

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6325 / June 8, 2023

Admin. Proc. File No. 3-20616

In the Matter of  
  
RICHARD VU NGUYEN

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

**Injunction**

Respondent was permanently enjoined from violations of the antifraud provisions of the federal securities laws. *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:

*Douglas M. Miller* for the Division of Enforcement.

On September 30, 2021, we instituted an administrative proceeding against Richard Vu Nguyen pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”).<sup>1</sup> We now find Nguyen to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity.

## I. Background

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

The order instituting proceedings (“OIP”) alleged that, in February 2020,<sup>2</sup> a federal district court entered a consent judgment permanently enjoining Nguyen from future violations of Section 17(a) of the Securities Act of 1933,<sup>3</sup> Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder,<sup>4</sup> and Advisers Act Sections 206(1), (2), and (4) and Rule 206(4)-8 thereunder.<sup>5</sup> According to the OIP, the Commission’s underlying civil complaint (“Complaint”) alleged that, from February 2018 to March 2019, Nguyen and NTV Financial Group, Inc. (“NTV Financial”) fraudulently raised \$2.4 million from 80 investors for the so-called “Nguyen Tran Le Fund” (“NTLF Fund”) and misappropriated \$600,000 of the funds raised. The Complaint also alleged that Nguyen lured investors by lying about his credentials and falsely claiming they would not lose their principal investments. Finally, the Complaint alleged that Nguyen, via false promises, convinced clients to give him access to their brokerage accounts so that he could trade securities on their behalf and then incurred significant losses in those accounts.

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 Nguyen to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).<sup>6</sup> The OIP informed Nguyen that if he failed to answer, he may be deemed in default, the

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<sup>1</sup> *Richard Vu Nguyen*, Advisers Act Release No. 5882, 2021 WL 4500203 (Sept. 30, 2021).

<sup>2</sup> The OIP incorrectly alleges that the injunction was entered on February 11, 2020. *See SEC v. Richard Vu Nguyen, et al.*, No. 19-cv-01174, Dkt. No. 107 at 6 (C.D. Cal. Feb. 13, 2020). 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).

<sup>3</sup> 15 U.S.C. § 77q(a).

<sup>4</sup> 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

<sup>5</sup> 15 U.S.C. § 80b-6(1), (2), (4); 17 C.F.R. § 275.206(4)-8.

<sup>6</sup> 17 C.F.R. § 201.220(b).

allegations in the OIP may 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>7</sup>

**B. Nguyen 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.**

Nguyen was properly served with the OIP on March 24, 2022, pursuant to Rule of Practice 141(a)(2)(i),<sup>8</sup> but did not respond. On May 4, 2022, more than 20 days after service, the Commission ordered Nguyen to show cause by May 18, 2022, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.<sup>9</sup> The show cause order warned Nguyen that, if the Commission found him to be 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 June 15, 2022, in the event that Nguyen failed to respond to the show cause order.

After Nguyen failed to answer the OIP or respond to the order to show cause, the Division filed a motion requesting that the Commission find Nguyen in default and bar him from associating in the securities industry. In support of its motion, the Division filed copies of the Complaint and consent judgment from Nguyen’s civil proceeding, in which Nguyen agreed not to contest the Complaint’s factual allegation in related Commission proceedings such as this one.<sup>10</sup> Nguyen did not respond to the Division’s motion.

## **II. Analysis**

**A. We hold Nguyen 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>11</sup> Because Nguyen has failed to answer or respond to the show cause order or to the

<sup>7</sup> See Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

<sup>8</sup> 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”).

<sup>9</sup> *Richard Vu Nguyen*, Advisers Act Release No. 6014, 2022 WL 1421492 (May 4, 2022).

<sup>10</sup> *See Nguyen*, No. 19-cv-01174, Dkt. No. 104 (C.D. Cal. Feb. 6, 2020).

<sup>11</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)).

Division's motion, we find it appropriate to hold 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, the evidentiary materials that the Division submitted with its motion for default and sanctions, and the additional materials of which we take official notice.<sup>12</sup>

**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 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; (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.<sup>13</sup>

The record establishes the first two of these elements. Nguyen was enjoined from conduct in connection with acting as an investment adviser and in connection with the purchase or sale of securities. Specifically, Nguyen was enjoined from violating Sections 206(1), (2), and (4) of the Advisers Act, as well as Rule 206(4)-8 promulgated thereunder, which prohibit securities fraud by investment advisers.<sup>14</sup> He was also enjoined from violating Section 17(a) of the Securities Act, which prohibits fraud in the offer or sale of securities,<sup>15</sup> and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraud in connection with the purchase or sale of securities.<sup>16</sup> The allegations of the Complaint, which Nguyen agreed not to contest in subsequent disciplinary proceedings before the Commission, also establish that Nguyen acted as an unregistered investment advisor at the time of the relevant misconduct. Namely, Nguyen held himself out as an investment adviser and acted in that capacity by advising clients and potential clients to invest in the NTLF Fund and through his control of certain clients' individual brokerage accounts. And he received compensation for these activities when he took

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<sup>12</sup> 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 from the injunctive action") (quoting and citing *Siris v. SEC*, 773 F.3d 89, 95-96 (D.C. Cir. 2014)).

<sup>13</sup> 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)).

<sup>14</sup> 15 U.S.C. § 80b-6(1), (2), (4); 17 C.F.R. § 275.206(4)-8.

<sup>15</sup> 15 U.S.C. § 77q(a).

