SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 94822 / April 29, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6009 / April 29, 2022

Admin. Proc. File No. 3-19696

In the Matter of

JOSEPH A. MEYER, JR.

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the 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:

Kristin W. Murnahan for the Division of Enforcement.

On February 7, 2020, we instituted administrative proceedings against Joseph A. Meyer, Jr., pursuant to Section 15(b) of the Securities Exchange Act of 1934 and 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 ("OIP") alleged that Meyer had been permanently enjoined from violating Section 17(a) of the Securities Act of 1933, Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Advisers Act Sections 206(1) and 206(2) for misconduct that occurred in connection with a private investment fund advised by an investment adviser that Meyer owned and controlled. Meyer 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 Meyer 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 Meyer.

The OIP alleged that, from August 2009 through at least June 2018, Meyer was the sole owner and control person of Statim Inc., an investment adviser registered with the state of Georgia. The OIP further alleged that Statim was the adviser to a private investment fund named Arjun, L.P., which sold securities to investors in several states. The OIP also alleged that, on January 31, 2019, a district court entered a bifurcated judgment against Meyer by consent permanently enjoining him from future violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Advisers Act Sections 206(1) and 206(2).

According to the OIP, the Commission's complaint in the civil action alleged that, from at least 2009 until 2018, in connection with the sale of limited partnership interests in Arjun, Meyer falsely stated to investors that their funds were guaranteed against losses; misappropriated fund assets; sent out false account statements indicating that investors' funds were fully invested and earning positive returns without disclosing that such returns were backed in significant part by unsecured promissory notes that Statim issued; and otherwise engaged in a variety of conduct that operated as a fraud and deceit on Arjun investors. In connection with his settlement, Meyer signed a consent indicating that, "in any disciplinary proceeding before the Commission based

[1] *Joseph A. Meyer, Jr.*, Exchange Act Release No. 88153, 2020 WL 605912 (Feb. 7, 2020); *see* 15 U.S.C §§ 78*o*(b) and 80b-3(f).

on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action."[2]

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 Meyer to file an answer with 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Meyer that if he failed to answer, he could be deemed in default, the 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.[4]

B. Meyer 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.

Meyer was properly served with the OIP on July 19, 2021, pursuant to Rule of Practice 141(a)(2(i),[5] but did not answer it. On December 9, 2021, more than 20 days after service, Meyer was ordered to show cause by December 23, 2021, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[6] Meyer was warned that, if 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.

The order to show cause acknowledged that on November 30, 2021, the Division had filed a motion requesting that we find Meyer in default and bar him from the securities industry. The Division supported that motion with a copy of the bifurcated judgment. Meyer failed to answer the OIP, respond to the order to show cause, or respond to the Division's motion.

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[2] *SEC v. Joseph A. Meyer, Jr., et al.*, Civ. A. No. 1:18-cv-05868-LMM (N.D. Ga. Jan. 29, 2020), ECF No. 98-1 at 5. We take official notice of the record in the civil action pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323 (providing that official notice may be taken "of any material fact which might be judicially noticed by a district court of the United States"); *Am. Inv. Serv., Inc.*, Exchange Act Release No. 43991, 2001 WL 167861, at *1 n.1 (Feb. 21, 2001) (recognizing Commission's authority to take official notice of federal district court orders).

[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).

[5] 17 C.F.R. § 201.141(a)(2)(i).

[6] *Joseph A. Meyer, Jr.*, Exchange Act Release No. 93746, 2021 WL 5862088 (Dec. 9, 2021).

II. Analysis

A. We hold Meyer 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."[7] Because Meyer has failed to answer or 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 the OIP to be true. Because Meyer agreed not to contest the Commission's civil complaint in a subsequent Commission proceeding when consenting to the injunction, we further deem the allegations in the Commission's complaint also to be true for purposes of this proceeding.[8] We base the findings that follow on the record, including the OIP, the civil complaint, and the materials that the Division submitted with its motion for default and sanctions.

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 we find, 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; (ii) the person was associated with an investment

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[7] 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)").

