SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6321 / June 1, 2023

Admin. Proc. File No. 3-19920

In the Matter of

PATRICK MORGAN SCHIRO

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of wire 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:

Sheldon Mui and *Todd D. Brody* for the Division of Enforcement.

On August 24, 2020, we instituted an administrative proceeding against Patrick Morgan Schiro pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] We now find Schiro to be in default, deem the allegations against him to be true, and bar him from the securities industry.

I. Background

The order instituting proceedings ("OIP") alleged that, on March 17, 2017, Schiro pleaded guilty to one count of violating the federal wire fraud statute, 18 U.S.C. § 1343. The OIP alleged further that the superseding criminal information to which Schiro pleaded guilty stated that, between July 2014 and October 2015, Schiro made "materially false and misleading statements and defrauded clients . . . by misappropriating their assets."[2] After accepting Schiro's guilty plea, a federal district court sentenced him to 28 months of incarceration followed by three years of supervised release and ordered him to pay $481,583 in restitution. The OIP also alleged that, at the time of the misconduct, Schiro was associated with an investment adviser, Black Rock Morgan LLC ("BRM"), a company that Schiro controlled. Schiro, through BRM, purported to advise clients about investing in securities in exchange for compensation.

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 Schiro to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Schiro 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.[4]

Schiro was properly served with the OIP on October 14, 2020, pursuant to Rule of Practice 141(a)(2)(i),[5] but did not respond. On September 23, 2022, more than 20 days after service, the Commission ordered Schiro to show cause by October 7, 2022, why it should not find him in default due to his failure to file an answer or otherwise to defend this proceeding.[6] The show cause order warned Schiro 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. The order directed the Division of Enforcement to file a motion for entry of an order of default and the imposition of remedial

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1 *Patrick Morgan Schiro*, Advisers Act Release No. 5564, 2020 WL 4936938 (Aug. 24, 2020).

2 *Id.* at *1.

3 17 C.F.R. § 201.220(b).

4 *See* Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

5 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").

6 *Patrick Morgan Schiro*, Exchange Act Release No. 95895, 2022 WL 4445478 (Sept. 23, 2022).

sanctions by November 4, 2022, in the event that Schiro failed to respond to the show cause order.

After Schiro failed to answer the OIP or respond to the show cause order, the Division filed a motion requesting that the Commission find Schiro in default and bar him from the securities industry. The Division supported its motion with copies of the superseding criminal information ("Information"), transcripts from the plea and sentencing hearings, and the amended judgment filed in Schiro's criminal proceeding. Schiro did not respond to the Division's motion.

II. Analysis

A. We hold Schiro 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 Schiro 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 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: (i) the person was convicted of violating the federal wire fraud statute 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]

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[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" Rule of Practice 155(a)).

[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).

The record establishes the first two of these elements. Schiro was convicted of violating the federal wire fraud statute within the applicable period.[9] He was also a person associated with an investment adviser at the time of his misconduct. The allegations of the OIP deemed true establish that, from July 2014 to October 2015, Schiro purported to advise clients on their investments in securities through BRM, which Schiro controlled, in exchange for compensation.[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 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]

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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"); *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").

10 *See* 15 U.S.C. § 80b-2(a)(17) (defining a "person associated with an investment adviser" to include "any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser"); *id.* § 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"); *see, e.g.*, *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *2 (Jan. 30, 2017) (determining that respondent, who controlled an unregistered investment adviser which received compensation based on the investments' returns, was a person associated with an investment adviser) (citing *Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010)); *Anthony Fields*, Advisers Act Release No. 9727, 2015 WL 728005, at *14 (Feb. 20, 2015) (finding that receiving compensation in exchange for services was evidence that respondent was an investment adviser).

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).

