SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 5981 / March 21, 2022

Admin. Proc. File No. 3-18890

In the Matter of

ELDRICK E. WOODLEY d/b/a
WOODLEY & CO. WEALTH STRATEGIES

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of fraud provisions of the federal securities laws. *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:

B. David Fraser for the Division of Enforcement.

On November 9, 2018, we instituted administrative proceedings against Eldrick E. Woodley d/b/a Woodley & Co. Wealth Strategies ("Woodley"), pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), 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 Woodley had been permanently enjoined from future violations of Sections 206(1) and 206(2) of the Advisers Act for misconduct that occurred while he was acting as an investment adviser. Woodley failed to file an answer to the OIP, failed to respond to an order to show cause why he should not be found in default for failing to file an answer, and failed to respond to the Division of Enforcement's subsequent motion for entry of default and sanctions. We now find Woodley 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 Woodley.

The OIP alleged that a federal district court entered a final judgment by default against Woodley on July 5, 2018, permanently enjoining him from future violations of Advisers Act Sections 206(1) and 206(2). According to the OIP, the Commission's complaint in the civil action had "alleged that Woodley, a state-registered investment adviser, perpetuated a fraudulent scheme to misappropriate money from his clients." The OIP itself alleged that, between May 2012 and June 2014, Woodley "billed clients for: (i) services that [Woodley] never performed, (ii) items and expenses his clients never agreed to pay, and (iii) purported investments for clients that were never made." The OIP also alleged that, as a result of these transactions, Woodley "fraudulently collected more than $147,000 from his clients' accounts."

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 Woodley to file an answer to the allegations contained therein within 20 days after service, as provided by Rule of Practice 220(b).[2] The OIP informed Woodley 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.[3]

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1 *Eldrick E. Woodley*, Advisers Act Release No. 5064, 2018 WL 5881785 (Nov. 9, 2018).

2 17 C.F.R. § 201.220(b).

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

B. Woodley 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.

Woodley was properly served with the OIP on May 8, 2019, pursuant to Rule of Practice 141(a)(2)(i),[4] but did not answer it. On October 16, 2020, more than 20 days after service, Woodley was ordered to show cause by October 30, 2020, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[5] Woodley 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 Woodley failed to respond to the order to show cause, the order directed the Division to file a motion for default and other relief by December 11, 2020.

After Woodley failed to answer the OIP or respond to the order to show cause, the Division filed a motion requesting that the Commission find Woodley in default and bar him from the securities industry. The Division supported the motion with copies of the district court's memorandum and order regarding the civil default, the final judgment by default, and the complaint in the civil action. Woodley did not respond to the Division's motion.

II. Analysis

A. We hold Woodley 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 Woodley 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. We base the findings that follow on the record, including the OIP and the exhibits attached to the Division's motion for default and sanctions.[7]

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[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"); *see also Eldrick E. Woodley*, Exchange Act Release No. 85658, 2019 WL 1616733 (Apr. 16, 2019) (directing the Division to file status report regarding service).

[5] *Eldrick E. Woodley*, Advisers Act Release No. 5614, 2020 WL 6117718 (Oct. 16, 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)").

[7] Because Woodley's injunction was entered by default, we do not rely on the allegations in the underlying civil complaint or any findings made by the district court in its memorandum and order in that action in determining whether Woodley's conduct warrants remedial sanctions. *Don Warner Reinhard*, Advisers Act Release No. 3139, 2011 WL 121451, at *4 (Jan. 14, 2011)

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 any conduct or practice in connection with acting as an investment adviser; (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]

The record establishes that Woodley has been enjoined from engaging in a conduct or practice in connection with acting as an investment adviser. The federal district court's final judgment states that Woodley is "permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940."[9] Those provisions prohibit an investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client and from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.[10]

Woodley was also associated with an investment adviser at the time of the alleged misconduct. The allegations of the OIP deemed true establish that Woodley was registered with the State of Texas as an investment adviser and conducted an investment advisory business.

(recognizing that collateral estoppel does not apply in the case of a judgment entered by default). However, the OIP here directly alleges facts concerning what the respondent did rather than allege only that an injunction was entered in the prior civil action or merely describe the complaint in that underlying action. As a result, if the respondent defaults, we may deem those allegations to be true pursuant to Rule of Practice 155(a). *See id.* at *4 n.18.

[8] 15 U.S.C. § 80b-3(f) (discussing injunctions from engaging in any action, conduct, or practice specified in Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4)); *see also id.* § 80b-3(e)(4) (sanction may be appropriate where investment adviser "is permanently or temporarily enjoined by [court] order . . . from acting as an investment adviser . . . or from engaging in or continuing any conduct or practice in connection with any such activity").

