SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6094 / August 22, 2022

Admin. Proc. File No. 3-20198

In the Matter of

MICHELLE MORTON

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Conviction

Respondent was permanently enjoined from violations of the antifraud provisions of the federal securities laws and convicted of investment adviser fraud and conspiracy to commit securities fraud. *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:

Nancy A. Brown and *Tejal D. Shah* for the Division of Enforcement.

On January 6, 2021, we instituted an administrative proceeding against Michelle Morton pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] We now find Morton to be in default, deem the allegations against her to be true, and bar her from the securities industry.

I. Background

A. The Commission instituted the proceeding against Morton.

The order instituting proceedings ("OIP") alleged that Morton has been associated, intermittently since 1989, with entities registered with the Commission. As relevant here, it alleged that, from August 2014 until January 2016, Morton was the Chief Executive Officer and an indirect shareholder of two investment advisers registered with the Commission—Hughes Capital Management, LLC ("Hughes") (from August 2014) and Atlantic Asset Management LLC ("Atlantic") (from August 2015).[2] According to the OIP, during that period, Morton was engaged in the business of managing client assets, including advising clients about investing in certain securities, and received compensation for those services.

The OIP also alleged that, on December 28, 2018, a federal district court permanently enjoined Morton with her consent from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder,[3] and Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8 thereunder.[4] The OIP alleged further that, on May 16, 2018, Morton pleaded guilty to one count of investment adviser fraud in violation of 15 U.S.C. §§ 80b-6 and 80b-17 and one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371.

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 directed Morton to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[5] The OIP informed Morton that if she failed to answer, she could be deemed in default,

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1 *Michelle Morton*, Advisers Act Release No. 5663, 2021 WL 62247 (Jan. 6, 2021).

2 In its motion for entry of default and sanctions, the Division of Enforcement states that the OIP mistakenly alleged that Morton became the CEO and indirect shareholder of Atlantic in August 2015, rather than in April 2015. The record before us, including Morton's plea allocution, indicates that Morton became associated with Atlantic in April 2015. In any case, the OIP accurately alleges that Morton was the CEO and indirect shareholder of at least one investment adviser during the entire relevant period of August 2014 until January 2016.

3 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

4 15 U.S.C. § 80b-6(1), (2), (4); 17 C.F.R. § 275.206(4)-8. The record reflects that the district court entered its judgment on December 27, 2018, rather than December 28, 2018.

5 17 C.F.R. § 201.220(b).

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 her upon consideration of the OIP.[6]

B. Morton failed to answer the OIP, respond to an order to show cause why she should not be found in default, or respond to a motion for a default and sanctions.

Morton was properly served with the OIP on January 11, 2021, pursuant to Rule of Practice 141(a)(2)(i),[7] but did not respond. On April 16, 2021, more than 20 days after service, the Commission ordered Morton to show cause by April 30, 2021, why it should not find her in default due to her failure to file an answer or otherwise to defend this proceeding.[8] The show cause order warned Morton that, if the Commission found her in default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against her upon consideration of the record. The order directed the Division of Enforcement to file a motion for entry of an order of default and the imposition of remedial sanctions by May 28, 2021, in the event that Morton failed to respond to the show cause order.

After Morton failed to answer the OIP or respond to the show cause order, the Division filed a motion requesting that the Commission find Morton in default and bar her from the securities industry. Morton did not respond to the Division's motion.

The Division supported the motion with the allegations of the OIP and with filings from both the criminal proceeding and the civil action against Morton. These filings included the superseding indictment in the criminal proceeding, excerpts of Morton's guilty plea allocution, the district court's opinion and order denying Morton's second motion to withdraw her guilty plea, the subsequent criminal judgment and amended criminal judgment, the sentencing transcript, Morton's executed consent to the judgment in the civil action, the civil judgment, and the amended civil complaint (the "Complaint").

According to the Complaint's allegations,[9] which Morton agreed not to contest in this proceeding in her consent to the civil judgment,[10] an individual named Jason Galanis and his

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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 "sending a copy . . . addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt").

8 *Michelle Morton*, Advisers Act Release No. 5722, 2021 WL 1513058 (Apr. 16, 2021).

9 Amended Complaint, *SEC v. Archer*, No. 1:16-cv-03505-WHP (S.D.N.Y. Dec. 27, 2018), ECF No. 88, https://www.sec.gov/litigation/complaints/2016/comp23689.pdf.

