SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6497 / December 6, 2023

Admin. Proc. File No. 3-19510

In the Matter of

ALBERT K. HU

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Conviction

Respondent was permanently enjoined from violations of the antifraud provisions of the federal securities laws and convicted of seven counts of wire fraud. *Held*, it is in the public interest to bar respondent from association with any investment adviser.

APPEARANCES:

Albert K. Hu, pro se.

Susan F. LaMarca, *Andrew J. Hefty*, *Elena Ro*, and *John S. Yun* for the Division of Enforcement.

On September 24, 2019, the Commission instituted an administrative proceeding against Albert K. Hu pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] The Division of Enforcement and Hu have now filed cross-motions for summary disposition. Based on our review of the filings, we grant the Division's motion for summary disposition and bar Hu from associating with any investment adviser.

I. Background

A. Hu was convicted of seven counts of wire fraud and enjoined under the antifraud provisions of the federal securities laws.

On June 20, 2012, a federal jury found Hu guilty of seven counts of wire fraud based on wires sent between approximately February 2005 and June 2007. In ordering restitution, the court found that Hu was "charged and convicted of inducing investors to wire him money through 'false representations regarding his hedge funds,'" quoting the indictment. And the amended restitution order found that Hu's scheme caused seven investors to lose over $5 million. Hu was sentenced to 144 months of incarceration and three years of supervised release. According to Hu's filings in this proceeding, he served ten years in prison and his supervised release was scheduled to end in August 2022.

Following Hu's conviction, a federal district court (in a civil proceeding that the Commission brought against Hu) issued a final judgment enjoining Hu from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder;[2] Section 17(a) of the Securities Act of 1933;[3] and Advisers Act Sections 206(1), (2), and (4) and Rule 206(4)-8 thereunder.[4] The court based this entry of injunction in part on Hu's failure to respond to the Commission's motion for final judgment. The court also ordered Hu to pay disgorgement, prejudgment interest, and civil money penalties.[5]

B. The Commission instituted this proceeding against Hu.

The order instituting proceedings ("OIP") alleges that Hu acted as an investment adviser for certain hedge funds between 2001 and 2009. The OIP also alleges that, based on Hu's misconduct during this period, a federal district court convicted Hu of seven counts of wire fraud in June 2012. The OIP further alleges that, in April 2013, a federal district court permanently enjoined Hu from future violations of Section 10(b) of the Securities Exchange Act of 1934 and

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1 *Albert K. Hu*, Advisers Act Release No. 5365, 2019 WL 4645968 (Sep. 24, 2019).

2 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

3 15 U.S.C. § 77q(a).

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

5 The court found Hu and several corporate defendants jointly and severally liable for making these payments.

Rule 10b-5 thereunder;[6] Section 17(a) of the Securities Act of 1933;[7] and Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8 thereunder.[8] The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest.

C. Hu filed an answer to the OIP, and the Division of Enforcement and Hu filed cross-motions for summary disposition.

Hu, who is pro se, filed an answer to the OIP, along with several evidentiary exhibits. The Division of Enforcement and Hu filed a joint prehearing conference statement in which the Division stated that it anticipated filing a motion for summary disposition, and Hu requested to proceed with discovery and the setting of a hearing date. The Commission set a briefing schedule for the Division's motion for summary disposition.[9] The briefing order noted that the Division was required to make certain documents available to Hu for inspection and copying prior to filing its summary disposition motion, but it denied Hu's request to set a schedule for additional discovery. The briefing order also provided that Hu should "advance in his opposition brief any arguments and support for his claim that summary disposition is inappropriate and that an in-person evidentiary hearing is required to resolve genuine disputes of material fact."[10]

The Division filed a motion for summary disposition requesting that we bar Hu from the securities industry. The Division supported its motion with documents from the criminal and civil proceedings against Hu.

Hu filed a response to the Division's motion for summary disposition and a cross-motion for summary disposition, requesting that we bar him only until the end of his supervised release in August 2022 and that we impose no additional monetary fines. Hu's response and cross-motion state that he recognizes the wrongful nature of his past conduct and that he "sincerely assures that there will be no future violations." But Hu's filing does not argue that an in-person hearing is necessary to resolve this follow-on proceeding or that he needs additional discovery to respond to the Division's motion.

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6 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

7 15 U.S.C. § 77q(a).

