

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6055 / June 22, 2022

Admin. Proc. File No. 3-19371

In the Matter of
PATRICK L. O'CONNOR

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of wire fraud and money laundering. *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:

Charles L. Kerstetter for the Division of Enforcement.

On August 22, 2019, we instituted an administrative proceeding against Patrick L. O'Connor, 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, in 2019, O'Connor was convicted of wire fraud in violation of 18 U.S.C. § 1343 and money laundering in violation of 18 U.S.C. § 1956(a)(1)(B) for misconduct that occurred while he conducted business as an investment adviser without having registered to conduct such business. O'Connor failed to file an answer to the OIP, respond to the Division of Enforcement's subsequent motion for entry of default and sanctions, or respond to an order to show cause why he should not be found in default for failing to file an answer. We now find O'Connor 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 O'Connor.

The OIP alleged that, from October 2011 through June 2018, O'Connor transacted business as an investment adviser without having registered to conduct such business. As further alleged in the OIP, on April 4, 2019, O'Connor pleaded guilty to one count of wire fraud and one count of money laundering. On July 30, 2019, O'Connor was sentenced to seven years in prison, and ordered to pay restitution in the amount of \$9,180,748 to his victims.

According to the OIP, the criminal information filed in O'Connor's case stated that O'Connor made material misrepresentations and omissions in soliciting investors to invest with Madison Financial Services, LLC ("MFS"). As part of his scheme, O'Connor projected an average annual return of 2% a month or 24% annually. The OIP further alleged that O'Connor provided at least one investor with a receipt of a deposit for \$250,000 indicating that the investor purchased shares in an MFS fund. The document represented that the funds would be invested in capital growth investment strategies to be managed and directed by O'Connor, and indicated that the purpose of the fund was to seek long and short-term capital appreciation through U.S. equity and debt instruments. According to the OIP, the document further stated that O'Connor would receive an annual fee of 10% of the investment profit in exchange for managing the fund. The OIP alleges further that, according to the criminal information filed in his case, O'Connor misappropriated most of the funds, operated a Ponzi-like scheme by making payments to some investors with the money received from other investors, and created and disseminated fictitious account statements with supposed year-to-date profits and supposed portfolio balances.

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 O'Connor to file an answer to the allegations within 20 days after service, as provided by Rule of

¹ *Patrick L. O'Connor*, Advisers Act Release No. 5327, 2019 WL 3975598 (Aug. 22, 2019).

Practice 220(b).² The OIP informed O'Connor 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

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

O'Connor was properly served with the OIP on August 26, 2019, pursuant to Rule of Practice 141(a)(2)(i),⁴ but did not answer it. On January 21, 2020, the Division filed a motion requesting that the Commission find O'Connor in default and bar him from the securities industry. The Division supported the motion with copies of the information entered in O'Connor's criminal proceeding, a September 2019 letter addressed to the Division of Enforcement from O'Connor's counsel stating that O'Connor was willing to enter into a "consent or default type order whereby he would be barred from transacting business in the future for other persons as an investment adviser," the Minute Entry and Judgment and Commitment in O'Connor's criminal case, and a copy of the MFS fund agreement O'Connor used to solicit investors. O'Connor did not respond to the Division's motion.

On January 27, 2021, O'Connor was ordered to show cause by March 15, 2021, why the Commission should not find him in default due to his failure to file an answer more than 20 days after service of the OIP or otherwise defend this proceeding.⁵ O'Connor 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. O'Connor did not respond.

II. Analysis

A. We hold O'Connor 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

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).

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 *Patrick L. O'Connor*, Advisers Act Release No. 5674, 2021 WL 302838 (Jan. 27, 2021).

to be true.”⁶ Because O’Connor 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 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 we find, on the record after notice and opportunity for hearing, that (i) the person was convicted of wire fraud in violation of 18 U.S.C. § 1343 (or another offense specified in Advisers Act Section 203(e)(2)(C), which includes felony money laundering) 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 O’Connor was convicted of wire fraud in violation of 18 U.S.C. § 1343 and money laundering in violation of 18 U.S.C. § 1956(a)(1)(B) (a felony) within ten years of the commencement of this proceeding.⁹ The allegations of the OIP deemed true establish that O’Connor transacted business as an investment adviser without having registered to conduct such business. Because O’Connor acted as an unregistered investment adviser, he necessarily also was a person associated with an investment adviser.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

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 We take official notice of the records in the underlying criminal proceeding 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”).

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 *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’”).

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 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, O'Connor admitted that, from 2011 to 2018, he solicited and received \$12,442,318.63 in investor funds by means of materially false and fraudulent representations, including the pretense of using funds to actively trade securities when he, instead, used the money to repay earlier investors or to fund his personal lifestyle, including the purchase of a residence and a boat. O'Connor also admitted that, as part of the scheme, he provided investors with fictitious account statements that showed their supposed year-to-date profits and current portfolio balance, with the intention of lulling the investors into believing that he was investing their money in legitimate investments, even though O'Connor admittedly knew the account statements were false. O'Connor admitted that, when paying investors with money from later investors, he falsely told the investors that the payments were income earned from stock trading. O'Connor's misconduct was thus egregious and recurrent.

O'Connor also acted with a high degree of scienter.¹⁴ Wire fraud requires a specific intent to defraud.¹⁵ And the counts of the criminal information to which O'Connor pleaded guilty alleged that he acted knowingly and with intent to defraud.

Because O'Connor failed to answer the OIP or to respond to the Division's motion or the order to show cause, he has made no assurances that he will not commit future violations. Although his guilty plea indicates that O'Connor 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 O'Connor's occupation would present opportunities for

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

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").

future violations. Although O'Connor 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

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 O'Connor 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 O'Connor 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, LEE, and CRENSHAW).

Vanessa A. Countryman
Secretary

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").

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. 6055 / June 22, 2022

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In the Matter of

PATRICK L. O'CONNOR

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Patrick L. O'Connor 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