issued an opinion granting summary judgment in favor of the Commission and finding that Respondent violated Sections 5 and 17(a) of the Securities Act of 1933 and Section 10(b), Rule 10(b)-5, and Section 15(a) of the Exchange Act. OIP Section II, ¶ 3; Exh. 2, *SEC v. CKB168 Holdings, Ltd., et al.,* 210 F. Supp. 3d 421 (E.D.N.Y. 2016). The Court also found that Respondent helped devise the fraud and actively promoted CKB to potential investors, knowingly made false statements about CKB, effected the purchase of CKB securities, sought to suppress the truth about CKB, and earned substantial commissions. Exh. 2 at 432-33, 446-47, 452-53. As a result, the Court found that Respondent acted as an unregistered broker or dealer. *Id.* at 452-53; OIP Section II, ¶ 3.

On August 12, 2022 the Court entered a final judgment that permanently enjoined Respondent from future violations of the foregoing securities laws and from participating in any pyramid scheme going forward. The Court also imposed monetary relief that included disgorgement, joint and several with the entity defendants and his co-architect Florence Leung, of $137,238,985, and a penalty of $13,700,000. OIP Section II, ¶ 4; Exh. 3, Final Judgment at 6-7.

B. The Follow-on Proceeding

On October 26, 2022, the Commission initiated this follow-on proceeding against Respondent pursuant to Section 15(b) of the Exchange Act. On March 27, 2023, the Division sought leave to serve Shern by alternative means. The Commission granted the Division's motion on December 26, 2023. On January 5, 2024, the Commission then served the OIP on Shern. Exh. 4. On February 22, 2024, the Commission issued an Order to Show Cause why Shern should not be

held in default. On March 18, 2024, the Division served the Order to Show Cause on the same email address to which it was authorized to serve the OIP. Exh. 5.

II. The Commission Should Enter Default Against the Respondent

Commission Rule of Practice 155(a) provides that "[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… [t]o answer, to respond to a dispositive motion within the time period, or to otherwise defend the proceeding." Here, because Shern has failed to "answer… or otherwise defend the proceeding," the Division submits that a default judgment should be entered against him, as is specifically contemplated by the Commission's Rules of Practice. *See* Rules 155(a) and 220(f).

In that judgment, the Commission should permanently bar Shern from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and also should permanently bar him from participating in an offering of penny stock.

Section 15(b) of the Exchange Act authorizes the imposition of an associational bar on any person who has been enjoined by a court of competent jurisdiction from acting as a broker or dealer and also authorizes the Commission to bar such person from participating in an offering of penny stock, if such bars would be in the public interest. 15 U.S.C. §§ 78o(b)(4)(C), (6)(A)(iii); *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding").

A. Respondent Has Been Enjoined

The District Court permanently enjoined Respondent from violating Section 15(a) of the Exchange Act, as well as the anti-fraud provisions of the securities laws. Exh. 3, at 4-5. The District Court had previously found that Respondent acted as a broker in connection with the activities at issue in the litigation. Exh. 2, at 453.

B. An Associational Bar and Penny Stock Bar Are in the Public Interest

In assessing whether associational and penny stock bars are in the public interest, the Commission considers several factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

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)). Additionally, the Commission considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5-6 (July 25, 2003).

The Commission has often emphasized, however, that the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public at large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, 55 S.E.C. 1133, 1145 (2002), *aff'd,* 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp*., 46 S.E.C. 78, 100 (1975). Moreover, the public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976). Here, the *Steadman* factors weigh in favor of an associational

industry bar.[2]

First, Respondent's actions were egregious. Respondent was the architect of a pyramid scheme that brought in hundreds of millions of dollars, which supports the fact that he knew or recklessly ignored the fact that CKB was a fraud**.** Exh. 2, at 446-47. Shern directly and substantially benefitted from the pyramid scheme, as both the scheme architect with control over bank accounts and as a top OMA. *Id*. Shern also directly promoted CKB to investors and sought to suppress claims that it was a fraud. *Id.* at 447.

Second, Respondent's violations were recurrent. As the architect and top beneficiary of the scheme, his misconduct was not an isolated incident. *Id*. at 446-47. His central role in the scheme also establishes that he acted with a high degree of scienter. He helped devise the fraud, promoted it, benefited from it, and sought to suppress the truth, including published allegations that CKB was a pyramid scheme. *Id*. at 432-33, 446-47.

Finally, Respondent has given no assurances against future violations and has failed to recognize the wrongful nature of his conduct. He has made no effort to accept responsibility or compensate harmed investors. That, coupled with the impact on the public at large, demonstrates that an associational bar is necessary. Such a bar "will prevent [Respondent] from putting investors at further risk." *Montford & Co*., Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied,* 793 F.3d 76 (D.C. Cir. 2015).

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[2] Even though Respondent's misconduct did not involve a penny stock *per se*, this kind of collateral relief is appropriate and in the public interest in this proceeding because where, as here, a party engages in misconduct that warrants a suspension or bar to protect investors in one part of the industry regulated by the Commission, it is in the public interest to protect investors in all parts of the industry the Commission regulates. Investors should not bear the risk the Commission is not able to accurately predict what business Respondent may choose to undertake during the associational bar. Therefore, because a penny stock bar is not disproportionate in these circumstances, the Commission should include it as part of its order.

Ultimately, the securities industry "relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, 2012 WL 6208750, at *11. Respondent's pattern of blatant misconduct demonstrates he is incapable of such fairness and integrity. He presents a significant risk to the securities market and should be sanctioned accordingly. *See Bartko v. SEC,* 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) ("Under Dodd-Frank, then, the Commission is now able to bar a securities market participant from the six listed classes—broker-dealers, investment advisers, municipal securities dealers, transfers agents, municipal advisors and NRSROs—based on misconduct in only one class.").

III. Conclusion

For the foregoing reasons, the Division of Enforcement respectfully requests the Commission grant this Motion for Entry of Default, and impose a permanent associational bar and penny stock bar against Respondent under Section 15(b) of the Exchange Act.

Dated: April 4, 2024

Respectfully submitted,

/s/ Daniel J. Maher

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CERTIFICATE OF SERVICE

I certify that on April 4, 2024, I caused a copy of the forgoing to be e-mailed to hshern@hotmail.com

/s/ Daniel J. Maher
Daniel J. Maher