SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 94770 / April 21, 2022

Admin. Proc. File No. 3-19515

In the Matter of

PATRICK S. CARTER

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of antifraud and registration provisions of the 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:

Douglas M. Miller, Esq. for the Division of Enforcement.

On September 25, 2019, we instituted an administrative proceeding against Patrick S. Carter, 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. The order instituting proceedings ("OIP") alleged that Carter had been permanently enjoined from violating Sections 5 and 17(a) of the Securities Act of 1933, and Exchange Act Sections 10(b) and 15(a) and Rule 10b-5 thereunder, for conducting fraudulent offerings of unregistered shares of 808 Renewable Energy Corporation ("808 Renewable").[1] Carter failed to file an answer to the OIP, failed to respond to the Division of Enforcement's motion for entry of default and sanctions, and failed to respond to an order to show cause why he should not be found in default. We now find Carter 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 an OIP against Carter.

The OIP alleged that, in a civil action the Commission brought against Carter, a federal district court had entered a final judgment by consent permanently enjoining him from future violations of Securities Act Sections 5 and 17(a), Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5.[2] The final judgment also (i) permanently restrained and enjoined Carter from soliciting, accepting, or depositing any monies from actual or prospective investors in connection with any offering of securities, except that it did not prevent him from purchasing or selling securities listed on a national securities exchange for his own personal accounts; (ii) prohibited Carter from acting as an officer or director of any issuer with a class of securities registered under Exchange Act Section 12 or that is required to file reports under Exchange Act Section 15(d); and (iii) permanently barred Carter from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.

The OIP further alleged that Carter founded 808 Renewable in 2009 and served as its president, secretary, treasurer, and director; and also served from 2009 to September 2010 and from November 2011 to November 2016 as its CEO.[3] The OIP alleged that Carter was registered with the Commission as an investment adviser from 2006 to August 2007, and was associated with a FINRA-registered broker-dealer from September 2006 to July 2007.[4]

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1 *Patrick S. Carter*, Exchange Act Release No. 87101, 2019 WL 4670692 (Sept. 25, 2019).

2 15 U.S.C. §§ 77e, 77q(a), 78j(b), 78*o*(a); 17 C.F.R. § 240.10b-5.

3 *Carter*, 2019 WL 4670692, at *1.

4 *Id.*

According to the OIP, the Commission's complaint in the civil action alleged that, from 2009 to at least 2014, Carter, 808 Renewable, and others raised over $30 million from more than 500 investors nationwide through fraudulent offerings of unregistered shares of 808 Renewable stock. The complaint alleged that Carter participated in the unregistered sale of 808 Renewable securities. The complaint also alleged that investors were led to believe they would earn a return on their investment and that their funds would be used to expand 808 Renewable's business but that Carter misused and misappropriated investor funds to pay commissions to himself and other sales representatives who helped him defraud investors. The complaint alleged further that Carter used the funds he misappropriated from 808 Renewable to support his lifestyle.

The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Carter to file an answer to the allegations contained therein within 20 days of service, as provided by Rule of Practice 220(b).[5] The OIP informed Carter that, if he failed to answer, he could be deemed in default, the allegations in the OIP may be deemed to be true as provided in the Rules of Practice, and the Commission could determine the proceeding against him upon consideration of the OIP.[6]

B. Carter 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.

Carter was properly served with the OIP on June 24, 2021, pursuant to Rule of Practice 141(a)(2)(i),[7] but did not answer it. On August 23, 2021, more than 20 days after service, Carter was ordered to show cause by September 7, 2021, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[8] Carter was warned 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. In the event that Carter failed to respond to the order to show cause, the order directed the Division to file a motion for default and other relief by October 4, 2021.

After Carter failed to answer the OIP or respond to the order to show cause, the Division filed a motion requesting that the Commission find Carter in default and bar him from the securities industry. The Division supported the motion with copies of the Complaint, Consent to Entry of Judgment, Civil Minutes, and Judgment from the civil action; and with copies of the

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5 17 C.F.R. § 201.220(b).

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

7 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "handing a copy of the order to the individual").

8 *Patrick S. Carter*, Exchange Act Release No. 92732, 2021 WL 3726145 (Aug. 23, 2021).

Plea Agreement from a parallel criminal action against Carter. In the Consent to Entry of Judgment, which was incorporated into the Judgment, Carter agreed that "in any disciplinary proceeding before the SEC based on the entry of the injunction in this action, [he] understands that he shall not be permitted to contest the factual allegations of the complaint in this action."[9]

Carter did not respond to the Division's motion for entry of default and sanctions.

II. Analysis

A. We hold Carter 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."[10] Because Carter has failed to answer or respond to the show cause order or the Division's motion for entry of default and sanctions, 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 and the materials submitted with the Division's motion.

