SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6556 / February 14, 2024

Admin. Proc. File No. 3-19635

In the Matter of

STEPHEN CONDON PETERS

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of investment adviser fraud, fraud in the sale of unregistered securities, and 18 other counts in connection with the fraudulent sale of notes to investment advisory clients. *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:

Stephen Condon Peters, pro se.

Edward G. Sullivan for the Division of Enforcement.

On January 6, 2020, the Securities and Exchange Commission instituted an administrative proceeding against Stephen Condon Peters under Section 203(f) of the Investment Advisers Act of 1940.[1] The Division has now filed a motion for summary disposition requesting that the Commission bar Peters from the securities industry. Based on our review of the record, we grant the Division's motion and find that an industry bar is in the public interest.

I. Background

A. The Commission instituted this proceeding against Peters.

The order instituting proceedings ("OIP") alleged that, from April 2012 until June 30, 2017, Peters was the owner and controlling person of an investment advisory firm registered with the Commission—VisionQuest Wealth Management, LLC ("VisionQuest Management").

As alleged in the OIP, on June 6, 2019, a jury convicted Peters on twenty counts, including one count of investment advisor fraud and aiding and abetting in violation of 15 U.S.C. §§ 80b-6, 80b-17 and 18 U.S.C. § 2, as well as one count of fraud in the sale of unregistered securities in violation of 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. § 240.10b5.[2] The United States District Court for the Eastern District of North Carolina entered a criminal judgment against Peters sentencing him to a prison term of 480 months and ordering him to pay restitution in the amount of $15,161,624. According to the OIP, Peters's criminal conduct underlying these counts involved, among other things, defrauding investors and obtaining money and property by means of materially false and misleading statements in connection with the fraudulent sale of notes to investment advisory clients between at least April 2012 and June 30, 2017.

The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Peters to file an answer to the allegations within 20 days after service, as provided by Rule of Practice

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1 *Stephen Condon Peters*, Advisers Act Release No. 5424, 2020 WL 58532 (Jan. 6, 2020).

2 Peters was additionally convicted of nine counts of wire fraud and aiding and abetting in violation of 18 U.S.C. §§ 1343 and 2; four counts of money laundering and aiding and abetting in violation of 18 U.S.C. §§ 1957, 1957(b)(1), and 2; one count of conspiracy to make and use false documents and to falsify and conceal records in violation of 18 U.S.C. § 371; one count of making and using false documents and aiding and abetting in violation of 18 U.S.C. §§ 1001(a)(1) through (a)(3), and 2; one count of falsifying and concealing records and aiding and abetting in violation of 18 U.S.C. §§ 1519 and 2; one count of corrupt endeavor to influence a federal agency in violation of 18 U.S.C. § 1505; and one count of aggravated identity theft and aiding and abetting in violation of 18 U.S.C. §§ 1028A(a)(1) and 2. *United States v. Stephen Condon Peters*, No. 5:17-CR-411-D, 2019 WL 2427991 (E.D.N.C. Jun. 6, 2019).

220(b).[3] The OIP further provided that, in the event the Commission determined that no in-person hearing was necessary, it would issue a "final order resolving the proceeding" after the "completion of briefing on a motion . . . for summary disposition pursuant to Rule of Practice 250."[4]

B. Peters filed an answer to the OIP, and the Division moved for summary disposition.

On February 13, 2020, the Division of Enforcement filed a motion for summary disposition supported with filings from the underlying criminal proceeding. Peters responded by filing a document that in substance requested a stay of this proceeding until Peters completed the appeal of his conviction.

On August 31, 2022, the Commission issued an order that denied Peters's request for a stay until the appeal of his conviction had completed and that requested the parties file additional briefing.[5] In doing so, the order observed that Peters's conviction was affirmed by the U.S. Court of Appeals for the Fourth Circuit and his subsequent petition for a writ of certiorari was denied. The order then directed the parties to file additional briefing and evidentiary materials regarding the factual predicate for Peters's convictions and the appropriateness of the sanctions sought.

On September 29, 2022, the Division filed a supplemental memorandum in support of summary disposition, which was supported by documents from Peters's criminal proceeding. On October 17, 2022, Peters filed a response stating that he was continuing to "exhaust every appeal avenue."

