

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 92267 / June 25, 2021

Admin. Proc. File No. 3-18807

In the Matter of
DAVID HOWARD WELCH (a/k/a DAVID HOWARD
BRYANT)

OPINION OF THE COMMISSION

BROKER DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violating the registration 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:

Leslie J. Hughes, Esq. for the Division of Enforcement.

On September 20, 2018, we instituted an administrative proceeding against David Howard Welch, 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 Welch had been permanently enjoined from violating Section 5 of the Securities Act of 1933 and Sections 15(a) and 20(b) of the Exchange Act for misconduct that occurred while he was associated with an unregistered broker-dealer.² After Welch did not answer the OIP, the Division of Enforcement moved to find him in default. Welch failed to respond to that motion, our subsequent order to show cause why he should not be held in default, and the Division’s subsequent motion for summary disposition as to the sanctions that it sought.³ We find Welch 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 Welch had been permanently enjoined from future violations of Securities Act Section 5 and Exchange Act Sections 15(a) and 20(b). The OIP also alleged that, in the underlying civil action, the Commission had “alleged that, from 2011 through 2015, Welch, and other defendants, through various shell companies, acted as brokers and dealers effecting transactions in the securities of Global Energy Technology Group (“Global Energy”), New Global Energy, Inc. (“New Global”), and other companies, while not registered, or associated with broker-dealers registered, with the Commission.” The Commission’s underlying “complaint also alleged that from 2012 through 2015, Welch, directly or indirectly, offered and sold securities of Global Energy and New Global when no registration statement was filed or in effect with the Commission and no exemption from registration applied.”

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 Welch to file an answer to the allegations contained therein within 20 days after service, as provided by Rule 220(b) of the Commission’s Rules of Practice.⁴ The OIP informed Welch 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.⁵ Welch was served with the OIP on August 4, 2019.

¹ *David Howard Welch (a/k/a David Howard Bryant)*, Exchange Act Release No. 84234, 2018 WL 4537200 (Sept. 20, 2018).

² *Id.* (citing Final Judgment, *SEC v. Welch*, No. 5:17-cv-1968 (C.D. Cal. June 18, 2018), ECF No. 65).

³ *See David Howard Welch (a/k/a David Howard Bryant)*, Exchange Act Release No. 89508, 2020 WL 4569093 (Aug. 7, 2020) (amended order to show cause).

⁴ 17 C.F.R. § 201.220(b).

⁵ *See* Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

The OIP directed Welch to file an answer within 20 days of service, but Welch did not file an answer to the OIP. On May 12, 2020, more than nine months after service, the Division filed a motion for entry of default against Welch and requested leave to submit a motion for summary disposition on the issue of remedial sanctions.

On August 7, 2020, Welch was ordered to show cause why the Commission should not find him in default due to his failure to file an answer, respond to the Division's motion, and otherwise to defend this proceeding.⁶ Welch was directed to address the reasons for his failure to timely file an answer or response to the Division's motion and was warned that, if he was found in default, the allegations in the OIP would be deemed true and the Commission could determine the proceeding against him. Welch did not thereafter answer the OIP, respond to the Division's motion to hold him in default, or respond to the show cause order.

Subsequently, the Division filed a motion for summary disposition on the question of remedial sanctions, requesting that the Commission bar Welch from the securities industry. The Division supported the motion with undisputed pleaded facts, declarations, transcripts of investigative testimony, and other documentary evidence. That evidence showed that Welch, his brother, and other associates established Vertex International Group ("Vertex") and Bechtel Advisory Group ("Bechtel") to sell the securities of Global Energy and New Global.⁷ The evidence also showed that Welch controlled the activities of Vertex and Bechtel. The Division also submitted cease-and-desist orders issued against Welch by state regulators and other facts that may be officially noticed under our Rule of Practice 323.⁸ Welch has not responded to the Division's motion.

I. Analysis

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

Rule of Practice 155(a) provides that if a party fails to "answer, 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, including the order instituting proceedings, the allegations of which may be deemed to be true."⁹ Because Welch has failed to answer the OIP, and has failed to respond to our show

⁶ *Welch*, 2020 WL 4569093, at *1.