[9] Final Judgment by Default, *SEC v. Woodley*, No. 4:15-cv-2767 (S.D. Tex. July 5, 2018), ECF No. 15, at 1. As indicated above, *see supra* note 7, collateral estoppel does not apply to the allegations of the civil complaint because the injunction was entered by default. But the "judgment of . . . [the district] court . . . operates as res judicata . . . even if obtained upon a default," and so conclusively establishes the relevant change in legal relations—that Woodley was enjoined and the scope of his injunction. *See Morris v. Jones*, 329 U.S. 545, 550–51 (1947).

[10] 15 U.S.C. § 80b-6(1), (2).

Because Woodley acted as an investment adviser, he necessarily also was a person associated with an investment adviser.[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]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. Woodley's misconduct was egregious and recurrent. The OIP alleges, and we deem conceded and established on the basis of Woodley's default, that from May 2012 to June 2014 Woodley defrauded his clients by submitting invoices to a third party, the custodian of his client's assets, to collect funds from client accounts for the services he purportedly performed. But in fact Woodley invoiced clients for services he never performed, items and expenses clients did not agree to pay, and purported investments that were never made. Woodley directed this entire series of transactions over a period of more than two years and as a result of his misconduct fraudulently misappropriated more than $147,000 in client funds.

The record establishes that Woodley repeatedly abused the position of trust he occupied as an investment adviser.[15] Woodley also acted with a high degree of scienter.[16] Woodley submitted a series of invoices for fictitious services over the course of multiple years—repeated

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11 *Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *3 (Mar. 1, 2017) ("[T]he finding that Desai acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f)."") (citing *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who acts "as an investment adviser in an individual capacity" is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an 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).

15 *See James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious.").

16 *See SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (scienter is "an intent to deceive, manipulate, or defraud" (citation omitted)); *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).

misstatements that cannot be explained away as the product of mere negligence or innocent mistake.[17] Furthermore, Woodley must have known that the invoices were false because he had direct and personal knowledge of the circumstances that made them so: He knew he was billing for "services that Respondent"—i.e., *he himself*—"never performed."[18] The fact that a defendant knowingly made a false statement is definitive evidence of scienter.[19]

Because Woodley failed to defend the civil court action, answer the OIP, or respond to the order to show cause or to the Division's motion for a default and sanctions, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. It appears that Woodley's occupation presents opportunities for future violations because he acted as an investment adviser during the two-year period of his misconduct, and he offers no evidence of his current occupation or assurances about his future plans.[20]

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

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[17] *See, e.g.*, *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *3 (Feb. 4, 2008) (imposing bar where the respondent misappropriated funds from multiple clients over a three-year period), *petition denied*, 561 F.3d 548 (6th Cir. 2009); *see also SEC v. Merkin*, No. 11-23585-civ, 2012 WL 5245561, at *8 (S.D. Fla. Oct. 3, 2012) (finding that the defendant's conduct was "intentional and that he acted with scienter" because, among other things, he "repeated the false statements on at least four occasions"), *aff'd*, 628 F. App'x 741 (11th Cir. 2016); *Se. Indus. Loan Co.*, Securities Act Release No. 2726, 1941 WL 40736, at *10 (Nov. 29, 1941) (explaining that "innocent mistakes of a false and misleading character" are less probable where the falsity has been repeated in multiple instances).

[18] *SEC v. Weintraub*, No. 11-21549-civ, 2011 WL 6935280, at *8 (S.D. Fla. Dec. 30, 2011) ("Given that all of these false or misleading statements . . . involve information within [the defendant's] personal knowledge, the Court finds that his misconduct could not have been inadvertent or the result of a mistake."); *see also Brendan E. Murray*, Advisers Act Release No. 2809, 2008 WL 4964110, at *5, *10 (Nov. 21, 2008) (concluding that the wrongfulness of preparing and submitting multiple invoices, "knowing that some invoices were marked up or completely falsified," was "obvious and manifested a high degree of scienter").

[19] *ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 65 (1st Cir. 2008); *see also SEC v. Weintraub*, 2011 WL 6935280, at *7 ("A defendant engages in knowing misconduct when he creates documents he knows are false.").

[20] *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (observing that the Commission was concerned that respondent's occupation will present opportunities for future violations where he did not indicate that he planned to leave the securities industry); *cf. Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *41 (May 29, 2015) (explaining that respondent offered "no assurance against future violations other than to assert that he has left the industry voluntarily, which provides no guarantee that he will not seek to return at some point in the future," and concluding that "[a]bsent a bar, nothing would prevent [respondent] from reentering the industry").

in it in any capacity would pose a risk to investors.[21] Because Woodley 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.[22]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

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21 *See Price*, 2017 WL 405511, at *5 (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).

22 *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. 5981 / March 21, 2022

Admin. Proc. File No. 3-18890

In the Matter of

ELDRICK E. WOODLEY d/b/a
WOODLEY & CO. WEALTH STRATEGIES

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Eldrick E. Woodley d/b/a Woodley & Co. Wealth Strategies 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