

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21726

In the Matter of

BRIAN BARTLETT
AMOA and ELBERT
“AL” ELLIOTT,

Respondent.

DIVISION OF ENFORCEMENT’S
MOTION FOR DEFAULT JUDGMENT
AND REMEDIAL SANCTIONS AS TO
RESPONDENT ELLIOTT

Pursuant to Rules 155(a) and 220(f) of the Commission’s Rules of Practice, the Division of Enforcement respectfully requests that the Commission enter a default judgment and impose appropriate sanctions against Respondent Elbert “Al” Elliott (“Respondent” or “Elliott”). More specifically, the Division requests that the Commission bar Elliott from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical ratings organization (“NRSRO”).

I. BACKGROUND

A. District Court Proceedings Against Elliott

On September 14, 2022, the Commission filed a district court Complaint against Elliott and others, alleging that Elliott violated 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. *SEC v. Chicago Crypto Capital LLC, et al.*, 22-cv-4975 (N.D. Ill.) (Dkt. 1). (*See* Ex. A.) The Complaint alleged that Elliott conducted a fraudulent and unregistered offering of a crypto asset security called BXY while acting as an unregistered

broker, illegally raising at least \$1.5 million in proceeds through unregistered offers and sales of BXY to around 100 individuals. (*See generally id.*)

On October 20, 2022, Elliott was served at his home with a Summons and a copy of the Complaint. But Elliott never filed an answer or a responsive pleading.¹ The Commission then moved for the entry of a default judgment against Elliott, and supported that motion with the Declaration of Craig McShane, an accountant within the Division of Enforcement. *Chicago Crypto Capital*, Dkt. 19 (N.D. Ill. April 28, 2023). (*See Ex. B.*) On May 10, 2023, the District Court entered a final default judgment against Elliott, permanently enjoining him from violations of Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, permanently enjoining him from participating in an offering of crypto asset securities other than for his own personal account, and ordering disgorgement of \$21,777.64, prejudgment interest of \$3,167.66, and a civil penalty of \$133,938. *Chicago Crypto Capital*, Dkt. 22. (*See Ex. C.*)

B. The OIP's Factual Allegations

On September 26, 2023, the Commission issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Exchange Act and Notice of Hearing (“OIP”). *See* Exchange Act Release No. 98526. Like the district court complaint, the OIP alleged specific details about Elliott’s violations of the Securities Act and the Exchange Act.

The OIP alleged that in December 2005, Elliott was charged by the State of Indiana with fraud, misappropriation and selling securities in an unregistered offering, and that Elliott entered a guilty plea and served five years in prison. (OIP ¶ 4.)

¹ Under Rule of Practice 323, the Commission may take judicial notice of the record in the district court action. *See* 17 C.F. R. § 201.343; *In re Conrad A. Coggeshall*, Exchange Act Release No. 97474, Advisers Act Release No. 6306, 2023 WL 3433398, at *2 n.6 (May 10, 2023) (relying on Commission filings on the district court docket).

The OIP further alleged that, beginning in February 2019, Elliott was employed by Chicago Crypto Capital LLC (“CCC”), an Illinois limited liability company that offered and sold crypto assets, including crypto asset securities.² (OIP ¶¶ 3-4.) CCC had previously entered an arrangement with a company called Beaxy Digital Ltd. (“Beaxy”), that operated a trading platform for crypto assets called the Beaxy Exchange and needed to fund its development of the Beaxy Exchange and related applications. (*Id.* ¶¶ 6, 10.) BXY was a crypto asset issued by Beaxy and offered and sold to investors. (*Id.* ¶ 10.) CCC and Beaxy agreed that CCC would sell BXY tokens to investors for up to \$0.05 per token, but that CCC would pay Beaxy only \$0.02 per token and retain the difference. (*Id.*) CCC was not required to sell or purchase any specific quantity of BXY; instead, its role was to sell BXY to retail investors to increase the number of users of the Beaxy Exchange and generally to raise money for Beaxy. (*Id.* ¶ 11.) This BXY offering was not registered with the Commission, did not satisfy any exemption from registration, and Elliott was not registered with the Commission as a broker or associated with a Commission-registered broker-dealer. (*Id.* ¶ 12.)

The OIP additionally alleged that, from approximately August 2018 through November 2019, CCC sales representatives, including Elliott, offered and sold BXY tokens, raising at least \$1.5 million from around 100 individuals, many of whom lacked experience investing in crypto assets and were not accredited investors. (*Id.* ¶ 13.) The CCC sales staff, including Elliott, made many cold calls to potential investors all over the U.S. using aggressive language and sales tactics. (*Id.* ¶ 14-17.) During these marketing efforts, sales representatives promoted BXY’s profit potential, using sales scripts and written marketing materials. (*Id.* ¶¶ 15-17.) Elliott, for example, falsely assured at least one older investor that BXY was a safe investment, despite knowing that

² The Division’s use of the phrase “crypto asset securities,” in the OIP and in the underlying District Court action, was intended to mean that the BXY crypto assets at issue in this matter were offered and sold to investors as securities. (*See* Ex. A, Compl. at ¶¶ 1-2, 4, and OIP at ¶¶ 1-2.)

the investor needed to preserve her assets for retirement, and persuaded the investor to purchase \$47,000 in BXY. (*Id.* ¶ 17.)