8 15 U.S.C. §§ 80b-6(1), (2), (4); 17 C.F.R. § 275.206(4)-8. In describing the civil complaint against Hu, the OIP correctly refers to Advisers Act Section 206(1). But in describing the civil injunction, the OIP erroneously refers to Advisers Act Section "2016(1)," which does not exist. Hu has not objected to this error, and we conclude that the OIP's reference to the wrong section number is a harmless typographical error and that the OIP provides sufficient notice of its allegation that Hu was enjoined under Advisers Act Section 206(1).

9 *Albert K. Hu*, Advisers Act Release No. 5754, 2021 WL 2474184, at *1 (June 16, 2021).

10 *Id.* at *1.

The Commission requested that the Division submit additional evidentiary materials regarding several issues, including the timing of Hu's association with an investment adviser and the factual predicates for his injunctions and convictions, and the Commission provided Hu the opportunity to respond to the Division's filing and submit additional evidentiary materials.[11] In response, the parties submitted supplemental filings in support of their motions for summary disposition.

II. Analysis

A. Hu forfeited any objection to our deciding this proceeding by summary disposition.

The Division and Hu filed cross-motions for summary disposition. A party that moves for summary disposition must demonstrate that there is "no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law."[12] The Commission's briefing order directed Hu to "advance in his opposition brief any arguments [or] support for his claim that summary disposition is inappropriate and that an in-person evidentiary hearing is required to resolve genuine disputes of material fact."[13] In his brief, Hu argued that he, rather than the Division, is entitled to summary disposition, but Hu did *not* argue that summary disposition is inappropriate or that an in-person hearing is necessary. We therefore hold that Hu has forfeited any such arguments.[14] Regardless, even if Hu had not forfeited these arguments, for the reasons provided below, we find that the Division has satisfied its burden under the summary disposition standard, and therefore summary disposition is appropriate and an in-person hearing is unnecessary in this case.[15]

B. The Advisers Act authorizes the Commission to determine whether any sanctions are appropriate based on Hu's convictions and the district court's injunction and Hu's association with an investment adviser.

Advisers Act Section 203(f) authorizes the Commission to censure, place limitations on, or suspend or bar a person from associating with an investment adviser if the Commission finds, on the record after notice and opportunity for hearing, that (1) the person was either (a) enjoined from engaging in or continuing any conduct or practice in connection with acting as an

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11 *See Albert K. Hu*, Advisers Act Release No. 6278, 2023 WL 2910020 (Apr. 11, 2023) (order requesting additional briefing and materials).

12 Rule of Practice 250(b), 17 C.F.R. 201.250(b); *see also Kornman v. SEC*, 592 F.3d 173, 182-83 (D.C. Cir. 2010) (upholding Commission's use of summary disposition in a follow-on proceeding).

13 *Hu*, 2021 WL 2474184, at *1.

14 *Cf. Canady v. SEC*, 230 F.3d 362, 364-65 (D.C. Cir. 2000) (upholding Commission's determination that defense was waived due to respondent's failure to raise it).

15 *Cf. James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *7 (Feb. 15, 2017) ("[S]ummary disposition is ordinarily appropriate in follow-on proceedings.").

investment adviser or in connection with the purchase or sale of any security, or (b) within ten years of the commencement of the proceeding, was convicted of wire fraud in violation of 18 U.S.C. § 1343; (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.[16]

No genuine issue of material fact exists as to the first two of these elements. Hu was enjoined from conduct in connection with acting as an investment adviser,[17] and in connection with the purchase or sale of any security.[18] Hu was also convicted of seven counts of wire fraud in violation of 18 U.S.C. § 1343 within ten years of the commencement of this proceeding.[19]

Although Hu argues that the evidence presented in the criminal case against him was faulty, collateral estoppel prevents him from re-litigating that he was convicted or the court's findings in the criminal proceeding.[20] Similarly, Hu contends that he lacked the ability to respond to the Commission's civil case against him and that the court should not have found that he committed securities fraud. But Hu cannot challenge the existence of the injunctions issued against him in this administrative proceeding, as the civil judgment operates as res judicata and

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[16] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(2) and (4), 15 U.S.C. § 80b-3(e)(2) and (4)); *see also id.* § 80b-3(e)(2)(D) (discussing conviction under 18 U.S.C. § 1343); *id.* § 80b-3(e)(4) (discussing applicable injunctions).

[17] *See* Advisers Act Section 206, 15 U.S.C. § 80b-6 (making it unlawful for "any investment adviser" to engage in specified conduct); Advisers Act Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8 (providing that certain conduct undertaken by "any investment adviser to a pooled investment vehicle" "shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business").

