

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

ADMINISTRATIVE PROCEEDING

File No. 3-21822

In the Matter of

JEFFREY ALAN HORN,

Respondent.

**DIVISION OF ENFORCEMENT'S
MOTION FOR DEFAULT ORDER AND OTHER RELIEF**

The Division of Enforcement (the “Division”), pursuant to Rules 155(a) and 220(f) of the Commission’s Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), and the Commission’s April 22, 2024, Order to Show Cause, moves for entry of an Order finding Respondent Jeffrey Alan Horn (“Respondent” or “Horn”) in default and ruling against him upon consideration of the record.¹

I. HISTORY OF THE CASE

The Commission issued the Order Instituting Proceedings (“OIP”) against Horn on December 23, 2023, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”). In summary, the OIP alleges that Horn acted as an unregistered broker who solicited individual investors to purchase shares in Sunset Capital Assets, Inc. (“Sunset”) and received commissions for the sale of those shares. OIP, ¶ 1. The OIP alleges that between October 2014 through April 2016, Horn spoke to and emailed prospective investors and made materially false statements and omissions to them about the Sunset offering, including failing to disclose that he and his co-conspirators would receive compensation for selling Sunset stock. *Id.*, ¶ 4. The OIP asserts that almost all investor money was diverted away from Sunset stock and into the pockets of Horn and his co-conspirators. *Id.* These facts led to a criminal indictment,² jury trial, and Horn’s conviction for: (i) conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349; (ii) conspiracy to commit securities fraud in violation of 18 U.S.C. § 371, and; (iii) four

¹ To the extent the Commission deems it appropriate, it may also analyze this motion as a summary disposition under Rule 250, 17 C.F.R. § 201.250.

² The Criminal Indictment against Horn and his co-defendants is attached as **Exhibit 1**.

counts of securities fraud in violation of 15 U.S.C. §§ 77q(a) and 77x, and 18 U.S.C. § 2. *United States v. Watson, et al.*, Case No. 0:21-60019-RS (S.D. Fla).³

On February 22, 2024, the Division filed a Notice of Proof of Service of OIP, Declaration of Delaney Jean Wyatt, and Return of Service (together, the “Notice of Service”) confirming that Horn had been served with the OIP. Specifically, Horn was served on February 8, 2024, at FCI Williamsburg in Salters, South Carolina by Deputy April Johnson of the Williamsburg County, South Carolina Sheriff’s Office. On or about February 27, 2024, Horn sent to the Division, but did not file with the Commission, a “Response” generally “contest[ing]” all allegations in the OIP and advising that he was represented by counsel, Michael Hursey. On March 21, 2024, the Division filed a Notice of Filing showing communications with Mr. Hursey, who advised that he does not represent Horn in this administrative proceeding. On April 22, 2024, the Commission entered an Order to Show Cause against Horn for failing to file a response with the Commission, and gave Horn until June 6, 2024, to explain the omission and “why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file any documents in this proceeding or to otherwise defend this proceeding.” Order to Show Cause, p. 2, Apr. 22, 2024. The Division is unaware of any subsequent filing by Horn.

II. MEMORANDUM OF LAW

A. Horn’s Criminal Case

A jury convicted Horn for: (i) one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349; (ii) one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371, and; (iii) four counts of securities fraud in violation of 15 U.S.C. §§ 77q(a)

³ The Judgment in a Criminal Case against Horn is attached as **Exhibit 2**. The court dismissed a count of securities fraud brought under 15 U.S.C. §§ 77q(a) and 77x and 18 U.S.C. § 2 (Count 3 of the criminal indictment). *See id.*

and 77x, and 18 U.S.C. § 2. **Ex. 2.**⁴ Horn was sentenced to imprisonment for 100 months, plus three years of supervised release, and was penalized a \$600.00 special assessment. *Id.*, pp. 3, 7-8.

B. Facts

The allegations of the OIP “may be deemed to be true” because Horn has defaulted. 17 C.F.R. § 201.155(a)/Rule of Practice 155(a). Additionally, Horn’s criminal conviction for securities fraud and conspiracy to commit mail and wire fraud binds him to the evidence presented at trial. *Albert K. Hu*, Advisers Act Release No. 6497, 2023 WL 8469447, at *3 (Dec. 6, 2023) (finding that “collateral estoppel prevents [respondent] from re-litigating that he was convicted or the court’s findings in the criminal proceeding”); *see also Stephen Condon Peters*, Advisor Act Release No. 6556, 2024 WL 624010, at *2 (Feb. 14, 2024) (opining that respondent “is precluded from collaterally attacking those facts ‘distinctly put in issue and directly determined’ in his criminal prosecution”) (quoting *Emich Motors Corp. v. General Motors Corp.*, 340 U.S. 558, 569 (1961)); *Gary M. Kornman*, Exch. Act Release No. 59403, 2009 WL 367635, at *8 (Feb. 13, 2009) (providing that, in a follow-on proceeding, collateral estoppel prevents re-litigation of the “factual findings or the legal conclusions of an underlying criminal proceeding”).