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 Schiro purported to advise clients on their investments in securities for more than one year. But according to the Information to which Schiro pleaded guilty, he knowingly and willingly "engaged in a scheme to defraud investors by utilizing BRM as a sham investment business" during that time. While acting as an investment adviser, Schiro made material misrepresentations and omissions regarding BRM's assets under management, investment strategies, number of client accounts, and company performance. Schiro admitted that he misappropriated five clients' funds and used a significant amount of the invested money on personal expenses. The criminal judgment's restitution order against Schiro indicates that his misconduct caused a loss of $481,583 to the five clients. Thus, his misconduct was egregious and recurrent.[14]

Schiro also acted with a high degree of scienter.[15] Wire fraud—to which Schiro pleaded guilty—requires a specific intent to defraud.[16] And, according to the Information, Schiro continued his fraudulent scheme by ignoring and refusing clients' requests to redeem the investments,[17] and by sending "fabricated emails in an effort to conceal his fraudulent misappropriation."[18]

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[14] *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).

[15] *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).

[16] *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).

[17] *See, e.g., Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *4 (Mar. 1, 2017) (explaining that respondent's attempt to "maintain control of the funds" when confronted by investors was an "effort to mask his violations of federal securities law"); *cf. Michael Batterman*, Advisers Act Release No. 2334, 2004 WL 2785527, at *5 (Dec. 3, 2004) (finding that respondent's false statements to investors concerning their ability to withdraw their funds evinced a high degree of scienter).

[18] *See, e.g., Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *6 (Jun. 17, 2011) (finding that "Brown's scienter is demonstrated by his conduct and his attempts to disguise his actions"); *Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *5 (Mar. 26, 2010) (stating that "attempts to conceal misconduct indicate scienter"); *Benjamin Durant, III*, Advisers Act Release No. 6198, 2022 WL 17422581, at *3 (Dec. 5, 2022) (finding a high degree of scienter where respondent attempted to conceal his insider trading scheme "by lying to his employer when asked about his trades and resolving with others involved in the scheme to 'not talk to authorities if they received inquiries'").

Because Schiro 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 Schiro pleaded guilty and stated at his sentencing hearing that he "accept[s] full responsibility," the district court noted at sentencing that Schiro had "an utter lack of remorse" and that he made "a calculated, deliberate decision to engage in fraudulent conduct, keenly aware of the potential consequences having been in that position before." Even if Schiro's guilty plea and statements during his sentencing indicate that he 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.[19]

It also appears that Schiro's occupation presents opportunities for future violations because he acted as an investment adviser during the period of his misconduct, offers no assurances about his future plans, and, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations.[20] Schiro is also a recidivist. In 2006, he pleaded guilty in a federal district court to one count of securities fraud in violation of 15 U.S.C. § 78j(b), and one count of conspiracy to commit fraud in violation of 18 U.S.C. § 371.[21] According to the indictment to which he pleaded guilty, Schiro was a registered representative at various broker-dealers between 1999 and 2000, during which time he engaged in a fraudulent scheme related to securities investments. For that misconduct, the federal district court sentenced Schiro to 15 months in prison, followed by three years of supervised release, and ordered him to pay $100,000 in restitution. Given his history of participating in multiple fraudulent securities schemes, we find that Schiro is likely to commit future violations absent industry bars.[22]

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

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[19] *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").

[20] *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).

[21] *United States v. Schiro*, Case 1:04-cr-00451-WHP (S.D.N.Y. Jan. 10, 2006). We take official notice of this criminal proceeding 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"); *cf. 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).

[22] *See, e.g.*, *Philip A. Lehman*, Exchange Act Release No. 54660, 2006 WL 3054584, at *3 (Oct. 27, 2006) (finding that because "Lehman is a recidivist whose egregious actions evidence a high degree of scienter," and because "Lehman's misconduct is so similar to that for which he was recently sanctioned, we can only conclude that the sanctions imposed on him in the earlier proceeding failed to imbue him with any appreciation for the wrongfulness of his actions").

propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that Schiro is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[23] Given that Schiro has defaulted in this proceeding, he has not opposed the imposition of any associational bar. Because Schiro 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.[24]

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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[23] *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).

[24] *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. 6321 / June 1, 2023

Admin. Proc. File No. 3-19920

In the Matter of

PATRICK MORGAN SCHIRO

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Patrick Morgan Schiro 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