[18] *See* 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).

[19] The jury found Hu guilty in June 2012, and the OIP commenced this proceeding in September 2019. *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "[c]onvicted" to include a "verdict…of guilty" if it "has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed"); *see also United States v. Hu*, 634 F. App'x 602 (9th Cir. 2016) (affirming Hu's conviction).

[20] *See e.g. Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *8 (Feb. 13, 2009) (stating that, in a follow-on proceeding, collateral estoppel prevents re-litigation of the "factual findings or the legal conclusions" made during the underlying criminal proceeding), *pet. for rev. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *4 (Jan. 16, 2007) (stating that the basis for a follow-on proceeding "is the action of the district court—in convicting and enjoining him—and its purpose is not to revisit the factual basis for that action").

"conclusively establishes the relevant change in legal relations."[21] Instead, Hu should have raised any challenge to the criminal and civil judgments to the relevant courts.[22]

There is also no genuine dispute that Hu was associated with an investment adviser at the time of his misconduct. An investment adviser includes "any person who, for compensation, engages in the business of advising others . . . as to the advisability of investing in, purchasing, or selling securities."[23] And Hu does not dispute that he was associated with an investment adviser at the time of his misconduct. Moreover, the Division submitted evidence that, from at least January 2003 through September 2008, Hu made investment decisions for certain hedge funds and induced others to invest in or stay invested in these hedge funds. Thus, Hu engaged in the business of providing investment advice at the time of his misconduct.[24] The Division also submitted evidence showing that Hu received management fees as compensation for his advice.[25] Accordingly, Hu acted as an investment adviser at the time of his misconduct, and therefore he necessarily also was a person associated with an investment adviser at that time.[26]

C. We find that barring Hu from being an investment adviser is in the public interest.

In determining whether any remedial action is in the public interest, we consider the *Steadman* factors: 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

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21 *Eldrick E. Woodley*, Advisers Act Release No. 5981, 2022 WL 836849, at *2 n.9 (Mar. 21, 2022).

22 *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *7 n.32 (Jan. 14, 2011) (stating that, if the respondent "wished to challenge the[] allegations" made in a civil action that ended with a default judgment, "he should have done so before the court").

23 *See* Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11).

24 *See, e.g.*, *Goldstein v. SEC*, 451 F.3d 873, 876 (D.C. Cir. 2006) (stating that general partners who manage hedge funds are investment advisers); *Abrahamson v. Fleschner*, 568 F.2d 862, 869-71 (2d Cir. 1977) (same), *overruled in part on other grounds by Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11 (1979).

25 *See, e.g.*, *Kornman*, 592 F.3d at 184-85 (upholding Commission's determination that compensation element was met where "[t]he hedge funds' private offering memoranda required the payment of quarterly and annual fees for management of the funds' portfolios").

26 *See Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *3 (Mar. 1, 2017) ("[T]he finding that Desai acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f)."") (citing *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who acts "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"' under Advisers Act Section 202(a)(17))).

the likelihood that the respondent's occupation will present opportunities for future violations.[27] Our public interest inquiry is flexible, and no one factor is dispositive.[28] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[29]

Hu concedes that an associational bar was warranted here, but he argues that any bar should not extend past when his supervised release ended in 2022.[30] By contrast, the Division argues that the bar should be permanent. Having weighed all the *Steadman* factors, we conclude that indefinitely barring Hu from associating with any investment adviser is warranted to protect the investing public.[31]

1. Hu's misconduct was egregious, recurrent, and done with a high degree of scienter.

We find no genuine dispute that Hu's misconduct was egregious and recurrent. For more than two years, Hu engaged in a scheme to defraud at least seven investors by making false representations regarding hedge funds he managed, resulting in the investors' loss of at least $5 million. Indeed, Hu acknowledges that, as an investment adviser, he failed in his "fiduciary responsibility." And the Commission has "consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious."[32]

Hu nevertheless downplays the egregiousness of his misconduct by arguing that he did not personally benefit from the missing $5 million and that the money simply disappeared. But even assuming that Hu did not personally benefit from the missing $5 million, he still defrauded at least seven investors out of over $5 million. Hu also contends that the defrauded investors

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

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

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

30 Specifically, Hu states that he is "fully aware[] of his failure [of] fiduciary responsibility, and [is] taking personal responsibility. Therefore, [Hu] had asked only for the bar and sanction [to] be ended concurrent with the end of [his] probation in 2022, 13 years from his arrest."