II. Analysis

A. Summary disposition is appropriate.

Under Rule of Practice 250(b), a motion for summary disposition may be granted if "there is no genuine issue with regard to any material fact" and the moving party is "entitled to summary disposition as a matter of law."[6] Here, Peters does not contend that a genuine issue of material fact exists or that an in-person hearing is necessary.[7] To the contrary, Peters merely

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[3] 17 C.F.R. § 201.220(b).

[4] *Peters*, 2020 WL 58532, at *4.

[5] *Stephen Condon Peters*, Advisers Act Release No. 6102, 2022 WL 3919674 (Aug. 31, 2022).

[6] 17 C.F.R. § 201.250(b).

[7] *Cf. Albert K. Hu*, Advisers Act Release No. 6497, 2023 WL 8469447, at *2 (Dec. 6, 2023) (holding that the respondent "forfeited any objection to our deciding this proceeding by summary disposition" because he failed to "argue that summary disposition is inappropriate or that an in-person hearing is necessary").

maintains his innocence by asserting that the records in his criminal case "speak for themselves." But Peters is precluded from collaterally attacking those facts "distinctly put in issue and directly determined' in [his] criminal prosecution."[8] We thus find that the Division has satisfied its burden under the summary disposition standard, that summary disposition is appropriate, and that an in-person hearing is unnecessary in this case.[9]

B. The Advisers Act authorizes the Commission to determine whether any sanctions are appropriate based on Peters's conviction and association with an investment adviser.

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, within ten years of the commencement of the proceeding, convicted of an offense involving the purchase or sale of any security, or a conspiracy to commit such an offense, or was convicted of an offense that arises out of the conduct of the business of an investment adviser; (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.[10]

No genuine issue of material fact exits as to the first two of these elements. Peters was convicted of an offense involving the purchase or sale of any security (fraud in the sale of unregistered securities). He was also convicted of an offense arising out of the conduct of the business of an investment adviser (investment adviser fraud and aiding and abetting of that

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8 *Emich Motors Corp. v. General Motors Corp.*, 340 U.S. 558, 569 (1961) (explaining that the record in the criminal proceeding may be reviewed to determine the factual findings implicitly made by the jury that are entitled to issue preclusive effect); *see also Peters*, 2022 WL 3919674, at *2 (discussing issue preclusive effect of prior criminal judgment).

9 *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.").

10 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(2), 15 U.S.C. § 80b-3(e)(2)); *see also id.* § 80b-3(e)(2)(A)-(B) (discussing convictions).

fraud).[11] And Peters committed both offenses within ten years of the commencement of this proceeding.[12] Furthermore, Peters admitted in his answer to the OIP that he, as the owner and controlling person of an investment adviser registered with the Commission between 2012 and 2017, was a person associated with an investment adviser at the time of his misconduct.[13]

C. We find that barring Peters from the securities industry is in the public interest.

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.[14] Our public interest inquiry is flexible, and no one factor is dispositive.[15] The remedy is intended to

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[11] The federal aiding-and-abetting statute provides that "[w]hoever commits an offense . . . or aids [or] abets . . . its commission, is punishable as a principal." 18 U.S.C. § 2(a). Here, the jury was instructed that Peters could be convicted on an aiding-and-abetting theory as to the investment adviser fraud count only if Peters "knew that the crime charged . . . was to be committed or was being committed"; "knowingly did some act for the purpose of aiding, abetting, commanding, or encouraging [its] commission"; and "acted with the intent to cause [it] to be committed." Thus, regardless of whether the jury convicted Peters as a principal or as an aider and abetter, it necessarily determined that Peters's misconduct arose "out of the conduct of a[n] . . . investment adviser" within the meaning of Advisers Act Section 203(e)(2)(B), 15 U.S.C. § 80b-3(e)(2)(B); *see also Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 189-90 (2007) (holding that the "criminal activities of . . . aiders and abettors" of a crime fall within the scope of the crime itself because "criminal law now uniformly treats" principals and aiders and abettors).

