

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 97776 / June 21, 2023

Admin. Proc. File No. 3-19335

In the Matter of  
MITCHELL B. DOW

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

**Injunction**

**Conviction**

Respondent was permanently enjoined from violations of registration provisions of the federal securities laws and convicted of wire fraud. *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 and from participation in an offering of penny stock.

APPEARANCES:

*Marisa Westervelt* and *Lynn M. Dean* for the Division of Enforcement.

On August 13, 2019, we instituted an administrative proceeding against Mitchell B. Dow pursuant to 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> We now find Dow to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity and from participating in an offering of penny stock.

## I. Background

### A. The Commission instituted the proceeding against Dow.

The order instituting proceedings (“OIP”) alleged that, in 2017, the Commission brought a civil action against Dow alleging that, from November 2014 to March 2016, Dow acted as an unregistered broker and sold unregistered securities of Kentucky-Tennessee 50 Wells/400 BBLPD Block, Limited Partnership (a/k/a Warren County 200 Well/1,600 BBLPD Block, Kentucky-Tennessee 200 Well/1600 BBLPD Block) (“KT-50 Wells”). The OIP also alleged that, on April 18, 2019, a federal district court permanently enjoined Dow from violating Sections 5(a) and 5(c) of the Securities Act of 1933,<sup>2</sup> and Section 15(a) of the Exchange Act.<sup>3</sup> The OIP further alleged, that on May 6, 2019, Dow pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 in connection with his sale of securities of KT-50 Wells.

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 Dow to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).<sup>4</sup> The OIP informed Dow 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.<sup>5</sup>

### B. Dow 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.

Dow was properly served with the OIP on January 17, 2020, pursuant to Rule of Practice 141(a)(2)(i),<sup>6</sup> but did not respond. On January 25, 2021, more than 20 days after service, the Commission ordered Dow to show cause by February 8, 2021, why it should not find him in

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<sup>1</sup> *Mitchell B. Dow*, Exchange Act Release No. 86639, 2019 WL 3814364 (Aug. 13, 2019).

<sup>2</sup> 15 U.S.C. § 77e(a), (c).

<sup>3</sup> 15 U.S.C. § 78o(a).

<sup>4</sup> 17 C.F.R. § 201.220(b).

<sup>5</sup> *See* Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

<sup>6</sup> 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by “leaving a copy at the individual’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein”).

default due to his failure to file an answer or otherwise to defend this proceeding.<sup>7</sup> The show cause order warned Dow 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. 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 March 8, 2021, in the event that Dow failed to respond to the show cause order.

After Dow failed to answer the OIP or respond to the show cause order, the Division filed a motion requesting that the Commission find Dow in default and bar him from associating in the securities industry and from participating in an offering of penny stock. Dow did not respond.

The Division supported the motion with the allegations of the OIP and with filings from the civil and criminal actions against Dow. These filings included the district court's order granting the Commission summary judgment in the civil action,<sup>8</sup> the district court's order granting the Commission's motion for injunctions and civil penalties, the court's final civil judgment against Dow, and the criminal information against Dow and his guilty plea.<sup>9</sup>

According to the district court's order granting summary judgment, and the charge in the criminal information to which Dow pleaded guilty, KT-50 Wells purported to be an investment in the development and operation of oil wells, with 65% of investor funds being devoted to "drilling efforts" according to its 2014 private placement memorandum ("PPM"). But KT-50 Wells spent just 13% of the money raised on oil well development and operation, with persons associated with the company misappropriating over 33% of the funds. The PPM also misrepresented KT-50 Wells's principals' experience and expertise in managing oil and gas investment projects and projected investment returns. The criminal information alleged that Dow was aware these statements were untrue when he disseminated the PPM to investors.

Dow engaged, along with others, in a scheme to offer and sell at least \$2.4 million in KT-50 Wells securities to at least 41 investors between May 2014 and February 2016. No registration statement was in effect for this offering, nor did any exemption from registration apply. Dow earned approximately \$198,000 in commissions from these unregistered sales.

