SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6048 / June 13, 2022

Admin. Proc. File No. 3-20168

In the Matter of

ROBERT J. LINDNER

OPINION OF THE COMMISSION

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

APPEARANCES:

William P. Hicks and M. Graham Loomis for the Division of Enforcement.

On December 14, 2020, we instituted an administrative proceeding against Robert J. Lindner, 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 ("OIP") alleged that Lindner had been permanently enjoined from violating antifraud provisions of the federal securities laws. Lindner 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, and failed to respond to the Division of Enforcement's motion for entry of default and sanctions. We now find Lindner 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 Lindner.

The OIP alleged that Lindner was the president, CEO, and chairman of Lindner Capital Advisers, Inc. ("LCA"), an entity registered with the Commission as an investment adviser. The OIP also alleged that, in November 2020, a district court entered a final judgment by consent against Lindner, permanently enjoining him from violating or from aiding and abetting violations of Advisers Act Sections 206(1), 206(2), 206(4) and 207 and Rule 206(4)-7. According to the OIP, the Commission's complaint in the district court case alleged that, in 2018 and 2019, Lindner and LCA made materially false statements in reports filed with the Commission and given to clients and failed to implement and enforce compliance procedures to prevent Advisers Act violations. The OIP also alleged that the complaint had alleged that: Lindner and LCA represented in a Form ADV that LCA's financial position was secure when LCA was heavily leveraged and increasingly unable to meet basic operating expenses; that LCA's stressed financial position led to its sale of assets in late 2019; and that Lindner and LCA falsely represented in a Form ADV that LCA was the owner and beneficiary of a life insurance policy on Lindner's life, when no such policy actually existed.

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 also directed Lindner to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[2] The OIP informed Lindner that if he failed to answer, he could be deemed in default, the allegations in the OIP could be deemed to be true, and the proceeding could be determined against him upon consideration of the OIP.[3]

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1 *Robert J. Lindner*, Advisers Act Release No. 5647, 2020 WL 7350746 (Dec. 14, 2020).

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. Lindner 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.

Lindner was properly served with the OIP on December 14, 2020, pursuant to Rule of Practice 141(a)(2)(i),[4] but did not answer it. On February 5, 2021, the Division filed a motion requesting that the Commission find Lindner in default and bar him from the securities industry. The Division supported its motion with copies of the complaint, judgment, and consent in the district court case, in which Lindner agreed not to contest the complaint's factual allegations in a related Commission proceeding such as this one. Lindner did not respond to the motion.

On August 20, 2021, more than 20 days after service, we ordered Lindner to show cause by September 3, 2021, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[5] We warned Lindner 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. Lindner did not respond.

II. Analysis

A. We hold Lindner 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 Lindner 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 evidentiary materials that the Division submitted with its 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 "handing a copy of the order to the individual").

5 *Robert J. Lindner*, Advisers Act Release No. 5828, 2021 WL 3708711 (Aug. 20, 2021).

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 *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *4 (Jan. 30, 2017) (stating that "it is well settled that the Commission is 'entitled to rely on the allegations of [a] complaint' that is followed by a consent judgment without 'relitigat[ing] those factual' issues" where the respondent "expressly agreed not to contest the factual allegations from the injunctive action") (quoting and citing *Siris v. SEC*, 773 F.3d 89, 95-96 (D.C. Cir. 2014)).

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 has been enjoined from any conduct or practice in connection with activity 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] Lindner was enjoined from a conduct or practice in connection with activity as an investment adviser because he was enjoined from violating the antifraud provisions of the Advisers Act for misconduct while acting as an investment adviser. The allegations of the OIP deemed true establish that Lindner was at the time of his misconduct a person associated with an investment adviser.

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.[9] Our public interest inquiry is flexible, and no one factor is dispositive.[10] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[11]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. Lindner's misconduct was egregious and recurrent. As described in the Commission's complaint, in 2018 and 2019, Lindner hid that LCA's assets under management and revenues were in decline and that, by 2017, LCA had borrowed nearly $2 million mostly in the form of loans from Lindner to LCA where Lindner had personally borrowed funds from LCA clients. In mid-2018, our staff sent Lindner and LCA a deficiency letter noting LCA was heavily leveraged and identifying inaccuracies in the firm's 2017 disclosure in a Form ADV regarding its financial condition. Lindner and LCA responded by representing to the staff that it would implement compliance procedures regarding client loans and reporting of LCA's financial condition, but Lindner and LCA then failed to implement and enforce the new procedures. By September 2019, LCA's borrowings had surpassed $2 million, but Lindner and LCA never amended LCA's filings with the Commission to reflect the high borrowing levels. LCA's April 2019 Form ADV falsely represented that the firm's financial condition was good, when LCA was near collapse, and that a large life insurance policy existed on Lindner's life for LCA's benefit. As discussed above, Lindner agreed not to contest these allegations in this proceeding.

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8 *See* 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4); *see also id.* § 80b-3(e)(4) (discussing injunctions).

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

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

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

Lindner also acted with scienter. The complaint in the injunctive action alleged that he acted with scienter, he agreed not to contest those allegations here, and the district court found that Lindner violated Advisers Act Section 206(1),[12] which requires a showing of scienter.[13]

Because Lindner failed to answer the OIP or respond to the order to show cause or to the Division's motion, he has made no assurances to us that he will not commit future violations or that he recognizes the wrongful nature of his conduct. It also appears that Lindner's occupation presents opportunities for future violations because he was the president, CEO, and chairman of an entity registered with the Commission as an investment adviser. Absent a bar, Lindner would have the opportunity to participate in the securities industry and commit further violations.[14]

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 Lindner is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[15] Because Lindner 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.[16]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

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12 15 U.S.C. § 80b-6(1).

13 *See Malouf v. SEC*, 933 F.3d 1248, 1263 (10th Cir. 2019) ("Liability under the Investment Advisers Act § 206(1) requires proof of scienter[.]"), *cert. denied*, 140 S. Ct. 1551 (2020); *see also 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).

14 *See Price*, 2017 WL 405511, at *3 (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).

15 *See Jaswant Gill*, Advisers Act No. 5858, 2021 WL 4131427, at *3-4 (Sept. 10, 2021) (finding that misconduct underlying respondent's injunction from violating the Advisers Act demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

16 *Id.* at *3-4 (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA
before the
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In the Matter of

ROBERT J. LINDNER

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Robert J. Lindner 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