[12] Peters was convicted of 18 other counts, *see supra* note 2, but because the Division rests its request for summary disposition on only the investment adviser fraud and fraud in the sale of unregistered securities counts—which it characterizes as the "significant ones" that "relate[] to the need for a full industry bar"—we rely on only those counts to determine that the Advisers Act authorizes the Commission to impose a sanction here.

[13] *See Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who is "in a position of control with respect to the investment adviser" thus "meets the definition of a 'person associated with an investment adviser"' under Advisers Act Section 202(a)(17)).

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

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

protect the trading public from further harm, not to punish the respondent.[16] We have weighed all these factors and find an industry bar is warranted to protect the investing public.

Peters's actions were egregious and recurrent. At sentencing, the district court found that Peters "perpetrated an extraordinary fraud . . . from 2009 until . . . 2017,"[17] which involved selling his investment advisory clients promissory notes issued by a company he controlled, and failing to disclose his ownership. As the Fourth Circuit found, "Peters promised his victims an eight or nine percent return on their investment, and he purported to use this money to buy new businesses."[18] He represented that the interest payments were guaranteed because those businesses ostensibly purchased would yield 30-40% profits. In fact, there were no such businesses and no profits. Peters instead used his clients' money to fund lifestyle expenses for himself and his family and payments to other investors. As the jury's special verdict found. Peters "personally obtain[ed]" at least $15 million in "proceeds from the fraud offenses" over the course of the entire scheme. Peters's misconduct was all the more egregious because he defrauded his investment advisor clients and, in so doing, violated his fiduciary duty and exploited the trust of his clients.[19] And, as the district court found, Peters did this in a repeated, prolonged pattern of fraud over a period of eight years.

Peters's misconduct also entailed a high level of scienter. The district court found during sentencing that Peters "knew all eight years" that he was "engaged in this fraud and . . . did it anyway." And Peters himself admitted in a recorded conversation with one of his employees that he had taken roughly $4.8 million from his clients in connection with one particular aspect of his fraud. Moreover, the jury convicted Peters of investment advisor fraud, which required that the defendant act knowingly and willfully with intent to defraud, and of securities fraud, which similarly required that the defendant act willfully and with intent to defraud.

Peters also took steps to conceal his misconduct and obstruct the investigation into it. He directed his employees to create false documents and lie to the Commission, as well as delete responsive documents.[20] During Peters's sentencing hearing, the district court noted that, "[i]t's

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

17 The OIP alleges that Peters's misconduct took place "between *at least* April 2012 and June 30, 2017," but in fact, as the district court found, his fraudulent scheme began even earlier. (Emphasis added.)

18 *United States v. Peters*, No. 19-4718, 2021 WL 4099907, at *3 (4th Cir. Sept. 9, 2021).

19 *Timothy S. Dembski*, Exchange Act Release No. 80306, 2017 WL 1103685, at *13 (Mar. 24, 2017) ("Dembski's conduct was all the more reprehensible because it occurred in his capacity as an investment adviser").

20 *Toby G. Scammell*, Exchange Act Release No. 3961, 2014 WL 5493265, at *6 (Oct. 29, 2014) ("acts of concealment… provide further evidence that [respondent] acted with a high degree of scienter.")

(*continued . . .*)

not just the fraud, it's the money laundering, it's the doubling down on the obstruction of justice in the SEC examination, it's the tripling down in the obstruction of justice in the SEC enforcement action and it's the quadrupling down of the repeated perjury in this courtroom."

Peters also does not recognize the wrongful nature of his conduct. To the contrary, Peters not only contends that maintaining his innocence should not prejudice him in this proceeding,[21] but he attempts to minimize his actions and to shift blame on others, asserting that "various [advisory] firm employees" committed and are as culpable for the criminal conduct that occurred here. As we have held, such attempts to shift blame are additional indicia of a respondent's failure to take responsibility for his actions.[22] And, without accepting responsibility, Peters "cannot plausibly claim" that he recognizes the wrongful nature of his conduct in a way that mitigates against our imposing a sanction.[23]

Peters argues that, because he is serving a 480-month prison sentence, "there is no potential harm to investors while [he is] incarcerated." However, the mere fact that a respondent will be incarcerated for the foreseeable future does not in itself weigh against a bar.[24] And, as we have held, a prison sentence is not "mitigative of the appropriate sanction to be imposed in the public interest in [a follow-on] administrative proceeding."[25] Moreover, Peters has made no

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[21] We need not (and do not) base our determination that a bar is warranted here on Peters's assertion of his jury-trial or appellate rights or his continued insistence that he is innocent. *Cf. Louis Ottimo*, Exchange Act Release No. 95141, 2022 WL 2239146, at *6 (June 22, 2022).

