SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 90472 / November 20, 2020

Admin. Proc. File No. 3-18723

In the Matter of

MARK MORROW

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of antifraud provisions of the federal securities laws. *Held*, it is in the public interest to bar respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

Mark Morrow, pro se.

Robert K. Gordon, Esq. and *Joshua A. Mayes, Esq.* for the Division of Enforcement.

On September 5, 2018, we instituted an administrative proceeding against Mark Morrow, pursuant to Section 15(b) of the Securities Exchange Act of 1934, to determine whether the statutory predicate for an administrative remedy was satisfied and whether remedial action would serve the public interest.[1] The order instituting proceedings ("OIP") alleged that Morrow had been permanently enjoined from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5.[2] After Morrow did not answer the OIP, the Division of Enforcement moved to find him in default. Morrow failed to respond to that motion, the Division's subsequent motion on the issue of sanctions, and our subsequent order to show cause why he should not be found in default. We find Morrow to be in default, deem the allegations of the OIP to be true, and bar him from the securities industry.

I. Background

The OIP alleged that, on July 24, 2018, a federal district court permanently enjoined Morrow from violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5. According to the OIP, Morrow was associated with a broker-dealer at the time of the misconduct alleged in the underlying civil action. The civil action alleged that from at least 2008 to 2012, in connection with the sale of promissory notes and equity interests in Detroit Memorial Partners, LLC ("DMP"), Morrow (i) "falsely stated to investors that their funds would be secured by interests in real property and assets of DMP, when in fact, DMP had no real property and, at the time, had nominal assets"; and (ii) "sold unregistered securities."

The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. The OIP directed Morrow to file an answer to the allegations contained therein within 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Morrow that if he failed to answer, he may be deemed in default, the proceedings may be determined against him upon consideration of the OIP, and the allegations in the OIP may be deemed to be true as provided in the Rules of Practice.[4] Morrow was served with the OIP on September 2, 2018.

Morrow failed to file a timely answer to the OIP. More than 20 days after service, the Division filed a motion for entry of default and sanctions. Morrow also failed to respond to that motion. On April 15, 2019, the Commission ordered Morrow to show cause why it should not

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[1] *Mark Morrow*, Exchange Act Release No. 84042, 2018 WL 4216816 (Sept. 5, 2018).

[2] *Id* at *1.

[3] 17 C.F.R. § 201.220(b).

[4] *See* Rules of Practice 155(a), 220(f), 17 C.F.R. § 201.155(a), .220(f).

find him in default and determine the proceeding against him.[5] Morrow filed a response and, on July 2, 2019, the Commission discharged the show cause order and dismissed the Division's motion without prejudice.[6] The Commission construed Morrow's response as an answer to the OIP and directed the parties to conduct a prehearing conference.

On July 17, 2019, the Division filed a statement regarding the prehearing conference. In the statement, the Division represented that the parties agreed not to request a hearing at that time and that the Division would move for summary disposition. On July 22, 2019, based on the parties' proposed briefing schedule, the Commission ordered that the Division file a motion for summary disposition by August 21, 2019, Morrow file an opposition by September 20, 2019, and the Division file any reply by October 4, 2019.[7]

On July 31, 2019, the Division filed its motion for summary disposition requesting that the Commission bar Morrow from the securities industry. The Division supported its motion with a copy of the Final Order and Judgment from the underlying civil action. Although Morrow was properly served with the Division's motion for summary disposition pursuant to Commission Rule of Practice 150(c)(2),[8] he did not file an opposition brief.

On May 20, 2020, the Commission ordered Morrow to show cause by June 3, 2020, why it should not find him in default due to his failure to respond to the Division's motion or to otherwise defend the proceeding. The Commission directed Morrow to address the reasons for his failure to timely file a response to the Division's motion as well as the substance of the Division's request for sanctions. The Commission also warned Morrow that, if he was found in default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against him upon consideration of the record. Morrow did not subsequently file a response to the Division's motion or to the show cause order.