[8] *Cf. Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) (finding that "[t]he Commission was entitled to rely on the allegations of the complaint in deciding whether or not imposition of a lifetime bar on Siris was in the public interest," where a consent judgment ordered Siris "'not . . . to contest the factual allegations of the complaint' in 'any disciplinary proceeding before the Commission based on the entry of the injunction in this action'" (omission in original)).

adviser at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[9] Meyer was enjoined from conduct in connection with the purchase or sale of any security because the district court enjoined him from violating Exchange Act Section 10(b) and Rule 10b-5 thereunder "in connection with the purchase or sale of any security."[10] The allegations of the OIP deemed true establish that Meyer owned and controlled an investment adviser and was therefore a person associated with an investment adviser at the time of the misconduct.[11]

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.[12] Our public interest inquiry is flexible, and no one factor is dispositive.[13] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[14]

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9 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4)). We also instituted administrative proceedings against Meyer pursuant to Exchange Act Section 15(b). That section makes the same relief available upon a finding that it is in the public interest against a person so enjoined who was associated with a broker or dealer at the time of the misconduct. 15 U.S.C. § 78*o*(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4)(C), 15 U.S.C. § 78*o*(b)(4)(C)). Exchange Act Section 15(b) also authorizes a bar from participating in the offering of a penny stock. *Id*. But the Division did not request a penny stock bar in this case. And, based on the record before us, we cannot determine whether Meyer was associated with a broker or dealer at the time of the alleged misconduct. Given our conclusion that it is in the public interest to bar Meyer from the securities industry under the Advisers Act, we decline to seek additional information from the Division concerning his association with a broker or dealer.

10 *SEC v. Joseph A. Meyer, Jr., et al.*, Civ. A. No. 1:18-cv-05868-LMM (N.D. Ga. Jan. 31, 2020), ECF No. 103 at 2.

11 *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 person directly or indirectly controlling . . . such investment adviser").

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

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

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

We have weighed all these factors and find an industry bar is warranted to protect the investing public. Meyer's misconduct was egregious and recurrent. As described in the Commission's complaint, Meyer defrauded Arjun investors for nearly a decade. Among other things, he told certain investors that, in return for relinquishing substantial portions of their profits, one class of investors would be protected from any loss of principal and other classes of investors would receive guaranteed rates of return. Although he told these investors that their relinquished profits would be transferred to a capital account to fund the principal protection and the guaranteed returns, Meyer withdrew substantially all of the relinquished profits as they were generated and used them to pay his living expenses. Meyer further deceived investors through account statements that, regardless of Arjun's actual performance, indicated that investors had not lost principal or had earned their guaranteed returns.

Meyer also acted with a high degree of scienter. The Commission's complaint alleged that Meyer engaged in the misconduct described above "knowingly, intentionally, and/or recklessly" and "with intent to deceive, manipulate or defraud."[15] As discussed above, Meyer agreed as part of his consent to the injunction not to contest that allegation in this proceeding.

Because Meyer 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 or that he recognizes the wrongful nature of his conduct. It also appears that Meyer's occupation presents opportunities for future violations because for nearly a decade, including during the period of his misconduct, he was associated with a registered investment adviser.

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 harm. Here, the record establishes that Meyer is unfit to be in the securities industry and that his participation in it in any capacity would pose a risk to investors.[16] Accordingly, because Meyer poses a continuing threat to investors, we conclude that it is in the public interest to bar Meyer from association with any

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[15] *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976) (stating that scienter is "a mental state embracing intent to deceive, manipulate, or defraud").

[16] *See Jonathan Morrone*, Exchange Act Release No. 93847, 2021 WL 6062990, at *5 (Dec. 21, 2021) (barring respondent 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).

broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[17]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

[17] 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). Meyer's misconduct spanned from August 2009 through at least 2018. We find that all of Meyer's conduct and a balancing of the factors discussed above demonstrate that a bar from associating with an investment adviser 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 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
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JOSEPH A. MEYER, JR.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that the Division of Enforcement's motion for default and for imposition of remedial sanctions is granted; and it is further

ORDERED that Joseph A. Meyer, Jr. 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