⁷ The Commission barred Welch's brother from the securities industry based on the same misconduct at issue here. *Marc Jay Bryant (aka Marc Jay Welch)*, Exchange Act Release No. 91531, 2021 WL 1351206 (Apr. 12, 2021).

⁸ 17 C.F.R. § 201.323.

⁹ 17 C.F.R. § 201.155(a); *see also* Rule of Practice 220(f), 17 C.F.R. § 201.220(f) (providing that "[i]f a respondent fails to file an answer required by this section within the time provided, such respondent may be deemed in default pursuant to § 201.155(a)").

cause order or the Division's motions to hold him in default and for summary disposition on the issue of sanctions, we hold him in default and deem the allegations of the OIP to be true.

We have said that "summary disposition is ordinarily appropriate in follow-on proceedings" such as this one.¹⁰ We base the findings that follow upon the record, including the OIP and the evidentiary materials attached to the Division's motion for summary disposition. The record before us includes documentary evidence of Welch's business, through Vertex and Bechtel, of effecting transactions in securities for the accounts of others.

Welch invoked his Fifth Amendment privilege against self-incrimination in his investigative testimony as a basis to refuse to provide testimony or documents. Because our proceedings are civil in nature, we may draw adverse inferences from a respondent's invocation of his Fifth Amendment privilege and take this into account in weighing all of the evidence.¹¹ Given that the other evidence in the record supports the inferences we would draw, we deem it appropriate to draw adverse inferences from Welch's investigative testimony in connection with our findings here.¹²

B. We find it in the public interest to impose an industry bar upon Welch.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from the securities industry if it finds, on the record after notice and opportunity for a hearing, that (i) the person has been enjoined from any action, conduct, or practice specified in Section

¹⁰ *James S. Tagliaferri*, Advisers Act Release No. 4650, 2017 WL 632134, at *7 (Feb. 15, 2017).

¹¹ *Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, at *16 (Dec. 11, 2009), *petition denied*, 627 F.3d 1230 (D.C. Cir. 2010); *see also, e.g., Daniel R. Lehl*, Securities Act Release No. 8102, 2002 WL 1315552, at *3, 8, 16 & nn. 17, 33, 74 (May 17, 2002), *petition denied sub nom. Schlien v. SEC*, 63 F. App'x 523, 523 (D.C. Cir. 2003) (holding that "the Commission acted neither arbitrarily nor capriciously in drawing an adverse inference"); *John Kilpatrick*, Exchange Act Release No. 23251, 1986 WL 626187, at *4 & n.18 (May 19, 1986); *Raymond L. Dirks*, Securities Investor Protection Act Release No. 123, 1985 WL 551556, at *4-5 & n.9 (July 5, 1985); *N. Sims Organ & Co., Inc.*, Exchange Act Release No. 6495, 1961 WL 61044, at *3 n.13 (1961), *aff'd* 293 F.2d 78, 80 (2d Cir. 1961).

¹² *See Pagel, Inc. v. SEC*, 803 F.2d 942, 946-47 (8th Cir. 1986) (affirming Commission administrative proceeding in which we took an "adverse inference into account," where we "did not rely solely on [the respondents'] refusal to testify but also . . . on the evidence of [security] price movements, [respondents'] trading activities, and other relevant facts" that tended to establish that they engaged in unlawful market manipulation); *cf. Lefkowitz v. Cunningham*, 431 U.S. 801, 808 n.5 (1977) (explaining that "an inference [may] be drawn in a civil case from a party's refusal to testify" where it is "only one of a number of factors to be considered by the finder of fact . . . , and was given no more probative value than the facts of the case warranted").

15(b)(4)(C); (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.¹³

1. Welch has been enjoined from an action, conduct, or practice specified in Section 15(b)(4)(C).

Exchange Act Section 15(b)(4)(C) provides that a person may be subject to sanctions if the person has been 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 any security.¹⁴ Welch’s injunction qualifies under each of these categories. To begin with, Welch has been enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker or dealer.¹⁵ The district court enjoined Welch from “violating, directly or indirectly, [Exchange Act] Section 15(a)” by using jurisdictional means “to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security, without being registered as a broker and/or dealer pursuant to [Exchange Act] Section 15(b) . . . or while . . . not associated with an entity registered with the Commission as a broker or dealer.”¹⁶ He has also been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. The district court enjoined Welch from violating Securities Act Section 5 by, among other things, using jurisdictional means to make an unregistered sale of, or offer to purchase or to sell, any security not subject to any applicable exemption.¹⁷

2. Welch was associated with a broker at the time of the alleged misconduct.

The Exchange Act defines a broker as one “engaged in the business of effecting transactions in securities for the account of others.”¹⁸ We have said that “[a]ctivities that are indicative of being a broker include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and

¹³ 15 U.S.C. § 78o(b)(6)(A)(iii) (cross-referencing Section 15(b)(4)(C)); *id.* § 78o(b)(4)(C) (specifying injunctions against various actions, conduct, and practices).