31 Although the Division requests that we impose collateral bars on Hu, we decline to do so because all his underlying misconduct occurred before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See Anthony Vassallo*, Advisers Act Release No. 6042, 2022 WL 2063310, at *3 n.15 (June 6, 2022) (declining to impose collateral bars for this reason); *Bartko v. SEC*, 845 F.3d 1217, 1222-26 (D.C. Cir. 2017) (holding that it is "impermissibly retroactive" to impose a collateral bar based on a respondent's misconduct that occurred before Dodd-Frank's effective date).

32 *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *3-4 (July 23, 2010).

were not "widows and orphans," but rather sophisticated accredited investors, and some of them were even his hedge funds' insiders. But the investors' alleged sophistication or alleged involvement in the hedge funds' management does not excuse Hu's fraud against them—nor make it any less egregious.[33] Hu additionally asserts that he could not have defrauded the investors because they depended on their own due diligence in auditing the hedge funds, rather than his misrepresentations. But the district court found that Hu's fraud caused seven investors to lose over $5 million, and Hu cannot re-litigate this finding in this follow-on administrative proceeding.[34]

There is also no genuine dispute that Hu acted with a high degree of scienter.[35] The jury instructions in Hu's criminal case show that the jury necessarily found that he "knowingly devised a scheme or plan to defraud, or a [scheme] or plan for obtaining money or property by means of false or fraudulent pretenses or representations or promises" and that he "acted with the intent to defraud, that is the inten[t] to deceive or cheat."

2. Hu's occupation will likely present opportunities for future violations, and an indefinite bar is in the public interest due to the risk he would reoffend if provided the chance.

We also find no genuine dispute that, absent a bar, Hu is likely to re-enter the securities industry, which would present the opportunity for future violations.[36] Hu acted as an investment adviser for at least five years and purported to manage several different hedge funds. And Hu asks us not to bar him permanently so that he can "contribute to the society if and when asked to assess the capital allocation to the right companies with true winning technologies, thus help[ing] the capital market select the right winner," claiming that he has "expertise" in doing so, thereby indicating that he hopes to become an investment adviser again. We thus find that Hu's more general and seemingly contradictory assertion that "he has no interest and will not be an

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33 *See Louis Ottimo*, Exchange Act Release No. 95141, 2022 WL 2239146, at *7 (June 22, 2022) (holding that "a customer's sophistication is not a mitigating factor," as "[w]e have repeatedly held that both sophisticated and unsophisticated investors are entitled to protection against abuse under the securities laws"); *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 4481515, at *7 (Dec. 21, 2007) ("[T]he sophistication of investors does not justify misleading them.").

34 *See supra* note 20 and accompanying text (explaining that Hu is collaterally estopped from contesting the findings from his criminal trial).

35 *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" in assessing the risk of future harm).

36 *See, e.g.*, *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (imposing a bar based in part on the finding that "there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again").

investment adviser" does not raise a genuine dispute about whether his occupation is likely to present opportunities for future violations.[37] And, given that Hu has suggested that he hopes to become an investment adviser again, we do not agree with Hu that his post-incarceration gainful employment makes it significantly less likely that he would reenter the securities industry and potentially reoffend.[38]

Hu claims to recognize the wrongful nature of his conduct and states that he will not commit further violations. But, in his filings, he also blames the investors he defrauded for their own lack of due diligence, undermining his claim that he recognizes the wrongful nature of his conduct. And even assuming that Hu's assurances against further violations are sincere and that he recognizes his prior conduct was wrong, "such assurances are not an absolute guarantee against misconduct in the future."[39] As we have noted many times before, "[t]he securities industry presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence."[40] Here, Hu's repeated commissions of fraud indicate a lack of honesty and integrity, creating a serious risk that he would commit another violation of the securities law if given the chance.[41]

Specifically, despite Hu's arguments to the contrary, we find there to be a serious risk that he would reoffend if we did not bar him. Although Hu argues that his age substantially decreases the risk he would present to the public, an individual can reoffend regardless of age.[42] Nor do we find the fact that Hu's misconduct occurred over a decade ago to be particularly mitigating, as he likely had limited opportunity to reoffend during his ten years of incarceration

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37 *See Tagliaferri*, 2017 WL 632134, at *7 (noting that party opposing summary disposition may not rely on "bare allegations and denials of facts that the Division presented").