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

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from the securities industry if we find, on the record after notice and opportunity for hearing, that (i) the person has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any 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.[11]

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[9] *See Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) (holding that the "Commission's application of factual preclusion in the follow-on proceeding was appropriate because the [district court consent] judgment unambiguously barred [respondent] from making any future challenge to the allegations in the complaint," and that the Commission was thus "entitled to rely on the allegations of the complaint in deciding whether or not imposition of a lifetime bar on [respondent] was in the public interest").

[10] 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 [rule] within the time provided, such respondent may be deemed in default pursuant to § 201.155(a)").

[11] 15 U.S.C. § 78*o*(b)(6)(A)(iii) (cross-referencing Exchange Act Section 15(b)(4)(C)); *id.* § 78*o*(b)(4)(C) (specifying injunctions against various actions, conduct, and practices).

The first element is satisfied because the injunction imposed on Carter—from violating Securities Act Sections 5 and 17(a), and Exchange Act Sections 10(b) and 15(a) and Exchange Act Rule 10b-5—all concern conduct in connection with the purchase or sale of any security. The second element is satisfied because the complaint in the civil action alleged that Carter was acting as an unregistered broker at the time of the misconduct and Carter agreed in consenting to the injunction that he would not contest those allegations in this proceeding. Because Carter was acting as an unregistered broker, he was a person associated with a broker.[12]

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 his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[13] Our public interest inquiry is flexible, and no one factor is dispositive.[14] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[15]

We have weighed all these factors and find an industry bar warranted to protect the investing public. Carter's misconduct was egregious and recurrent. From 2009 through 2014, Carter and his co-defendants in the civil action raised over $30 million from over 500 investors nationwide by offering and selling five different types of unregistered shares of 808 Renewable. Carter misrepresented in private placement memoranda ("PPMs") and orally to investors that offering proceeds would be used for legitimate business purposes, and that any commissions paid would be to FINRA registered brokers and would not exceed 10% of the offering proceeds. But only about half of the proceeds were used for legitimate business purposes, while the remaining half was misappropriated and misused to support Carter's lifestyle and to pay commissions of up to 25% to Carter and unregistered sales representatives who helped him defraud investors.

In addition, Carter misrepresented to investors that 808 Renewable was generating positive cash flow that would be used to pay monthly or quarterly dividends to investors. But 808 Renewable was actually cash-strapped, and at Carter's direction it used new investor funds

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[12] *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a "person associated with a broker" in Exchange Act Section 3(a)(18)).

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

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

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

to make Ponzi-like dividend payments to investors. Carter also misrepresented to investors that 808 Renewable's shares had been pre-approved by the NYSE for listing on the AMEX.[16]

Carter also acted with scienter. Scienter is "a mental state embracing intent to deceive, manipulate, or defraud."[17] Carter reviewed and approved the PPMs, and he directed the transfer of offering proceeds from 808 Renewable to himself and co-defendants in the district court action. Also, as noted above, Carter directed the payment of Ponzi-like dividends to investors. Thus, Carter knew or must have known that the statements in the PPMs and that he made orally concerning the use of investor proceeds, commission payments, and dividends were untrue. The complaint in the civil action also alleged that Carter acted with scienter, and Carter agreed in consenting to the injunction that he would not contest those allegations in this proceeding. Accordingly, we find that Carter's degree of scienter weighs heavily in favor of an industry bar.

Because Carter failed to answer the OIP or respond to the show cause order or to the Division's motion, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. Although Carter's guilty plea in the parallel criminal action indicates that he might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that Carter poses a risk to the investing public.[18]

Further, it appears that Carter's occupation presents opportunities for future violations because he acted as an unregistered broker during the period of his misconduct, he previously worked as a registered investment adviser and as an associated person of a FINRA-registered broker-dealer, and he offers no assurances about his future plans.[19]

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 Carter is unfit to participate in the securities industry and that his participation in

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[16] In the parallel criminal action, Carter pleaded guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343, for misrepresenting to investors that shares of 808 Renewable had been preliminarily approved for listing on the NYSE. Carter is awaiting sentencing.

[17] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976).

[18] *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").

[19] *See George Charles Cody Price,* Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (expressing concern that respondent's occupation would present opportunities for future violations where he did not indicate that he planned to leave the securities industry).

it in any capacity would pose a risk to investors.[20] Because Carter poses a continuing threat to investors, we conclude that it is in the public interest to bar Carter from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[21]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

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[20] *See id.* at *5 (barring respondent from the securities industry on the ground that the misconduct underlying the respondent's injunction demonstrated that the respondent was unfit to participate in the securities industry and posed a risk to investors).

[21] 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, 1222-1224 (D.C. Cir. 2017); *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015). Carter's misconduct spanned from 2009 through at least 2014. We find that all of Carter's misconduct and a balancing of the factors discussed above demonstrate that a bar from associating with a broker or dealer is necessary to protect the public. We find that the misconduct 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 Grp. 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. 94770 / April 21, 2022

Admin. Proc. File No. 3-19515

In the Matter of

PATRICK S. CARTER

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Patrick S. Carter 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