¹⁴ 15 U.S.C. § 78o(b)(4)(C).

¹⁵ Final Judgment, *SEC v. Welch*, No. 5:17-cv-1968 (C.D. Cal. June 18, 2018), ECF. No. 65).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 2 (enjoining Welch, “[u]nless a registration statement is in effect as to a security, [from] making use of any means or instruments of transportation or communication in interstate commerce or of the mails” to “sell,” “offer to sell[,] or offer to buy” such security “through the use or medium of any prospectus or otherwise”). The District Court also barred Welch from participating in any offering of a penny stock. *See id.* at 4.

¹⁸ 15 U.S.C. § 78c(a)(4)(A).

receiving transaction-based compensation.”¹⁹ We also have noted that “transaction-based compensation[] or commissions are one of the hallmarks of being a broker-dealer.”²⁰ Transaction-based compensation is an important consideration because “[c]ompensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection which require application of broker-dealer regulation under the Act.”²¹

Vertex and Bechtel, through their sales agents, engaged in hundreds of transactions in the securities of Global Energy and New Global totaling millions of dollars and millions of shares. The sole purpose of Vertex and Bechtel was to sell these issuers’ securities. Vertex and Bechtel actively solicited potential investors, valued the securities that they sold, and handled investor funds. For example, Welch provided sales agents with a “list of potential investors to call,” a script with a “sample opening pitch” for “cold call[s],” sample email templates for follow-up communications with “prospects” identified after these calls, and other favorable information about the securities for the sales agents’ use in offering and selling them. Welch also set the price at which the securities were to be sold to investors. The sales agents sent investors throughout the country stock purchase agreements by courier, and requested return of the agreements with payment to Vertex or Bechtel. The sales agents were then compensated through commissions on the sales.²² Accordingly, Vertex and Bechtel acted as brokers.²³

¹⁹ *Anthony Fields*, Advisers Act Release No. 4028, 2015 WL 728005, at *18 (Feb. 20, 2015) (collecting authorities).

²⁰ *Tagliaferri*, 2017 WL 632134, at *4.

²¹ *Persons Deemed Not to be Brokers*, Exchange Act Release No. 22172, 50 Fed. Reg. 27,940, 27,942 (July 9, 1985); *see also SEC v. Collyard*, 154 F. Supp. 3d 781, 789 (D. Minn. 2015) (stating that “courts place great weight on whether the defendant received commissions” because the ““underlying concern [is] that such compensation represents a potential incentive for abusive sales practices that registration is intended to regulate and prevent””) (alteration in original) (citation omitted), *aff’d in relevant part*, 861 F.3d 760 (8th Cir. 2017).

²² As we have noted, whether a particular compensation arrangement is “based either directly or indirectly on transactions in securities depends on all of the particular facts and circumstances.” 50 Fed. Reg. at 27,942. Here, Vertex and Bechtel existed solely to sell the securities of specific issuers, engaged sales agents to effect the sales, and compensated the sales agents by paying commissions on the securities transactions they induced. Investors were the ultimate source of the funds used to pay the commissions. For these reasons, the facts and circumstances in this case indicate that the compensation arrangement was one that could “induce high pressure sales tactics and other problems of investor protection” that are appropriately addressed by application of the broker-dealer registration regime. *Id.*

²³ *See, e.g., SEC v. Lottonet Operating Corp.*, No. 17-21033, 2017 WL 6949289, at *3-4, 9, 17 (S.D. Fla. Mar. 31, 2017) (finding that entity operated as an unregistered broker where it provided sales agents with scripts to use in soliciting investors, where its sales agents cold-called potential investors and emailed potential investors marketing materials, and where its sales agents received transaction-based commissions on the sales that they completed).