38 *See Ted Harold Westerfield*, Exchange Act Release No. 41126, 1999 WL 100954, at *4 (Mar. 1, 1999) (imposing permanent bar despite respondent's contention that his new occupation as truck driver would not present further opportunities for future securities-related misconduct because "absent a permanent bar, [the respondent] may try again to become a securities professional").

39 *Kornman*, 2009 WL 367635, at *11.

40 *E.g.*, *id.* at *7.

41 *See Reinhard*, 2011 WL 121451, at *8 (imposing associational bars where respondent's "repeated acts of false filings and dishonest conduct over several years and his refusal to appreciate the wrongfulness of his misconduct . . . demonstrated his unfitness for employment in the industry"); *see also Tagliaferri*, 2017 WL 632134, at *6 ("Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." (cleaned up)).

42 *See Kornman*, 2009 WL 367635, at *9 & n.40 ("We do not view [the respondent's] age . . . as mitigation to sanctions.").

or his three years of supervised release.[43] In fact, the order of supervised release prohibited Hu from serving in "a position of fiduciary capacity without the prior permission of the probation officer." And Hu has only been unsupervised for about a year.

Hu also asserts that he simply made a mistake and that he has a good character, as demonstrated by other good acts at other points in his life, including during his incarceration. But we find that Hu did not merely make a simple mistake, given the egregious and recurrent nature of his fraud, which was committed with scienter.[44] And, even accepting as true Hu's claim that he has behaved well in other contexts, we still find a substantial risk that he could reoffend if allowed to re-enter the securities industry, given that he already committed significant and recurrent fraud in that particular context.

Hu further argues that the length of his prison sentence and his loss of assets due to his convictions will deter him from further offenses.[45] But we have previously held that a prison sentence is not "mitigative of the appropriate sanction to be imposed in the public interest in [a follow-on] administrative proceeding."[46] Similarly, "'[f]inancial loss to a wrongdoer as a result of his wrongdoing' does not mitigate the gravity of his conduct."[47] But even if Hu's prison sentence and loss of assets serve as a deterrent from future misconduct, they also reflect the severity of Hu's misconduct and do not outweigh our concern that he would pose a substantial risk to the public if he were allowed to re-associate with an investment adviser.

Finally, we conclude that a time-limited bar would not provide sufficient protection to the investing public.[48] Hu proposes that any bar should not extend past when his supervised release ended in August 2022. But as described above, the end of Hu's supervised release represents the first time in over a decade that he is completely unmonitored by the criminal justice system and

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[43] *See John A. Carley*, Exchange Act Release No. 57246, 2008 WL 268598, at *22 n.119 (Jan. 31, 2008) (finding age of misconduct outweighed by other factors).

[44] *Cf. Westerfield*, 1999 WL 100954, at *4 (rejecting respondent's contention that his misconduct was isolated due to his lack of other disciplinary history, as the misconduct itself had been recurrent).

[45] In his answer, Hu also suggested that he might be unable to find a job due to his convictions, but his subsequent filings indicate that he is now employed.

[46] *Reinhard*, 2011 WL 121451, at *7; *see also Armstrong*, 2009 WL 2972498, at *4 (Sept. 17, 2009) (imposing a bar based in part on the finding that "there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again").

[47] *Kornman*, 2009 WL 367635, at *9 (alteration in original) (quoting *Robert L. Wallace*, Exchange Act Release No. 40654, 1998 WL 778608, at *5 (Nov. 10, 1998)).

[48] We also note that Advisers Act Section 203(f) authorizes the Commission to impose suspensions of up to 12 months, but it does not mention temporary bars. *See* 18 U.S.C. § 80b-3(f).

may provide a potentially tempting opportunity for recidivism. The egregious, recurrent, and intentional nature of Hu's misconduct, along with his desire to act as an investment adviser in the future, ultimately cause us to find that an indefinite bar is the only way to protect the public from the serious risk that Hu would reoffend.[49]

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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 Hu is unfit to associate with an investment adviser and that allowing him to do so would pose a risk to investors.[50] Because Hu poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any investment adviser.[51]

An appropriate order will issue.[52]

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

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[49] *See Westerfield*, 1999 WL 100954, at *5 ("Given the nature of [the respondent's] conduct, we believe that the bar should not be time-limited.").

[50] *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).

[51] *Id.* (imposing associational bars where they were necessary to protect the public).

[52] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6497 / December 6, 2023

Admin. Proc. File No. 3-19510

In the Matter of

ALBERT K. HU

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Albert K. Hu is barred from association with any investment adviser.

By the Commission.

Vanessa A. Countryman
Secretary