The OIP and the facts admitted as part of Horn’s jury conviction establish the following:

⁴ Rule 323 of the Commission’s Rules of Practice permits the Commission to take notice of “any material fact which might be judicially noticed by a district court of the United States...” The Commission, like any U.S. district court, may take notice of criminal case pleadings, orders, judgments, filings, transcripts, and other court filings. *See, e.g.*, Fed. R. Evid. 201(b) & (c); *McDowell Bey v. Vega*, 558 Fed. App’x 923, 926-27 (11th Cir. 2014) (affirming dismissal of complaint based, in part, on district court’s reliance on criminal case filings outside four-corners of complaint). As such, the Division requests that the Commission take judicial notice of the filings in Horn’s criminal case, including: the Criminal Indictment Against Horn (**Exhibit 1**); the Judgment in a Criminal Case (**Exhibit 2**), and; the April 13, 14, and 18, 2022 transcripts from Horn’s criminal trial (**Exhibits 3-5**).

- Horn spoke to and emailed prospective investors about Sunset stock (**Ex. 3** at 158:7-161:12; **Ex. 4** at 41:24-49:2; **Ex. 5** at 17:15-21:24).
- Horn made materially false statements and omissions to investors about the Sunset offering, including failing to disclose that he and his co-conspirators would receive exorbitant commissions from selling Sunset stock (**Ex. 4** at 42:3-47:4; 72:2-73:17; 116:18-22);
- Horn omitted from investors that nearly all of \$1.5 million raised from investors was diverted away from Sunset and paid to Horn and his co-conspirators (**Ex. 3** at 118:9-133:4);
- Horn provided to investors private placement memoranda, other documents, and emails containing false statements, including the false claims that Sunset had assets worth more than half a billion dollars and owned precious gemstones (**Ex. 3** at 158:13-161:18; 196:16-198:23; **Ex. 4** at 52:22-64:1; 124:14-129:11; 195:8-196:20), and;
- Horn received proceeds, paid to his personal company, Genesis Holding Group, LLC,⁵ from the sale of Sunset stock (**Ex. 3** at 75:13-76:2; 82:6-15; 83:3-84:5; 167:14-168:14; 174:1-5; 174:21-175:12).

C. Entry of Default is Appropriate

Under Rule 155(a) of the Commission’s Rules of Practice, a party who fails to file a timely answer “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” 17 C.F.R. § 201.155(a). Here, Horn has not filed an answer, and therefore the proceeding should be determined against him based on the record.

⁵ **Ex. 3** at 120:7-11 and 130:1-14.

Moreover, Horn has not responded to the Commission’s April 22, 2024, Order to Show Cause and, as the Commission explained in that order, Horn’s failure to respond “could result in [the Commission] deeming him in default and determining the proceedings against him.” Order to Show Cause, p. 2, Apr. 22, 2024.

The facts established in Horn’s criminal trial and conviction show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A)(ii), which provides in relevant part:

With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such 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 opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—...

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of [this administrative proceeding.]

15 U.S.C. § 78o(b)(6)(A)(ii). The offenses described in Section 15(b)(4)(B) include, among others: (a) a felony conviction involving the purchase or sale of any security, “or conspiracy to commit any such offense” (15 U.S.C. § 78o (b)(4)(B)(i)); (b) a felony conviction arising “out of the conduct of the business of a broker ... investment adviser...” (15 U.S.C. § 78o(b)(4)(B)(ii)); (c) “involves the larceny, theft ... fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity ...” (15 U.S.C. § 78o(b)(4)(B)(iii)).

All of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Horn was acting as an unregistered broker by selling securities while not registered or associated with a registered broker-dealer—are satisfied here.

1) *The Division Timely Filed this Action*

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within “10 years” of the criminal conviction. *See Joseph Contorinis*, Exch. Act Release No. 72031, 2014 WL 1665995, at *3 (Apr. 25, 2014) (finding 10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding, and that limitations period runs from date of conviction, not underlying conduct). Here, the Judgment in a Criminal Case was entered against Horn on September 23, 2022.⁶ This matter was filed on December 23, 2023—well within 10 years of Horn’s conviction.⁷

2) *Horn Was Convicted of a Qualifying Offenses and His Conduct Supports those Claims*

Under the Exchange Act, the Commission may sanction Horn for offenses involving securities fraud, wire fraud, and mail fraud. *See* Exchange Act Section 15(b)(4)(B)(i), (iii), and (iv). Horn was convicted of (a) securities fraud, and (b) conspiracy to commit mail, wire, and securities fraud. Horn’s conviction satisfies the requirements of Exchange Act sections:

- 15(b)(4)(B)(i) – requiring felony conviction involving the purchase or sale of any security;
- 15(b)(4)(B)(ii) – requiring felony conviction “aris[ing] out of the conduct of the business of a broker...[;]”
- 15(b)(4)(B)(iii) – requiring felony conviction involving “fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities...”, and;

⁶ Ex. 2.

