SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 97474 / May 10, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6306 / May 10, 2023

Admin. Proc. File No. 3-20142

In the Matter of

CONRAD A. COGGESHALL

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the 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:

Robert M. Moye and *Jennifer Peltz* for the Division of Enforcement.

On November 5, 2020, we instituted an administrative proceeding against Conrad A. Coggeshall, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.[1] We now find Coggeshall 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 instituted the proceeding against Coggeshall.

The order instituting proceedings ("OIP") alleged that Coggeshall was an investment adviser representative and registered representative of a dually registered investment adviser and broker-dealer. The OIP further alleged that, in March 2020, a federal district court entered a consent judgment permanently enjoining Coggeshall from violating or aiding and abetting violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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 Coggeshall to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[2] The OIP informed Coggeshall 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. Coggeshall failed to answer the OIP, respond to an order to show cause why he should not be found in default, or respond to a motion for a default and sanctions.

Coggeshall was properly served with the OIP on November 20, 2020, pursuant to Rule of Practice 141(a)(2)(i),[4] but did not respond. On October 25, 2021, more than 20 days after service, we ordered Coggeshall to show cause by November 8, 2021, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[5] The show cause order warned Coggeshall that, if the Commission found him 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. Coggeshall did not

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1 *Conrad A. Coggeshall*, Exchange Act Release No. 90358, 2020 WL 6559223 (Nov. 5, 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).

4 *Conrad A. Coggeshall*, Exchange Act Release No. 93415, 2021 WL 4974889, at *1 (Oct. 25, 2021) (citing Notice of Filing Regarding Service of Order Instituting Proceeding (March 11, 2021)); 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 *Coggeshall*, 2021 WL 4974889, at *1.

respond. On March 9, 2022, after Coggeshall failed to answer the OIP or respond to the show cause order, the Division of Enforcement filed a motion requesting that the Commission find Coggeshall in default and bar him from the securities industry. Coggeshall did not respond to the Division's motion.

The Division supported its motion with the allegations of the OIP and with copies of the complaint (the "Complaint"), judgment, and consent in the injunctive action, in which Coggeshall agreed not to contest the Complaint's factual allegations in a related Commission proceeding such as this one.[6]

According to the OIP, the Complaint alleged that, between April 2017 and May 2018, Coggeshall defrauded elderly investors in a company he called BOTR, LLC. Specifically, the OIP alleged that Coggeshall made multiple misrepresentations to investors, including that they were investing in a successful mergers and acquisition firm based in New York; that their investments were safe and insured; and that they would receive periodic interest payments at a high, fixed rate. In reality, according to the OIP, Coggeshall deposited investors' funds into brokerage and bank accounts in the name of an entity that he owned and that did not engage in mergers or acquisitions. Coggeshall used investor funds to trade securities, incurring significant losses, as well as to pay personal expenses and to make payments to investors.

II. Analysis

A. We hold Coggeshall 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 Coggeshall 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.[8]

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[6] 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).

[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] *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

B. We find an industry bar to be in the public interest.

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize the Commission to bar a person from the securities industry if it finds, on the record after notice and opportunity for hearing, that (1) the person was enjoined from engaging in any conduct or practice in connection with the purchase or sale of a security; (2) the person was associated with a broker or dealer (Section 15(b)(6)) or an investment adviser (Section 203(f)) at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[9]

The record establishes the first two of these elements. Coggeshall was enjoined from engaging in any conduct or practice in connection with the purchase or sale of a security.[10] Coggeshall was also a person associated with a dually registered investment adviser and broker-dealer from June 2015 until January 2018. Coggeshall additionally acted as an unregistered investment adviser between January 2018 and at least May 2018 by engaging "in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities," through his efforts to encourage investment in BOTR and other securities.[11] And because Coggeshall was acting as an unregistered investment adviser, he was also "associated with an investment adviser" for purposes of Advisers Act Section 203(f).[12]

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

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from the injunctive action") (quoting and citing *Siris v. SEC*, 773 F.3d 89, 95-96 (D.C. Cir. 2014)).

9 15 U.S.C. §§ 78o(b)(6)(A), 80b-3(f); *see also id.* §§ 78o(b)(4)(B).

10 *See* Securities Act Section 17(a), 15 U.S.C. § 77q(a) (prohibiting fraud "in the offer or sale of any securities"); 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).

11 *See* 15 U.S.C. § 80b-2(a)(11)(defining "investment adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities"); *see also Koch v. SEC*, 793 F.3d 147, 157 (D.C. Cir. 2015) ("The definition of investment adviser does not include whether one is registered or not with the SEC. Hence, Koch could be primarily liable for violating the Advisers Act irrespective of registration with the Commission.") (citations omitted).

12 *See Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *3 (Mar. 1, 2017); *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who "act[s] 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'").

likelihood that the respondent's occupation will present opportunities for future violations.[13] Our public interest inquiry is flexible, and no one factor is dispositive.[14] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[15]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. The allegations of the Complaint, which Coggeshall agreed not to contest in this proceeding, establish that his misconduct was egregious, recurrent, and involved a high degree of scienter.[16] Between April 2017 and May 2018, Coggeshall raised $700,000 from elderly investors with whom he had built long-standing relationships of trust, convincing them to invest in a purportedly successful New York mergers and acquisitions (M&A) firm called BOTR. But instead of investing the funds in a New York M&A firm, Coggeshall deceived these investors by depositing all of their funds into brokerage and bank accounts of a company registered in Arizona that he created and controlled. And rather than engaging in successful M&A transactions, Coggeshall used the funds to trade securities (incurring large losses) and to pay for personal expenses. Coggeshall never disclosed to his investors the true destination of their funds nor his trading activity and use of those funds. Coggeshall thus fraudulently induced multiple elderly clients to invest in BOTR over a period of more than a year. And the Complaint specifically alleged that he acted with scienter and that he violated Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5 thereunder, which require a showing of scienter.[17]

Because Coggeshall failed to answer the OIP or 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. As described in the Complaint, Coggeshall has

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

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

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

[16] *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").

[17] *See Aaron v. SEC*, 446 U.S. 680, 695-97 (1980) (violations of Exchange Act Section 10(b), Rule 10b-5 thereunder, and Securities Act Section 17(a)(1) require a showing of scienter); *see also Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *8 (Dec. 12, 2013) ("[W]hen the injunctive complaint contains allegations that a respondent 'engaged in scienter-based offenses' the respondent is precluded from arguing in a follow-on proceeding 'that he had no scienter.'" (quoting *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *5 (July 23, 2010))), *petition denied*, 773 F.3d 89.

repeatedly sought to abuse the relationship of trust he built with numerous elderly clients. Absent a bar, Coggeshall would have the opportunity to participate in the securities industry and commit further violations.[18]

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 Coggeshall is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[19] Because Coggeshall 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.[20]

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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18 *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).

19 *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).

20 *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

CONRAD A. COGGESHALL

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Coggeshall 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