SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 5858 / September 10, 2021

Admin. Proc. File No. 3-19204

In the Matter of

JASWANT GILL

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

**Injunction**

**Conviction**

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

APPEARANCES:

*Ruth L Hawley* for the Division of Enforcement.

On June 17, 2019, we instituted administrative proceedings against Jaswant Gill, pursuant to Section 203(f) of the Investment Advisers Act of 1940, 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 (the "OIP") alleged that Gill had been permanently enjoined from violations of the antifraud provisions of the federal securities laws and convicted of wire fraud for misconduct that occurred while he was associated with an investment adviser. Gill failed to file an answer to the OIP, respond to an order to show cause why he should not be found in default for failing to file an answer, or respond to the Division of Enforcement's subsequent motion for entry of default and sanctions. We now find Gill to be in default, deem the allegations of the OIP to be true, and bar him from the securities industry.

## I. Background

### A. The Commission issued the OIP against Gill.

The OIP alleged that, from 2013 through 2016, Gill was the founder and CEO of JSG Capital Investments, LLC, and JSG Capital, LLC, companies that claimed to be investment advisers and represented to investors that they were investing their money in certain pre-IPO and publicly traded securities. The OIP also alleged that, in September 2017, a district court entered a final judgment against Gill, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Advisers Act Section 206(1) and (2). According to the OIP, the Commission's complaint alleged that, from September 2013 until May 2016, Gill perpetuated an offering fraud and Ponzi scheme by falsely promising guaranteed, fixed returns to investors and by falsely representing that their money was invested in shares of pre-IPO companies, that their investments were insured, and that Gill had close ties to various well-known venture capital firms. In fact, according to the OIP, Gill spent most of the investors' money on nightclubs, restaurants, casinos, hotels and luxury retail stores, and Ponzi payments to earlier investors.

In addition, and as further alleged in the OIP, in August 2017, Gill pleaded guilty to thirteen counts of wire fraud in violation of 18 U.S.C. § 1343 in a parallel criminal proceeding. In October 2018, Gill was sentenced to 130 months in prison, followed by three years of supervised release, and ordered to make restitution, jointly and severally with a co-defendant, of $4,577,370.

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It also directed Gill to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[2] The OIP informed Gill that if he failed to answer, he could be deemed in default, the

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1 *Jaswant Gill*, Advisers Act Release No. 5254, 2019 WL 2499593 (June 17, 2019).

2 17 C.F.R. § 201.220(b).

allegations in the OIP could be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP.[3]

### B. Gill failed to answer the OIP, respond to an order to show cause why he should not be found in default, or respond to the Division's motion for a default and sanctions.

Gill was properly served with the OIP on October 24, 2019, pursuant to Rule of Practice 141(a)(2)(i),[4] but did not answer it. On January 28, 2020, more than 20 days after service, the Commission ordered Gill to show cause by March 13, 2020, why the Commission should not find him in default due to his failure to file an answer or otherwise to defend this proceeding.[5] Gill was warned that if he were 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. In the event that Gill failed to respond to the order to show cause, the order directed the Division to file a motion for default and other relief by March 27, 2020.

After Gill failed to answer the OIP or respond to the order to show cause, the Division filed a motion requesting that the Commission find Gill in default and bar him from the securities industry. The Division supported the motion with copies of Gill's Application for Permission to Enter Plea of Guilty, his handwritten statement in support of his application, and the Order Accepting Plea filed in the criminal proceeding. Gill did not respond to the Division's motion.

## II. Analysis

### A. We hold Gill 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."[6] Because Gill has failed to answer or to respond to the order to show cause or the Division's motion, we find it appropriate to deem him in default and to deem the allegations of

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

[4] 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "sending a copy . . . addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt").

[5] *Jaswant Gill*, Advisers Act Release No. 5437, 2020 WL 433235 (Jan. 28, 2020).

[6] 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)").

the OIP to be true. We base the findings that follow on the record, including the OIP and the evidentiary materials that the Division submitted with its motion for default and sanctions.[7]

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

Advisers Act Section 203(f) 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 engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or was convicted of wire fraud in violation of 18 U.S.C. § 1343 (or of any other offense specified in Advisers Act Section 203(e)(2)(C)) within ten years of the commencement of the proceeding; (ii) the person was associated with an investment adviser at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[8] Gill was enjoined from conduct in connection with the purchase or sale of any security, and was convicted of wire fraud in violation of 18 U.S.C. § 1343 within ten years of the commencement of this proceeding.[9] The allegations of the OIP deemed true establish that Gill was a person associated with an investment adviser at the time of the misconduct.[10]

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 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 the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[11] Our

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[7] We take official notice of the records in the underlying civil and criminal proceedings pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323 (allowing official notice to "be taken of any material fact which might be judicially noticed by a district court"). Because Gill's injunction in the civil action was entered by default, we do not rely on any findings made in that action in determining whether Gill's conduct warrants remedial sanctions. *Don Warner Reinhard*, Advisers Act Release No. 3139, 2011 WL 121451, at *4 (Jan. 14, 2011) (recognizing that collateral estoppel does not apply in the case of a judgment entered by default).

[8] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)); *see also id.* § 80b-3(e)(2)(D) (discussing convictions for violating 18 U.S.C. § 1343).

[9] *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "convicted" to include a "plea of guilty" if it "has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed").

[10] *See* Advisers Act Section 202(a)(17), 15 U.S.C. § 80b-2(a)(17) (defining a "person associated with an investment adviser . . . [as] any partner, officer, or director of such investment adviser").

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

public interest inquiry is flexible, and no one factor is dispositive.[12] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[13]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. As part of his guilty plea, Gill admitted that he took $250,000 from an investor under the pretense of investing it in a fixed index portfolio but instead used the money for personal expenses and to pay earlier investors. Gill also admitted that he took $20,000 from a different investor under the same pretense but again used the money for personal expenses and to pay earlier investors. Gill admitted further that he sent an investor 11 wire transfers that the investor believed reflected actual returns on his investment but were in fact funds from later investors. Gill's misconduct was thus egregious and recurrent.

Gill also acted with a high degree of scienter.[14] Wire fraud requires a specific intent to defraud.[15] And Gill pleaded guilty to the thirteen counts of wire fraud in his indictment, which alleged that he acted knowingly and with intent to defraud.

Because Gill failed to answer the OIP or to respond to the order to show cause or the Division's motion, he has made no assurances that he will not commit future violations. Although his guilty plea indicates that Gill 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.[16] It also appears that Gill's occupation would present opportunities for future violations. Although Gill is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.[17]

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12 *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

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

14 *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

15 *See United States v. Miller*, 953 F.3d 1095, 1098-99, 1101-03 (9th Cir. 2020) (holding that wire fraud requires specific intent to deceive and cheat).

16 *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility").

17 *See, e.g.*, *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (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").

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 Gill is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[18] Because Gill poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[19]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

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[18] *Tagliaferri*, 2017 WL 632134, at *6 (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

[19] *Id*. (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5858 / September 10, 2021

Admin. Proc. File No. 3-19204

In the Matter of

JASWANT GILL

ORDER IMPOSING REMEDIAL SANCTIONS

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

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

By the Commission.

Vanessa A. Countryman
Secretary