⁷ *See* OIP.

- 15(b)(4)(B)(iv) – requiring conduct that violates of 18 U.S.C. §§ 1341 and 1342 (mail fraud) and § 1343 (wire fraud).

Horn’s (mis)conduct, subject of the criminal case and supporting his criminal conviction, satisfies these requirements.

3) *Horn Acted as a Broker at the Time of the Misconduct*

Exchange Act Section 15(b)(6) requires that Horn to be either associated with, or act as, a broker at the time of the misconduct. The broker in question need not have been a registered broker. *Tzernach David Netzer Korem*, Exch. Act Rel. No. 70044, 2013 WL 3864511, at *8 n.68 (July 26, 2013).

Exchange Act Section 3(a)(4) defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.” A person engages in the business of effecting securities by “participat[ing] in purchasing and selling securities involving more than a few isolated transactions; there is no requirement ... that such activity be a person’s principal business or the principal source of income.” *Anthony Fields, CPA*, Securities Act Rel. No. 9727, 2015 WL 728005, at *18 (Feb. 20, 2015) (internal quotations omitted; quoting *Gordon Wesley Sodorff*, Exchange Act Release No. 31134, 1992 WL 224082, at *4 (Sept. 2, 1992)). Indicia of broker activity “include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation.” *Anthony Fields, CPA*, 2015 WL 728005, at *18; *see also James S. Tagliarferri*, Securities Act Rel. No. 10308, 2017 WL 632134, at * 4-5 (Feb. 15, 2017) (finding respondent acted as a broker by actively finding investors, being closely involved in negotiations, and receiving transaction-based compensation).

Here, the evidence from Horn’s criminal trial showed that Horn solicited and sold securities to investors, and he received substantial commissions for those sales. *See supra* Section II.B. Even though Horn was not associated with a registered broker-dealer, those facts, proven at Horn’s criminal trial, show that he was acting as a broker as defined by Exchange Act Section 3(a)(4). As such, Horn’s criminal conviction conclusively establishes that he was a broker for purposes of the Exchange Act. *James S. Tagliarferri*, 2017 WL 632134 at *4-6.

4) *An Industry Bar is an Appropriate Sanction and in the Public Interest*

The Commission considers six factors when deciding that an industry bar is in the “public interest”: (i) the egregiousness of the respondent’s actions; (ii) the isolated or recurrent nature of the infraction; (iii) the degree of scienter involved; (iv) the sincerity of the respondent’s assurances against future violations; (v) the respondent’s recognition of the wrongful nature of his conduct, and; (vi) the likelihood that the respondent’s occupation will present opportunities for future violations. *Lawrence Deshetler*, Advisers Act Rel. No. 5411, 2019 WL 6221492, at *2 (Nov. 21, 2019). “Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry.” *Frederick W. Wall*, Exch. Act Rel. No. 52467, 2005 WL 2291407, at *4 (Sept. 19, 2005) (internal quotation omitted); *accord Shreyans Desai*, Exch. Act Rel. No. 80129, 2017 WL 782152, at *4 (Mar. 1, 2017). These factors weigh heavily in favor of an industry bar and there are no mitigating circumstances.

Horn’s conduct easily satisfies the first, second, and third elements. The misconduct supporting Horn’s criminal convictions for securities fraud and conspiracy to commit mail, wire, and securities fraud was egregious, recurrent, and involved a high degree of scienter. As detailed above: (i) Horn spoke to and emailed prospective investors about buying Sunset stock; (ii) Horn made materially false statements and omissions to investors about Sunset stock; (iii) Horn did not