<sup>16</sup> 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

trading profits and misappropriated investor funds.<sup>17</sup> Because Nguyen acted as an investment adviser, he necessarily also was a person associated with an investment adviser.<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 his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.<sup>19</sup> Our 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 an industry bar is warranted to protect the investing public. The allegations of the Complaint, which Nguyen agreed not to contest in subsequent disciplinary proceedings before the Commission, establish that, from February 2018 to March 2019, Nguyen and NTV Financial raised \$2.4 million from 80 investors for the NTLF Fund. Nguyen lured investors by falsely claiming that he could guarantee them "no loss" of their principal investment. According to the Complaint, Nguyen also falsely claimed to investors that he had worked as a fund manager at Goldman Sachs and that the funds he had managed there suffered no losses, when in fact, he never worked at Goldman. Moreover, the NTLF Fund did not exist as a legal entity, and Nguyen lost a significant portion of the money raised from NTLF Fund investors, in part due to his misappropriation of approximately \$600,000 in client funds.

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<sup>17</sup> 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., 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); *Alexander V. Stein*, Advisers Act Release No. 1497, 1995 WL 358127, at \*2 (June 8, 1995) (finding that respondent acted as investment adviser by holding himself out as an investment adviser and by receiving compensation when he diverted funds for his personal use).

<sup>18</sup> *Patrick L. O'Connor*, Advisers Act Release No. 6055, 2022 WL 2239152, at \*3 (citing cases).

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

<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).

The Complaint's allegations further establish that Nguyen: (1) falsely claimed via extensive broadcast and streaming videos that his trading strategies were patent pending and so effective that other firms contracted for them; (2) misrepresented to NTLF Fund investors that they could redeem their initial investment at any time by not disclosing that the fund had been significantly undercapitalized since its inception; and (3) falsely promised investors that 35% of the value of the NTLF Fund would be placed in a segregated account as part of a "No Net Loss" policy.

The Complaint's allegations also establish Nguyen's significant disciplinary history. The Complaint alleges that the California Department of Corporations sanctioned Nguyen in 2007 for acting as an unregistered broker-dealer and in 1999 for securities-related misconduct. Nguyen also pleaded guilty in 2009 to wire fraud for creating a scheme where he intentionally misled investors into giving him their money.<sup>22</sup>

Because he was acting as an investment adviser, Nguyen owed a fiduciary duty to his clients.<sup>23</sup> Yet he repeatedly abused that position of trust by lying about his credentials, fraudulently guaranteeing investors would suffer no losses, and misappropriating client funds. We thus conclude that Nguyen's misconduct was egregious<sup>24</sup> and recurrent.<sup>25</sup> Moreover, the

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<sup>22</sup> *United States v. Richard Nguyen*, No. 08-cr-00796, Dkt. No. 81 (C.D. Cal. Aug. 21, 2009).

<sup>23</sup> *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.").

<sup>24</sup> *See, e.g., 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."); *Eldrick E. Woodley*, Advisers Act Release No. 5981, 2022 WL 836849, at \*3 (Mar. 21, 2022) (finding investment adviser's conduct to be egregious where he misappropriated \$147,000 in client funds); *cf. Sean Kelly*, Advisers Act Release No. 6006, 2022 WL 1288179, at \*4 (Apr. 28, 2022) (finding misappropriation of investor funds for personal use to be egregious); *Kimm C. Hannan*, Advisers Act Release No. 5906, 2021 WL 5161855, at \*3 (Nov. 5, 2021) (finding respondent's making false representations when selling securities to his clients to be egregious).

<sup>25</sup> *Cf. John Sherman Jumper*, Advisers Act Release No. 6193, 2022 WL 17346044, at \*3 (Nov. 30, 2022) (finding conduct recurrent where Respondent misappropriated funds on three occasions over eleven months).

Complaint expressly alleged that he engaged in misconduct with scienter<sup>26</sup> and took steps to conceal his wrongdoing by, for example, distributing quarterly statements that falsely suggested the NTLF Fund was generating positive returns.<sup>27</sup>

Because Nguyen failed to answer the OIP or respond to the show cause order or to the Division's motion, he has made no assurances in this proceeding that he will not commit future violations. And although Nguyen's consent to the district court injunction suggests 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.<sup>28</sup> Nguyen also has made no assurances that he will not reenter the industry. He also appears likely to commit future violations because he is a recidivist who has been repeatedly sanctioned for securities-related misconduct and convicted of fraud.<sup>29</sup>

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 Nguyen is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.<sup>30</sup> Given that Nguyen has defaulted in this proceeding, he has not opposed the imposition of any particular associational bar. We conclude that it is in the public interest to bar Nguyen from association with any investment adviser,

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<sup>26</sup> See *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 *Dawson*, 2010 WL 2886183, at \*5)); see also *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (defining scienter as an “intent to deceive, manipulate, or defraud”).

<sup>27</sup> 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”).

<sup>28</sup> *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at \*6 (Feb. 15, 2017) (finding the “egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility”).

<sup>29</sup> See *Aaron v. SEC*, 446 U.S. 680, 701 (1980) (holding that the “degree of intentional wrongdoing evident in a defendant’s past conduct” is an “important factor” indicating a risk of future harm); *Brett Hamburger*, Exchange Act Release No. 93844, 2021 WL 6062981, at \*5 (Dec. 21, 2021) (finding respondent more likely to commit fraud due to previous administrative sanction and fraud conviction).

<sup>30</sup> *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 that his participation in it in any capacity would pose a risk to investors).

broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.<sup>31</sup>

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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<sup>31</sup> *Id.* (imposing associational bars where necessary to protect the public).



UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6325 / June 8, 2023

Admin. Proc. File No. 3-20616

In the Matter of  
  
RICHARD VU NGUYEN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Richard Vu Nguyen 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