“It is well established that we are authorized to sanction an associated person of an unregistered broker-dealer . . . in a follow-on administrative proceeding.”²⁴ A person “associated with a broker” includes “any partner, officer, director, or branch manager of such broker . . . (or any person occupying a similar status or performing similar function), any person directly or indirectly controlling . . . such broker, . . . or any employee of such broker.”²⁵ Welch controlled the activities of Vertex and Bechtel, and accordingly was an associated person of these unregistered brokers at the time of the misconduct.

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

In determining if any remedial action is in the public interest, we consider 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.²⁶ Our public interest inquiry is flexible, and no one factor is dispositive.²⁷ The remedy is intended to protect the trading public from further harm, not to punish the respondent.²⁸

We have weighed all these factors, and find an industry bar warranted. Welch’s misconduct was egregious and recurrent. Welch, through Vertex and Bechtel, effected hundreds of unregistered sales of the securities of Global Energy and New Global in violation of Securities Act Section 5. These sales occurred over three years and amounted to nearly \$4.5 million in proceeds from investors.²⁹ Scienter is not an element of Welch’s violations, but the record reflects that Welch was aware of the wrongfulness of his misconduct. Welch was formerly associated with a broker-dealer and was aware of the registration requirements. He used a series of business entities, including Vertex and Bechtel, to hide his activities. After being subject to a cease and desist order from Wisconsin securities regulators prohibiting Vertex from making

²⁴ *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *8 (July 26, 2013) (citing, *e.g.*, *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *6 (Dec. 2, 2005)); *cf. Teicher v. SEC*, 177 F.3d 1016, 1017-19 (D.C. Cir. 1999) (finding that the authority under Section 203(f) of the Investment Advisers Act of 1940 to sanction persons who were associated with an investment adviser at the time of the underlying misconduct extended to persons associated with unregistered as well as registered advisers).

²⁵ 15 U.S.C. § 78c(a)(18).

²⁶ *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

²⁷ *Korem*, 2013 WL 3864511, at *4.

²⁸ *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

²⁹ *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *3 (Feb. 4, 2008) (finding misconduct to be recurrent when it “occurred over three years”).

offers or sales of securities until the securities and its agents were registered in the state,³⁰ Welch did not cease his misconduct but instead created Bechtel and two other entities to continue his unlawful sales.³¹

Because Welch failed to answer the OIP, respond to our show cause order, or respond to the Division's motions for default or for summary disposition on the issue of sanctions, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. Welch is also likely to commit future violations because he is a recidivist whose shell-company entities have been subject to cease-and-desist orders by state securities regulators in Wisconsin and California for making unregistered securities transactions and acting as an unregistered broker-dealer, and in California for engaging in fraud in the sale of securities.³²

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.³³ Here, all the factors we consider demonstrate that Welch is unfit to be in the securities industry and that an industry bar is necessary to remedy the continuing threat that Welch poses to investors. Accordingly, we conclude that it is in the public interest to bar Welch from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, ROISMAN, LEE, and CRENSHAW).

Vanessa A. Countryman
Secretary

³⁰ *Vertex International Group LLC*, No. S-227825(EX) (Wisc. Dep't of Fin. Inst., Div. of Secs., Sept. 4, 2013), https://www.wdfi.org/_resources/indexed/site/newsroom/admin_orders/2013/VertexGroup_order.pdf.

³¹ *See, e.g., Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *5 (Mar. 26, 2010) (explaining that "attempts to conceal misconduct indicate scienter").

³² *See, e.g., Philip A. Lehman*, Exchange Act Release No. 54660, 2006 WL 3054584, at *3 (Oct. 27, 2006) (finding that because "Lehman is a recidivist whose egregious actions evidence a high degree of scienter," and because "Lehman's misconduct is so similar to that for which he was recently sanctioned, we can only conclude that the sanctions imposed on him in the earlier proceeding failed to imbue him with any appreciation for the wrongfulness of his actions").

³³ *Lawrence Allen Deshetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92267 / June 25, 2021

Admin. Proc. File No. 3-18807

In the Matter of
DAVID HOWARD WELCH (a/k/a DAVID HOWARD
BRYANT)

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that David Howard Welch (a/k/a David Howard Bryant) 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