II. Analysis

A. We hold Morrow in default and deem the OIP's allegations to be true.

Rule of Practice 155(a) provides that if a party fails "to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding," we may deem the party in default and "determine the proceeding against that party upon consideration of the record,

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5 *Mark Morrow*, Exchange Act Release No. 85651, 2019 WL 1615066, at *1 (Apr. 15, 2019).

6 *Mark Morrow*, Exchange Act Release No. 86282, 2019 WL 2775916 (July 2, 2019).

7 *Mark Morrow*, Exchange Act Release No. 86428, 2019 WL 3284695 (July 22, 2019).

8 17 C.F.R. § 201.150(c)(2) (permitting service of papers by a party by U.S. Mail).

including the order instituting proceedings, the allegations of which may be deemed to be true."[9] Because Morrow has failed to respond to the Division's motion for summary disposition or to the show cause order, we find it appropriate to deem him in default and to deem the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP.

B. We find an industry bar to be in the public interest.

Exchange Act Section 15(b)(6) authorizes the Commission to suspend or bar a person from the securities industry if it finds, on the record after notice and opportunity for hearing, that (i) the person was enjoined from any conduct or practice in connection with the purchase or sale of a security; (ii) the person was associated with a broker or dealer at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[10] A federal district court enjoined Morrow from violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.[11] And the record establishes that Morrow was associated with a broker-dealer at the time of the misconduct underlying the civil action.

Thus, we need determine only if any remedial action is in the public interest. In doing so, we consider the egregiousness of the respondent's actions, the isolated or recurrent nature of the violation 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.[12]

Morrow's misconduct warrants an industry bar to protect the investing public. We give preclusive effect to "a district court's summary judgment findings supporting an injunction."[13]

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[9] 17 C.F.R. § 201.155(a).

[10] 15 U.S.C. § 78*o*(b)(6) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78*o*(b)(4)); *see also id.* § 78*o*(b)(4)(C) (discussing injunctions from any conduct or practice in connection with the purchase or sale of a security). Exchange Act Section 15(b)(6) also authorizes a bar from participating in an offering of penny stock, but the Division did not request such a bar in its motion for summary disposition and we do not impose one in this opinion.

[11] The district court also ordered Morrow to disgorge $7,973,413.89 plus prejudgment interest and to pay a civil penalty of $1,000,000. In a parallel criminal proceeding, Morrow pleaded guilty to one count of conspiracy to commit wire fraud, which was based on the same misconduct as the civil action. He was sentenced to 66 months imprisonment.

[12] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

[13] *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *3 (Mar. 1, 2017).

The district court's findings in the underlying civil action establish that Morrow's misconduct was egregious, recurrent, and involved a high degree of scienter.

As the district court found in granting summary judgment, Morrow managed and controlled DMP and defrauded over 100 investors in DMP promissory notes and DMP equity shares from 2007 to 2012. The fraud caused investors to suffer net losses of almost $8 million.

DMP and another entity, Westminster Memorial Group ("WMG"), formed Midwest Memorial Group, LLC ("MMG") to purchase cemeteries in Michigan. DMP owned 49%, and WMG owned 51%, of MMG. MMG's operating agreement allowed WMG to recoup 100% of its capital contribution before DMP was entitled to any distribution of profit.

In 2007, Morrow authorized DMP to sell promissory notes. Morrow reviewed a private placement memorandum used to sell the notes, which misrepresented that the notes were "secured by real property and equity interest in 28 Michigan cemeteries" that DMP had purchased, and that DMP had other assets to make payments on the notes. But DMP had not purchased the cemeteries, had no assets, and had not secured the notes. In addition, MMG had not yet purchased any cemeteries when Morrow authorized the note sales. Morrow also sold unregistered securities because no registration statement was filed with the Commission for the note offering. DMP raised $9.5 million from the offering.

In 2008, DMP sold $3 million in equity shares. Morrow misled those investors by failing to disclose the note offering and claiming instead that he borrowed the $9.5 million personally.