In granting the Commission's motion for summary judgment and imposing civil money penalties of \$160,000 and disgorgement of \$198,478, the district court found that Dow violated Securities Act Sections 5(a) and 5(c) by engaging in the unregistered offer and sale of securities and Exchange Act Section 15(a) by acting as an unregistered broker-dealer. The district court found that Dow acted with scienter and that his business practices were "fraudulent, deceitful,

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<sup>7</sup> *Mitchell B. Dow*, Exchange Act Release No. 90983, 2021 WL 241884 (Jan. 25, 2021).

<sup>8</sup> Order Regarding Plaintiff's Motion for Summary Judgment, *SEC v. Wayland*, No. 8:17-cv-01156-AG (C.D. Cal. Apr. 8, 2019), ECF No. 71.

<sup>9</sup> Information, *United States v. Dow*, No. 8:19-cv-00079-JVS (C.D. Cal. May 6, 2019) ECF No. 1.

and manipulative and resulted in loss to other persons.”<sup>10</sup> The court enjoined Dow from future violations of the provisions of the securities laws that it found him to have violated.

The criminal information to which Dow pleaded guilty charged him with wire fraud in violation of 18 U.S.C. § 1343.<sup>11</sup> Dow was alleged to have engaged in various “fraudulent and deceptive acts, practices and devices” that caused approximately \$94,800 in losses.<sup>12</sup> The district court sentenced Dow to 24 months imprisonment, plus three years of supervised release. Dow also is a recidivist in that he had earlier been convicted and imprisoned for wire fraud.

## II. Analysis

### A. We hold Dow 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.”<sup>13</sup> Because Dow has failed to answer or to respond to the show cause order 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 evidentiary materials that the Division submitted with its motion for default and sanctions.

### B. We find associational and penny stock bars to be in the public interest.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in an offering of penny stock if it finds, on the record after notice and opportunity for hearing, that (1) the person was (a) convicted of violating the federal wire fraud statute within ten years of the commencement of the proceeding, or (b) enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker or dealer or in connection with the purchase or sale of a

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<sup>10</sup> Order Regarding Plaintiff’s Motion for Summary Judgment, *SEC v. Wayland*, No. 8:17-cv-01156-AG-DFM (C.D. Cal. Apr. 8, 2019) ECF No. 71.

<sup>11</sup> Information, at 1.

<sup>12</sup> *Id.*

<sup>13</sup> 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)).

security; (2) the person was associated with a broker or dealer at the time of the misconduct; and (3) such a sanction is in the public interest.<sup>14</sup>

The record establishes the first two of these elements. Dow was convicted of violating the federal wire fraud statute within the applicable period.<sup>15</sup> Dow was also enjoined from violating Securities Act Section 5(a) and (c) and Exchange Act Section 15(a) and was therefore enjoined from conduct in connection with activity as a broker and in connection with the purchase or sale of a security.<sup>16</sup> And the district court in the civil action found that Dow acted as an unregistered broker. We give preclusive effect to a district court’s summary judgment findings supporting an injunction.<sup>17</sup> Because Dow was acting as an unregistered broker at the time of his misconduct, he was a person associated with a broker.<sup>18</sup>

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 the conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.<sup>19</sup> Our

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<sup>14</sup> 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78o(b)(4)); *see also id.* § 78o(b)(4)(B)(iv) (discussing convictions for violating 18 U.S.C. § 1343); *id.* § 78o(b)(4)(C) (discussing injunctions from engaging in or continuing any conduct or practice in connection with acting as a broker or dealer or the purchase or sale of a security).

<sup>15</sup> *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining “convicted” to include a “plea of guilty”); *Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at \*8 (Mar. 7, 2014) (concluding that “there is no reason for ascribing a different meaning to the word ‘convicted’ in the Exchange Act to the meaning given to that term in the Advisers Act”) (internal quotations and citation omitted), *petition granted in part on other grounds*, 845 F.3d 1217 (D.C. Cir. 2017); *Alexander Smith*, Exchange Act Release No. 3785, 1946 WL 24891, at \*6 (Feb. 5, 1946) (stating that when a court has accepted a guilty plea, “there is the ‘conviction’ contemplated by [Exchange Act Section 15(b)] as the starting point for an inquiry into the fitness of the person involved to engage in the securities business”).

<sup>16</sup> *See* 15 U.S.C. § 77e(a), (c) (prohibiting unregistered offers and sales of securities); 15 U.S.C. § 78o(a) (prohibiting unregistered brokers from effecting transactions in securities).

<sup>17</sup> *Mark Morrow*, Exchange Act Release No. 90472, 2020 WL 6867614, at \*3 (Nov. 20, 2020); *see also Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at \*4 (June 17, 2011) (finding that “a respondent in a follow-on administrative proceeding may not challenge the findings made by the court in the underlying [injunctive] proceeding”).

<sup>18</sup> *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at \*3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a “person associated with a broker” in Exchange Act Section 3(a)(18)).

<sup>19</sup> *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

public interest inquiry is flexible, and no one factor is dispositive.<sup>20</sup> The remedy is intended to protect the trading public from further harm, not to punish the respondent.<sup>21</sup>

We have weighed all these factors, and find associational and penny stock bars are warranted to protect the investing public. The district court's findings in the underlying civil action establish that Dow's misconduct was egregious and recurrent. Dow and others effected unregistered sales of securities to over 40 investors in violation of the securities laws over several years. As a result of the sales, Dow received nearly \$200,000 in commissions while investors suffered substantial losses. Dow also acted with a high degree of scienter. The district court observed that Dow acted with scienter and engaged in "fraudulent" business practices. Moreover, the wire fraud charge to which Dow pled guilty requires a specific intent to defraud.<sup>22</sup>

Because Dow failed to answer the OIP or to respond to the show cause order or the Division's motion, he has made no assurances in this proceeding that he will not commit future violations. And although his guilty plea indicates that Dow 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.<sup>23</sup> It appears that Dow's occupation presents opportunities for future violations because he acted as a broker during the period of his misconduct and offers no assurances about his future plans. Finally, Dow's status as a recidivist suggests a risk of future violations.

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 Dow is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.<sup>24</sup> Given that Dow has defaulted in this

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<sup>20</sup> *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at \*4 (July 26, 2013).

<sup>21</sup> *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

<sup>22</sup> *See, e.g., United States v. Miller*, 953 F.3d 1095, 1099 (9th Cir. 2020) (holding that "the crime of wire fraud requires the specific intent to utilize deception to . . . to cheat the victim").

<sup>23</sup> *See Saul Daniel Suster*, Exchange Act Release No. 90401, 2020 WL 6680445, at \*4 (Nov. 12, 2020) ("While Suster's plea agreement acknowledges his 'recognition and affirmative and timely acceptance of personal responsibility,' we find this consideration outweighed by the egregiousness of the misconduct, the recurrent nature of the violations, the degree of scienter involved, and the failure to offer assurances against future violations.").

<sup>24</sup> *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at \*5 (Jan. 30, 2017) (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).

proceeding, he has not opposed the imposition of any particular associational bar or a bar from participating in an offering of penny stock. We conclude that it is in the public interest to bar him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of penny stock.<sup>25</sup>

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners CRENSHAW, UYEDA, and LIZÁRRAGA; Commissioner PEIRCE concurring in part and dissenting with respect to the imposition of a bar from participating in an offering of penny stock).

Vanessa A. Countryman  
Secretary

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<sup>25</sup> *Id.* (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 97776 / June 21, 2023

Admin. Proc. File No. 3-19335

In the Matter of  
MITCHELL B. DOW

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Mitchell B. Dow is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Mitchell B. Dow is barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Vanessa A. Countryman  
Secretary