10 Proposed Judgment as to Defendant Michelle Morton at 6-12, *Archer*, No. 1:16-cv-03505-WHP, ECF No. 198 (attaching "Consent of Defendant Michelle Morton"); *see also* Judgment as to Defendant Michelle Morton, *Archer*, No. 1:16-cv-03505-WHP, ECF No. 221 (incorporating Morton's consent into the judgment).

associates arranged the purchase of Hughes and then Atlantic and installed Morton as CEO. Morton understood that the financing of these acquisitions was contingent on her agreement to invest Hughes and Atlantic clients' funds in bonds issued by a Native American tribal entity ("Tribal Bonds"). Morton authorized the purchase of $27 million in Tribal Bonds on behalf of nine Hughes clients in August 2014 and later purchased $16.2 million in Tribal Bonds on behalf of one Atlantic client in April 2015, without disclosing various known conflicts of interest prior to the purchases, including conflicts arising from Hughes's affiliations with the bonds' placement agent and with the provider of the annuity into which the proceeds of the sale were to be invested. At least by the time she made the second purchase in April 2015, Morton was aware that there was no active market for the Tribal Bonds. Galanis and his associates used the funds invested in the Tribal Bonds for their personal benefit.

Similarly, during Morton's guilty plea allocution, she stated that "on or about April 2015," while she was CEO of Atlantic, she "agreed with others to purchase certain bonds for a client account at Atlantic" and that she "knew there was a material conflict of interest in connection with the bonds and did not disclose it to the client before making the purchase."[11] She acknowledged that her conduct was wrong and that it "enabled Jason Galanis to steal the bond proceeds through a broader fraud" that she asserted she did not know about and, therefore, her "investors lost money."[12] The district court entered a criminal judgment that sentenced Morton to 15 months in prison, followed by three years of supervised release, and ordered her to forfeit more than $9 million and pay restitution of more than $43 million.[13]

II. Analysis

A. We hold Morton 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."[14] Because Morton has failed to answer or to respond to the show cause order or the Division's motion, we find it appropriate to deem her 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 evidentiary materials that the Division submitted with its motion for default and sanctions.

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11 Transcript of Proceedings at 20, *United States v. Morton*, No. 1:16-cr-00371-RA (S.D.N.Y. Dec. 9, 2020), ECF No. 503 (guilty plea allocution on May 16, 2018).

12 *Id.*

13 Amended Judgment in a Criminal Case, *Morton*, No. 1:16-cr-00371-RA, ECF No. 948.

14 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" Rule of Practice 155(a)).

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 (1) the person was (a) enjoined from engaging in or continuing any conduct or practice in connection with acting as an investment adviser or in connection with the purchase or sale of any security, or (b) within ten years of the commencement of the proceeding, was convicted of an offense involving the purchase or sale of any security, or a conspiracy to commit such an offense, or was convicted of an offense that arises out of the conduct of the business of an investment adviser; (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[15]

The record establishes the first two of these elements. Morton was enjoined from conduct in connection with acting as an investment adviser[16] and in connection with the purchase or sale of securities.[17] She also was convicted of an offense arising out of the conduct of the business of an investment adviser—investment adviser fraud—as well as conspiracy to commit an offense involving the purchase or sale of any security—conspiracy to commit securities fraud—within ten years of the commencement of this proceeding.[18] The allegations of the OIP deemed true establish that Morton, as CEO of each of the two relevant investment advisers, was a person associated with an investment adviser at the time of her misconduct.[19]

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

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15 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(2) and (4), 15 U.S.C. § 80b-3(e)(2) and (4)); *see also id.* § 80b-3(e)(2)(A)-(B) (discussing convictions); *id.* § 80b-3(e)(4) (discussing injunctions).

16 *See* Advisers Act Section 206, 15 U.S.C. § 80b-6 (making it unlawful for "any investment adviser" to engage in specified conduct); Advisers Act Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8 (providing that certain conduct undertaken by "any investment adviser to a pooled investment vehicle" "shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business").

17 *See* Exchange Act Section 10(b), 15 U.S.C. § 78j(b) (applying to conduct "in connection with the purchase or sale of any security"); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 (same).

18 *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "[c]onvicted" to include a "plea of guilty" if it "has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed").

19 *See id.* § 80b-2(a)(17) (defining a "person associated with an investment adviser" to include "any partner, officer, or director of such investment adviser").