The OIP also alleged that in return for its solicitation efforts, CCC was generally compensated through a markup CCC charged of up to 150% on each BXY token it sold to investors. (*Id.* ¶ 18.) CCC compensated its salespeople, including Elliott, by paying them a portion—typically 40%—of the markup CCC received on each BXY sale. (*Id.*) And CCC handled the investors’ funds and held BXY tokens for investors, without first purchasing any BXY from the issuer for later resale. (*Id.* ¶ 19.) But CCC salespeople, including Elliott, failed to inform investors about that markup, or about a subsequent markup that CCC charged once BXY tokens were freely trading on certain crypto asset trading platforms. (*Id.* ¶¶ 20-23.) For example, on July 11, 2019, when the quoted closing price of BXY was \$0.055 per token, Elliott sold \$10,000 in BXY for about twice that price per token without disclosing that markup. (*Id.* ¶ 22.) Indeed, Elliott failed to inform potential investors about the commission that he personally was earning, instead representing that funds from the sale would be used by Beaxy to develop the Beaxy Exchange. (*Id.* ¶ 23.) In reality, Elliott received compensation of a portion—typically 40%—of the markup that CCC received on each sale of BXY. (*Id.* ¶ 18.)

The OIP further alleged that on top of making false representations about markups and commissions, Elliott also made additional material misrepresentations, including that he and members of his family had personally invested in BXY, and that he had other customers who had investments of at least \$250,000 in BXY. (*Id.* ¶ 26.) He even falsely told an investor that BXY had “strong [price] support” and would not fall for a period of time. (*Id.*) In the fall of 2019, Elliott told investors that he expected BXY to generate large returns, but failed to tell those same investors that

he was aware of serious financial and operational problems at Beaxy that threatened the viability of Beaxy and BXY. (*Id.* ¶ 27.)

Finally, the OIP further alleged that on May 10, 2023, the district court in *SEC v. Chicago Crypto Capital LLC* entered a final judgment by default against Elliott, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. (*Id.* ¶ 8).

C. Elliott’s Failure to Defend this Administrative Proceeding

After the OIP issued, Elliott was personally served with the OIP on November 25, 2024. Status Report and Proof of Service of Order Instituting Proceeding (Nov. 26, 2024). The OIP served on Elliott advised that Elliott “shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission’s Rules of Practice, 17 C.F.R. § 201.220(b).” Further, the Commission’s February 10, 2025 Order to Show Cause required Elliott to explain why he failed to timely respond to the OIP, and to provide a proposed answer. However, Elliott has failed to answer or otherwise defend this proceeding, and is thus in default.

II. ARGUMENT

Under Section 15(b) of the Exchange Act, the Commission may impose remedial sanctions on a person associated with a broker, dealer, or investment adviser, consistent with the public interest, if the associated person has been permanently enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities. *See* 15 U.S.C. § 78o(b). The Commission should exercise that authority against Elliott here.

A. Elliott Is In Default, so the Factual Allegations of the OIP Should Be Deemed True

Rule of Practice 220(f) provides that if a “respondent fails to file an answer . . . within the time provided, such person may be deemed in default pursuant to Rule 155(a).” In turn, under Rule 155(a) of the Commission’s Rules of Practice, “a party to a proceeding may be deemed to be in default and the Commission . . . may determine the proceeding against that 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 . . . to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding. . . .”³ See 17 C.F.R. § 201.155(a). Elliott was served with the OIP in November 2024, but to date has not appeared or filed a response in this proceeding. Elliott is thus in default, and all the factual allegations against him in the OIP should be deemed true. *See In re Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *2 (Mar. 29, 2023) (deeming allegations of OIP as true against respondent in default).

Here, the allegations of the OIP establish that: (1) Elliott offered and sold BXY as a security without registering it with the Commission nor satisfying any exemption from registration; (2) Elliott was not registered with the Commission as a broker nor associated with a Commission-registered broker-dealer, yet acted as a broker of BXY (by among other things, selling BXY on behalf of Beaxy in exchange for commissions and markups on each transaction); (3) Elliott and his colleagues raised at least \$1.5 million from around 100 individuals from the offers and sales of BXY while making fraudulent representations to

³ The OIP expressly advised Elliott of this possibility: “If Respondent[] fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, 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.”

investors (including about the amount and use of the markup and commissions charged, the financial and management problems at BXY's issuer in late 2019, and the security of BXY as an investment); and (4) Elliott was enjoined by the U.S. District Court for the Northern District of Illinois from future violations of the registration and antifraud provisions of the Securities and Exchange Acts, as well as from participating in an offering of crypto asset securities. (*See* OIP ¶¶ 1-27.) The allegations of the OIP, accepted as true, therefore prove Elliott's violations of the securities laws.