In 2012, Morrow authorized additional DMP promissory note sales. DMP used a "Fact Sheet" in connection with the offering, which did not disclose (i) that WMG had a preference in receiving distributions from MMG's cemetery operations; (ii) that cemetery operations had not been profitable; and (iii) that DMP and WMG had been required to satisfy ongoing capital calls to fund operations. Rather, the "Fact Sheet" stated that, "DMP management has increased sales over 120%" and "DMP is excited about continuing operations."

The district court found that the above facts established that Morrow made material misrepresentations and misleading omissions with scienter.[14]

The remaining factors support the conclusion that an industry bar is warranted. Because Morrow failed to respond to the Division's motion or to the show cause order, he has made no assurances that he will not commit future violations. Morrow's guilty plea in a criminal

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[14] *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (stating that the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm); *see also SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (stating that scienter is "an intent to deceive, manipulate, or defraud").

proceeding parallel to the civil action does not establish that he recognizes the wrongful nature of his conduct. In his response to our first show cause order, he denied that he engaged in the conduct found in the underlying civil action.[15] The district court also found that Morrow worked in the securities industry for 34 years. His occupation therefore presents opportunities for future violations. Absent a bar, Morrow would have the opportunity to re-enter the securities industry and commit further violations upon his release from prison in 2023.[16]

In his response to our first show cause order, Morrow stated that the broker-dealer he was associated with at the time of the underlying misconduct "had a clean disciplinary record with no actions or complaints from the SEC or [its] clients." To the extent Morrow is arguing that this is a mitigating factor, we find that it is outweighed by the factors discussed above.

The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that Morrow is unfit to participate in the securities industry and that his "continued association in the industry would pose an unacceptable risk to the public."[17] Because Morrow poses a continuing threat to investors, we conclude that it is in the public interest to bar him from

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15 *See*, *e.g.*, *Desai*, 2017 WL 782152, at *4 (crediting argument that a respondent's "appeal of his previously agreed upon guilty plea evidences a failure to recognize the wrongfulness of his conduct"); *cf. United States v. Lee*, 827 F. App'x 289, 2020 WL 5642138, at *2 (4th Cir. Sept. 22, 2020) ("Notably, pleading guilty is not enough, by itself, to support an acceptance-of-responsibility reduction. Instead, the defendant bears the burden of showing he has clearly recognized and affirmatively accepted personal responsibility for his criminal conduct.") (alterations, internal quotation marks, and internal citations omitted).

16 *See, e.g.*, *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (imposing a bar based in part on the finding that "there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again"); *see also, e.g.*, *SEC v. Monarch Funding Corp.*, No. 85-7072, 1996 WL 348209, at *9 & n.12 (S.D.N.Y. June 24, 1996) (noting that defendant had "not ceased his involvement with the securities industry" "while incarcerated, [and] has managed to remain involved in questionable ventures that have resulted in violation of the securities laws").

17 *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *5 (Jan. 30, 2017) (finding that the misconduct underlying the respondent's injunction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[18]

An appropriate order will issue.

By the Commission (Chairman CLAYTON and Commissioners PEIRCE, ROISMAN, LEE, and CRENSHAW).

Vanessa A. Countryman
Secretary

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18 *Id.* (imposing associational bars where they were necessary to protect the public). The D.C. Circuit has held that certain bars from associating in capacities beyond the capacity in which the misconduct occurred cannot be imposed based on conduct that entirely pre-dated the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. *Bartko v. SEC*, 845 F.3d 1217, 1222-24 (D.C. Cir. 2017); *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015). Morrow's misconduct spanned from 2007 to 2012. We find that the entirety of Morrow's conduct and a balancing of the factors discussed above demonstrates that a bar from associating with a broker or dealer is necessary to protect the public. We find that the conduct that post-dated the effective date of the Dodd-Frank Act in July 2010 demonstrates that a bar from associating in the additional capacities listed above is also necessary to protect the public. *See Bennett Group Fin. Servs. LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *4 n.34 (Mar. 30, 2017) ("Respondents' misconduct spanned 2009 to 2011, and we find that the conduct that post-dates the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act by itself warrants a bar from all these associations.").

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90472 / November 20, 2020

Admin. Proc. File No. 3-18723

In the Matter of

MARK MORROW

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Mark Morrow is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary