SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 98789 / October 24, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6469 / October 24, 2023

Admin. Proc. File No. 3-19726

In the Matter of

BRUCE C. WORTHINGTON

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

State Securities Commission Final Order

Respondent was subject to a final order of a state securities commission, which barred him from association with entities regulated by that commission. *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:

Martin F. Healy for the Division of Enforcement.

On March 10, 2020, the Securities and Exchange Commission instituted an administrative proceeding against Bruce C. Worthington, 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 Worthington 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 Worthington.

The order instituting proceedings ("OIP") alleged that, from 1992 to 2018, Worthington was an investment adviser representative and registered representative of three different dually registered investment advisers and broker-dealers—one between 1992 and 1999, a second between 1999 and 2013, and a third between 2013 and 2018. The OIP further alleged that the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the "Secretary"), which enforces Massachusetts's securities laws codified in chapter 110A of the Massachusetts General Laws, initiated a state action (the "State Action") against Worthington on February 21, 2019 by filing an administrative complaint (the "Complaint") against him. The OIP further alleged that on June 24, 2019, following Worthington's failure to answer the Complaint, the Secretary issued an Order Adopting Presiding Officer's Recommended Final Order for Entry of Default (the "Final Order"), which included a permanent cease-and-desist order against Worthington and permanently barred him from associating or registering in Massachusetts as a broker-dealer or an investment adviser.

According to the OIP, the Complaint alleged that, between September 2006 and April 2018, Worthington fraudulently misappropriated investment funds from the advisory account he managed for one Massachusetts investor (the "Client") for Worthington's own personal use and benefit. Specifically, according to the OIP, the Complaint alleged that between September 2006 and November 2008, over $90,000 was withdrawn from the Client's account, the Client did not receive all of that money, and Worthington unilaterally withdrew and diverted funds for his own personal benefit. As recounted in the OIP, the Complaint further alleged that Worthington misled the Client for years to hide his scheme by presenting fictitious documents to the Client to convince him that his funds had been invested and, during communications with the Client, assuring the Client that his funds were safe and secure.

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 Worthington to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[2] The OIP informed Worthington 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

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[1] *Bruce C. Worthington*, Exchange Act Release No. 88347, 2020 WL 1231409 (Mar. 10, 2020).

[2] 17 C.F.R. § 201.220(b).

Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP.[3]

B. Worthington 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.

Worthington was properly served with the OIP on August 14, 2020, pursuant to Rule of Practice 141(a)(2)(i),[4] but did not respond. On July 22, 2021, more than 20 days after service, the Commission ordered Worthington to show cause by August 5, 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 Worthington 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. On August 25, 2021, after Worthington failed to answer the OIP or respond to the show cause order, the Division of Enforcement filed a motion requesting that the Commission find Worthington in default and bar him from the securities industry.[6] The Division supported the motion with the allegations of the OIP and copies of the Complaint and the Final Order. Worthington did not respond to the Division's motion.

On March 30, 2022, the Commission issued an order requesting additional briefing and materials.[7] The order reminded Worthington that, when a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record. Worthington did not respond. On April 29, 2022, the Division filed a responsive brief and a declaration from a Division attorney who was involved in the investigation of Worthington.

On June 1, 2022, the Commission issued an order requesting additional materials.[8] The order warned Worthington that, if he did not file a response, the Commission might hold him in default and the proceeding might be determined against him. Worthington did not respond. On August 1, 2022, the Division filed additional evidence, including the transcript of Worthington's investigative testimony, notes from Division interviews of both the Client and a chief compliance officer of one of Worthington's former employers, statements from the bank and financial

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[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 "handing a copy of the order to the individual").

[5] *Bruce C. Worthington*, Exchange Act Release No. 92464, 2021 WL 3110030, at *1 (July 22, 2021).

[6] The Division does not request a penny-stock bar in its motion for default, and we do not impose one here.

[7] *Bruce C. Worthington*, Exchange Act Release No. 94557, 2022 WL 969939 (Mar. 30, 2022).

[8] *Bruce C. Worthington*, Exchange Act Release No. 95019, 2022 WL 1785718 (June 1, 2022).

accounts of Worthington and his Client during 2007 through 2009, and portfolio documents that Worthington provided his Client between 2008 and 2011.

II. Analysis

A. We hold Worthington 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."[9] Because Worthington has failed to answer or respond to the order to show cause, the Division's motion, and our orders for additional materials, we find it appropriate to deem him in default and to deem the allegations of the OIP to be true. We decline, however, to deem true the underlying allegations of the Complaint recited by the OIP because the OIP merely recounts the allegations in the Complaint, rather than independently alleging that Worthington engaged in particular conduct.[10] Moreover, because the Final Order was entered by default and the State Action was not actually litigated, it does not have preclusive effect as to the facts alleged in the Complaint.[11] We base the findings that follow on the record, including the OIP and the evidentiary materials that the Division submitted in support of its motion for default and sanctions.

We further note that Worthington invoked his Fifth Amendment privilege against self-incrimination in his investigative testimony as a basis to refuse to answer certain questions. Because our proceedings are civil in nature, we may draw adverse inferences from a respondent's invocation of his Fifth Amendment privilege and take this into account in weighing

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[9] 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)").

[10] *See Worthington*, 2022 WL 969939, at *2 (noting that, where an OIP recounts the allegations of a complaint instead of "independently alleg[ing] that [the respondent] engaged in particular conduct," entering a default against the respondent "would not appear to permit the Commission to deem true the allegations of the complaint"); *Clinton Maurice Tucker II*, Exchange Act Release No. 94208, 2022 WL 394644, at *1 (Feb. 9, 2022) (same).

[11] *Cf. In re Strangie*, 192 F.3d 192, 194 n.2 (1st Cir. 1999) ("Whether a federal court is to accord collateral estoppel effect to a state court judgment is controlled by state law."); *Treglia v. MacDonald*, 717 N.E.2d 249, 253-54 (Mass. 1999) (holding that in Massachusetts default judgments are generally not given collateral estoppel effect because the issues generally have not been "actually litigated"). *But cf. Reginald Buddy Ringgold*, Advisers Act Release No. 6267, 2023 WL 2705591, at *3 (Mar. 29, 2023) (holding that "where the default judgment is entered as a sanction for bad conduct, and the party being estopped had the opportunity to participate in the underlying litigation, the default judgment has preclusive effect" (quoting *In re Snyder*, 939 F.3d 92, 100 (2d Cir. 2019))).

all of the evidence.[12] Given that the other evidence in the record supports the inferences we would draw, we deem it appropriate to draw adverse inferences from Worthington's investigative testimony in connection with our findings here.[13]

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

Exchange Act Section 15(b)(6)(A) 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 subject to any final order of a state securities commission (or an agency performing like functions) that bars that person from association with an entity regulated by such commission or from engaging in the securities business; (2) the person was associated with a broker or dealer (Section 15(b)(6)(A)) or an investment adviser (Section 203(f)) at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[14]

The record establishes the first two of these elements. The Secretary enforces Massachusetts's Uniform Securities Act, which is codified in Chapter 110A of the Massachusetts General Laws.[15] Worthington was subject to the Final Order, which is a final order of the Secretary.[16] The Final Order permanently barred Worthington from associating or registering in

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[12] *See, e.g.*, *David Howard Welch*, Exchange Act Release No. 92267, 2021 WL 2941483, at *3 (June 25, 2021) (noting the Commission's ability to draw adverse inferences from invocations of the Fifth Amendment); *Marc Jay Bryant*, Exchange Act Release No. 91531, 2021 WL 1351206, at *3 (Apr. 12, 2021) (same); *Guy P. Riordan*, Exchange Act Release No. 61153, 2009 WL 4731397, at *16 (Dec. 11, 2009) (same), *petition denied*, 627 F.3d 1230 (D.C. Cir. 2010), *abrogated on other grounds*, *Kokesh v. SEC*, 581 U.S. 455 (2017); *Daniel R. Lehl*, Securities Act Release No. 8102, 2002 WL 1315552, at *3 n.17, *8 n.33, *16 n.74 (May 17, 2002) (same), *petition denied*, 63 F. App'x 523 (D.C. Cir. 2003).

[13] *See, e.g.*, *Welch*, 2021 WL 2941483, at *3 ("deem[ing] it appropriate to draw adverse inferences" where respondent invoked his Fifth Amendment privilege and "the other evidence in the record supports the inferences"); *Bryant*, 2021 WL 1351206, at *3 (same).

[14] 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4)(H), 15 U.S.C. § 78o(b)(4)(H)); 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(9), 15 U.S.C. § 80b-3(e)(9)).

[15] *See* Mass. Gen. Laws ch. 110A, §§ 401(a) ("'Secretary' means the state secretary or the secretary of the commonwealth"), 406(a) ("This chapter shall be administered by the secretary."), 407A(a) (authorizing the secretary to issue cease-and-desist orders for "a violation of any provision of this chapter or any rule or order issued thereunder"), 416 ("This chapter may be cited as the Uniform Securities Act.").

[16] For purposes of Exchange Act Section 15(b)(4)(H), a "final order" means "a written directive or declaratory statement issued by a state agency under statutory authority that provides for notice and opportunity for a hearing and constitutes a final disposition or action by the state agency." *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *7 (June 26, 2014). The identical language in Advisers Act Section 203(e)(9) carries the same meaning. *Nicholas Rowe*, Exchange Act Release No. 75982, 2015 WL 5608532, at *2 (Sept. 24, 2015)

Massachusetts as a broker-dealer, broker-dealer agent, investment advisor, investment advisor representative, or as a partner, officer, director, or control person of a broker-dealer or investment advisor. It thus barred Worthington from association with entities regulated by the Secretary and from engaging in the securities business in Massachusetts.[17] Worthington was also a person associated with dually registered investment advisers and broker-dealers from 1992 until 2018, which encompasses the time of his misconduct.

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.[18] Our public interest inquiry is flexible, and no one factor is dispositive.[19] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[20]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. The record establishes that Worthington's misconduct was egregious, recurrent, and involved a high degree of scienter. From February 2007 through November 2008—through at least nine separate transactions—Worthington obtained more than $90,000 from his Client's advisory account by representing to the Client that he would invest that money on the Client's behalf. But rather than investing that money, Worthington used it for his personal benefit, including to satisfy his personal tax debts. Worthington then repeatedly lied to his Client—and continued to do so through 2018—to conceal his misappropriation by assuring the

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(applying the definition of "final order" from *Savva* to "final order" in Section 203(e)(9)). The Final Order conforms with this definition. First, it was a final disposition of the State Action that the Secretary filed against Worthington. Second, the statutory authority for the State Action provides for notice and the opportunity for a hearing. *See* Mass. Gen. Laws ch. 110A, § 407A(a) (permitting the secretary of the commonwealth to issue a cease-and-desist order "after notice and opportunity for hearing"); *id.* § 407A(c) (prohibiting the entry of non-temporary cease-and-desist orders "without prior notice of and opportunity for hearing"); *cf. Savva*, 2014 WL 2887272, at *7-8 (holding that a consent order qualified as a "final order" under Section 15(b)(4)(H) because respondent was provided the opportunity for a hearing even though he waived that opportunity).

[17] *See* Mass. Gen. Laws ch. 110A, §§ 201(a) & (c) (requiring broker-dealers and investment advisers to be registered under Chapter 110A); *id.* § 204(a) (granting the Secretary the power, under certain conditions to "impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action" against a broker-dealer or investment adviser).

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

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

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

Client in meetings and phone calls that everything was fine with the Client's money and providing his Client documents, stating that the Client's portfolio had tens of thousands more dollars than it actually did after Worthington's misappropriation. By 2018, the Client had no more than $60,000 in his account, although Worthington told him that the value was over $140,000.

Because Worthington was acting as an investment adviser, he owed a fiduciary duty to his Client.[21] Yet he repeatedly abused this position of trust by misappropriating his Client's funds. And even after he was no longer the Client's investment adviser, he continued acting as a broker while lying to the Client about the status of his Client's funds for approximately a decade.[22] We thus conclude that Worthington's misconduct was egregious[23] and recurrent.[24] Moreover, Worthington's conduct, including trying to conceal his wrongdoing by lying to his Client about the status of the Client's funds, demonstrates that Worthington acted with scienter.[25]

Because Worthington failed to answer the OIP or respond to the show cause order, the Division's motion, or any of our subsequent orders for additional materials, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. Nor has he made any assurances that he will not reenter the industry. As such, it appears that Worthington's occupation presents opportunities for future violations because he acted as a broker-dealer and an investment adviser during the period of his misconduct, offers no

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[21] *See Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *3 (June 17, 2011) ("Investment advisers and their associated persons have a fiduciary duty to their clients.").

[22] Worthington acted as an investment adviser over the account until some point in 2009, when the account transitioned to a brokerage account.

[23] *See, e.g.*, *Conrad A. Coggeshall*, Exchange Act Release No. 97474, 2023 WL 3433398, at *3 (May 10, 2023) (finding respondent's conduct egregious where he raised funds from investors for a purported investment in a firm, but, in actuality, used the raised funds for personal expenses and to trade securities without ever disclosing the true use of the funds to the investors); *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."); *Sean Kelly*, Exchange Act Release No. 94808, 2022 WL 1288179, at *4 (Apr. 28, 2022) (finding misappropriation of investor funds for personal use and misleading "investors by providing them false accounts statements" to be egregious).

[24] *See, e.g.*, *Coggeshall*, 2023 WL 3433398, at *3 (finding respondent's conduct recurrent where he fraudulently induced investments from clients over approximately one year); *John Sherman Jumper*, Exchange Act Release No. 96407, 2022 WL 17346044, at *3 (Nov. 30, 2022) (finding conduct recurrent where respondent misappropriated funds on three occasions over eleven months).

[25] *See, e.g.*, *Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *5 (Mar. 26, 2010) (finding that "attempts to conceal misconduct indicate scienter"); *see also Aaron v. SEC*, 446 U.S. 680, 701 (1980) (explaining that the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

assurances of his future plans, and, absent a bar, he would have the opportunity to participate in the securities industry and commit further violations.[26] These concerns are not diminished by the bar the Secretary imposed on Worthington from participating in the securities industry in Massachusetts, or by another bar FINRA imposed on him on March 11, 2019, which prohibits Worthington from associating with a FINRA member firm.[27] If we were to decline to impose a bar, Worthington would still be able to act as an investment adviser outside of Massachusetts.[28]

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 Worthington is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[29] Given that Worthington has defaulted in this proceeding, he has not opposed the imposition of any associational bar. Because Worthington 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

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[26] *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (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).

[27] *See* BrokerCheck Report for Bruce Colin Worthington, https://brokercheck.finra.org/individual/summary/2193895. We take official notice of BrokerCheck pursuant to Rule of Practice 323. *See also Roman Sledziejowski*, Exchange Act Release No. 97485, 2023 WL 3433408, at *4 n.29 (May 11, 2023) (taking official notice of BrokerCheck records and citing Rule of Practice 323, 17 C.F.R. § 201.323).

[28] *See Joseph Ricupero*, Exchange Act Release No. 62891, 2010 WL 3523186, at *7 (Sept. 10, 2010) (rejecting argument that a bar was unnecessary because applicant had left the securities industry since applicant could seek to reenter the industry).

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

securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[30]

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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[30] *See id.* at *3-4 (imposing associational bars where they were necessary to protect the public). Because Worthington was associated with only dually registered broker-dealers and investment advisers and was not attempting to associate with other entities, the bars from associating in the additional capacities listed above are collateral. *See Stephen Stuart*, Exchange Act Release No. 97642, 2023 WL 3790799, at *1 (June 2, 2023). Although the D.C. Circuit has held that collateral bars cannot be imposed based on conduct that entirely pre-dates the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, *see Bartko v. SEC*, 845 F.3d 1217, 1222-23 (D.C. Cir. 2017), we impose collateral bars here based on the misconduct that Worthington engaged in after the effective date of that act. *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 n.44 (Feb. 15, 2017) (concluding that *Bartko*'s "holding does not affect our ability to impose a collateral bar based on misconduct after Dodd-Frank's effective date").

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
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INVESTMENT ADVISERS ACT OF 1940
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Admin. Proc. File No. 3-19726

In the Matter of

BRUCE C. WORTHINGTON

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Bruce C. Worthington 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