In addition, the Commission may consider other evidence supporting the allegations of the OIP, including documents from the Division's investigation. *See, e.g., In re John Sherman Jumper*, Exchange Act Release No. 96407, Advisers Act Release No. 6193, 2022 WL 1736044, at *2 (Nov. 30, 2022); *In re Don Warner Reinhard*, Exchange Act Release No. 63720, Advisers Act Release No. 3139, 2011 WL 121451, at *3-4 (Jan. 14, 2011) (relying on plea agreement and related documents). Here, the Division has submitted as Exhibit B the same evidentiary declaration the district court relied on in granting the Commission a final default judgment against Elliott. The McShane Declaration establishes that Elliott benefited by about \$21,777.64 from his misconduct, while failing to produce records that would have permitted a more exact calculation. (Ex. B ¶¶ 10, 18.)

B. Elliott Should Receive an Associational Bar

"Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in any offering of a penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker or dealer or in connection with the purchase or sale of a security; (2) the person was

associated with a broker or dealer at the time of the misconduct; and (3) such a sanction is in the public interest.” *In re Paul Hanson*, Exchange Act Release No. 99159, 2023 WL 8648841, at *2 (Dec. 13, 2023); *see also In re David Michael*, Exchange Act Release No. 99263, 2024 WL 49075, at *3 (Jan. 2, 2024). For the purposes of Section 15(b)(6)(A), if “the OIP, taken as true, states that [respondent] was acting as an unregistered broker at the time of his misconduct, he was a person associated with a broker.” *Hanson*, 2023 WL 8648841, at *2 (citations omitted); *see also Michael*, 2024 WL 49075, at *3.

Here, Elliott acted as a broker while committing the misconduct described above. Second, the district court imposed a permanent injunction, prohibiting violations of Sections 5 and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and prohibiting participation in offerings of crypto asset securities, against Elliott because of this misconduct. And third, as explained below, an associational bar against Elliott would serve the public interest.

In determining whether an associational bar is in the public interest, the Commission considers these factors:

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, the respondent’s recognition of the wrongful nature of his conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the extent to which the sanction will have a deterrent effect. *See In re Stanley C. Brooks*, SEC Release No. 475, 2012 WL 6132660, at *3 (Dec. 11, 2012). A severe

sanction is warranted when a respondent's misconduct involved fraud "because opportunities for dishonesty recur constantly in the securities business." *In re Anthony Tyrone Jones, Jr.*, SEC Release No. 1088, 2016 WL 7210100, at *3 (Dec. 12, 2016).

Each of those factors weighs in favor of imposing an associational bar against Elliott. His conduct was egregious, repeated, and involved a high degree of scienter. Elliott repeatedly used his position as a broker to illegally solicit investments in BXY from individuals who had no little-to-no experience with that type of crypto asset. For over a year, Elliott made numerous false and misleading statements to BXY purchasers and potential purchasers—including about the markup and commissions charged, the financial and management problems at BXY's issuer in late 2019, and about the safety and security of the investment. Elliott also personally benefited from this misconduct in the form of undisclosed commissions.

Elliott also has failed—both in this administrative proceeding and in the preceding district court action—to demonstrate that he recognizes the wrongful nature of his conduct or make any meaningful assurances against future violations. Indeed, a prior state conviction and prison sentence for securities fraud did not deter him from the misconduct here. *See* OIP ¶ 4; *Elliott v. State*, 995 N.E.2d 728 (Ind. Ct. App. 2013). As a result, any future employment opportunities in the securities industry are likely to present him with the temptation and possibility of new violations. Finally, by publicly sanctioning Elliott, the Commission would protect investors in the securities markets by promoting both general and specific deterrence.

In short, the facts of this case support imposing an associational bar against Elliott.

III. CONCLUSION

For these reasons, the Division of Enforcement respectfully requests that the Commission enter a default judgment against Elliott pursuant to Rules 155(a) and 220(f) of the Rules of Practice. The Division further requests that the Commission bar Elliott from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

Dated: March 14, 2025

By: /s/ Devlin N. Su
Robert M. Moyer (moyer@sec.gov)
Peter Senechalle (senechallep@sec.gov)
Devlin N. Su (sude@sec.gov)
U.S. Securities and Exchange Commission
Chicago Regional Office
175 West Jackson Boulevard, Suite 1450
Chicago, IL 60604
Telephone: (312) 353-7390

Counsel for the Division of Enforcement

CERTIFICATE OF SERVICE

In accordance with the Commission's Rules of Practice, I hereby certify that I have caused a copy of this document to be served by email upon:

Elbert Elliott


/s/ Devlin N. Su
Devlin N. Su