[22] *Allen M. Perres*, Exchange Act Release No.79858, 2017 WL 280080, at *4 (Jan. 23, 2017).

[23] *Ottimo*, 2022 WL 2239146, at *6.

[24] *See, e.g., Kimm C. Hannan*, Advisers Act Release No. 5906, 2021 WL 5161855, at *3 (Nov. 5, 2021) (imposing bar on respondent sentenced to 20 years in prison); *SEC v. Payne*, No 1:00-cv-1265-JMS-TAB, 2011 WL 693630, at *4 (S.D. Ind. Feb. 18, 2011) (rejecting defendant's argument that a permanent injunction was unnecessary because he would be 70 years old upon release from federal prison).

[25] *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *7 (Jan. 14, 2011); *see also 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").

assurances that he will not reenter the securities industry should he be released from custody.[26] Accordingly, should Peters reenter the industry upon his release, his occupation will present opportunities for future violations.[27]

Peters also asserts that various employees of his firm who testified against him at his criminal trial admitted that they, too, committed many of the same offenses for which he was convicted, and that the Commission has not instituted proceedings against any of these individuals. He argues that this demonstrates that it is not necessary for the Commission to impose sanctions against him now. But the decision to seek sanctions against one individual, and not others allegedly involved in the same misconduct, is a "'classic illustration of a decision committed to agency discretion,' and agency decisions about the best use of staff time are a matter of prosecutorial judgment."[28] And the fact that individuals other than Peters may have been involved in or acquiesced in the overall fraudulent scheme cannot enable Peters to avoid consequences for his own conduct.[29]

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 Peters is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[30] Because Peters poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any

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[26] *See, e.g.*, *Anthony Vassallo*, Advisers Act Release No. 6042, 2022 WL 2063310, at *4 (June 6, 2022) (finding respondent likely to commit future violations because he acted as an investment adviser during the period of his misconduct and offered no assurances concerning his plans following incarceration).

[27] *See, e.g.*, *Armstrong*, 2009 WL 2972498, at *4 (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").

[28] *Dolphin and Bradbury, Inc.*, Exchange Act Release No. 54143, 2006 WL 1976000, at *12 (July 13, 2006), *aff'd*, 512 F.3d 634 (D.C. Cir. 2008) (quoting *Chicago Bd. of Trade v. SEC*, 883 F.2d 525, 530-31 (7th Cir. 1989)).

[29] *See, e.g.*, *James J. Pasztor*, Exchange Act Release No. 42008, 1999 WL 820621, at *5-6 & nn.27-28 (Oct. 14, 1999).

[30] *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); *see also Mark Morrow*, Exchange Act Release No. 90472, 2020 WL 6867614, at *4 (Nov. 20, 2020) (similar).

investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[31]

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

Although some of Peters's misconduct occurred before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the egregious misconduct that post-dated the effective date of the Dodd-Frank Act alone warrants a bar from associating in all of the capacities listed above. *See, e.g.*, *Joseph A. Meyer, Jr.*, Exchange Act Release No. 94822, 2022 WL 1288226, at *4 n.17 (Apr. 29, 2022) (noting that respondent's misconduct "spanned from August 2009 through at least 2018" and finding that the conduct that post-dated the effective date of the Dodd-Frank Act demonstrated that a bar was necessary to protect the public (citation omitted)); *see also 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). Here, the district court found that the fraudulent scheme did not end until 2017. Moreover, a number of the counts of convictions required the jury to find that Peters committed misconduct—for example, money laundering—on specific dates between 2012 through 2017.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6556 / February 14, 2024

Admin. Proc. File No. 3-19635

In the Matter of

STEPHEN CONDON PETERS

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Stephen Condon Peters 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