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.[20] Our public interest inquiry is flexible, and no one factor is dispositive.[21] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[22]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. The allegations of the OIP deemed true establish that Morton acted as an investment adviser at the time of her misconduct.[23] And the allegations of the Complaint, which Morton agreed not to contest in this proceeding, establish that Morton repeatedly abused the position of trust she occupied as an investment adviser.[24] Morton knew that Galanis's financing of the acquisition of Hughes and Atlantic was contingent on her agreement to invest client funds in Tribal Bonds. After Morton was installed as CEO of each investment adviser, Morton authorized the purchase of over $43 million in Tribal Bonds on behalf of ten clients, first at Hughes in August 2014 and then at Atlantic in April 2015, without disclosing various known conflicts of interest to the clients. By the time of the second purchase in April 2015, Morton knew that the Tribal Bonds had no active market. The criminal judgment's restitution order against Morton indicates that her misconduct caused a loss of over $43 million to the ten clients. Thus, her misconduct was egregious and recurrent.[25]

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

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

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

[23] *See supra* text following note 2; 15 U.S.C. § 80b-2(a)(11) (defining "[i]nvestment adviser" as anyone "who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities").

[24] *See Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) ("Whether or not issues established in the consent judgment were 'actually litigated' for purposes of estoppel, the Commission's application of factual preclusion in the follow-on proceeding was appropriate because the judgment unambiguously barred Siris from making any future challenge to the allegations in the complaint."); *see also George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *4 (Jan. 30, 2017) (relying on complaint where petitioner had "expressly agreed not to contest the factual allegations from the injunctive action").

[25] *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."); *cf. James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding misconduct egregious where individual "violated the fiduciary duties he owed his clients as an investment adviser by failing to disclose the conflict of interest inherent in receiving kickbacks for investing client funds in [certain] securities" and caused ten to fifty victims to lose millions of dollars).

Morton also acted with a high degree of scienter.[26] Conspiracy to commit securities fraud requires specific intent.[27] Morton pleaded guilty to one count of conspiracy to commit securities fraud in her indictment, which alleged that she acted knowingly and willfully. In addition, the Commission's Complaint against Morton alleged that she committed securities fraud with scienter, and she agreed not to contest that allegation in this proceeding.

Because Morton failed to answer the OIP or to respond to the show cause order or the Division's motion, she has made no assurances that she will not commit future violations. And although Morton pleaded guilty and stated at her plea allocution that some of her actions were wrong and she was "truly sorry" that her investors lost money, the district court noted at her sentencing that she had attempted to withdraw her guilty plea twice.[28] In light of these efforts, the district court found that Morton was "not willing to accept responsibility for her actions, although she may well be remorseful that people were harmed in the way that they were."[29] Even if Morton's guilty plea and statements during her allocution indicate that she might have some appreciation for the wrongfulness of her conduct, it does not outweigh the evidence that she poses a risk to the investing public.[30] It also appears that Morton's occupation presents opportunities for future violations because she has been intermittently employed in the securities industry since 1989, was the CEO of a registered investment adviser during the period of her misconduct, and offers no assurances about her future plans.[31]

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 Morton is unfit to participate in the securities industry and that her participation

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[26] *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).

[27] *See United States v. Downing*, 297 F.3d 52, 56-57 (2d Cir. 2002) (holding that conspiracy to commit securities fraud requires that "the defendant knowingly participated in the conspiracy with the specific intent to commit the offenses that were the objects of the conspiracy").

[28] Transcript of Proceedings at 34, *Morton*, No. 1:16-cr-00371-RA, ECF No. 946 (transcript of sentencing proceeding on November 18, 2020).

[29] *Id.*; *cf. Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *4 (Mar. 1, 2017) (noting district court's finding that respondent failed to recognize the wrongfulness of his conduct because he appealed his guilty plea).

[30] *See Tagliaferri*, 2017 WL 632134, at *6 (finding that the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility").

[31] *See Price*, 2017 WL 405511, at *3 (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).

in it in any capacity would pose a risk to investors.[32] Because Morton poses a continuing threat to investors, we conclude that it is in the public interest to bar her from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[33]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

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[32] *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).

[33] *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. 6094 / August 22, 2022

Admin. Proc. File No. 3-20198

In the Matter of

MICHELLE MORTON

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Michelle Morton 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