tell investors that he received commissions for selling Sunset stock and that nearly all the money raised from the sales was used to pay Horn and his co-conspirators, and; (iv) Horn did not tell investors that the Sunset private placement memoranda, documents, and emails contained false statements about Sunset's assets. *See supra* Section II.B. Moreover, Horn's conviction is proof of his specific intent to defraud. *Herbert Steven Fouke*, Rel. No. 660, 2014 WL 4258244, *4-6 (Aug. 29, 2014) (providing that conviction for conspiracy to commit securities, wire, and mail fraud "involved scienter, 'a mental state embracing intent to deceive, manipulate, or defraud.'" (quoting *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980)); *see also U.S. v. Vilar*, 729 F.3d 62, 88-89 (2d Cir. 2013)) (explaining that scienter is an element in criminal securities fraud); *see also U.S. v. Brooks*, 681 F.3d 678, 700 (5th Cir. 2012) (providing that proof of "specific intent to defraud" is required to prove criminal wire fraud); *U.S. v. Manges*, 110 F.3d 1162, 1173 (5th Cir. 1997) (explaining that intent is an element of criminal conspiracy to commit mail fraud); *U.S. v. Litvak*, 808 F.3d 160, 178 (2d Cir. 2015) ("Liability for securities fraud requires proof that the defendant acted with scienter, which is defined as 'a mental state embracing intent to deceive, manipulate or defraud'" (quoting *U.S. v. Newman*, 773 F.3d 438, 447 (2d Cir. 2014))).

With respect to the fourth and fifth factors, Horn has not participated in this matter,⁸ and he has not provided any assurances that he will avoid future violations of the law. *Kimm C. Hannan*, Advisers Act Rel. No. 5906, 2021 WL 5161855, *3 (Nov. 5, 2021) ("Because Hannan failed to answer the OIP or respond to the order to show cause or to the Division's motion, he has made no assurances to us that he will not commit future violations or that he recognizes the wrongful nature of his conduct."); *David Aaron Rockwell*, Securities Act Rel. No. 6611, 2024 WL 2372035, at *4 (May, 23, 2024) ("Although Rockwell is currently incarcerated, absent a bar, he

⁸ Other than mailing the Division his purported "Response" contesting the OIP allegations.

would have the opportunity to re-enter the securities industry and commit further violations upon his release.”); *Oscar Ferrer Rivera*, Advisers Act Rel. No. 5759, 2021 WL 2593642, at *4 (June 24, 2021) (“Although his guilty plea indicates that Ferrer might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses a risk to the investing public.”). While “[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar . . . the existence of a violation raises an inference that it will be repeated.” *Tzernach David Netzer Korem*, Exchange Act Rel. No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quotation and alternations omitted). Horn has offered no evidence to rebut that inference.

Last, although Horn is serving a 100-month prison sentence,⁹ he will be released in 2028,¹⁰ and unless he is barred from the securities industry, he will have the opportunity to again harm investors. *Hannan*, Advisers Act Rel. No. 5906, 2021 WL 5161855, *3 (“Although Hannan is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.”). Accordingly, the record amply supports all six factors and an industry bar.

III. CONCLUSION

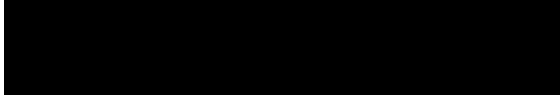
For the reasons discussed above, the Division asks the Commission to sanction Horn by barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and by imposing a penny stock bar.

⁹ Ex. 2 at p. 3.

¹⁰ As of June 17, 2024, the Federal Bureau of Prisons website (www.bop.gov/inmateloc/) indicates Horn will be released on November 10, 2028.

Dated: July 3, 2024

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on July 3, 2024, the foregoing Division of Enforcement's Motion for Default Order and Other Relief was filed using the eFAP system and that a true and correct copy of said filing is being served via First Class U.S. Mail and Priority Mail, on the following person entitled to notice:

Jeffrey Alan Horn, Register Number 27340-509



Brian Lechich
Trial Counsel

UNITED STATES OF AMERICA
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SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
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INDEX OF EXHIBITS
TO THE DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT
ORDER AND OTHER RELIEF AGAINST RESPONDENT JEFFREY ALAN HORN

<u>Exhibit</u>	<u>Description</u>
Exhibit 1	Indictment (DE 1), <i>United States v. Horn, et al.</i> , Case No. 21-cr-60019-RS (S.D. Fla.)
Exhibit 2	Judgment against Jeffrey Alan Horn, (DE 196), <i>United States v. Horn et al.</i> , Case No. 21-cr-60019-RS (S.D. Fla.)
Exhibit 3	April 13, 2022, Trial Transcript (Day 3), (DE 229), <i>United States v. Horn et al.</i> , Case No. 21-cr-60019-RS (S.D. Fla.)
Exhibit 4	April 14, 2022, Trial Transcript (Day 4), (DE 230), <i>United States v. Horn et al.</i> , Case No. 21-cr-60019-RS (S.D. Fla.)
Exhibit 5	April 18, 2022, Trial Transcript (Day 5), (DE 231), <i>United States v. Horn et al.</i> , Case No. 21-cr-60019-RS (S.D. Fla.)