SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 102505 / February 28, 2025

Admin. Proc. File No. 3-21822

In the Matter of

JEFFREY ALAN HORN

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of conspiracy to commit mail and wire fraud, conspiracy to commit securities fraud, and securities fraud. *Held*, it is in the public interest to bar respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participation in any penny stock offering.

APPEARANCES:

Brian Lechich for the Division of Enforcement.

On December 29, 2023, the Securities and Exchange Commission instituted an administrative proceeding against Jeffrey Alan Horn under Section 15(b) of the Securities Exchange Act of 1934.[1] We now find Horn to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity and from participating in an offering of penny stock.

I. Background

A. Horn was convicted of conspiracy to commit mail and wire fraud, conspiracy to commit securities fraud, and securities fraud.

In April 2022, a federal jury found Horn guilty of one count of conspiracy to commit mail and wire fraud, one count of conspiracy to commit securities fraud, and four counts of securities fraud. These charges related to a conspiracy among Horn and others to defraud prospective investors in Sunset Capital Assets, Inc. ("Sunset") and to misappropriate proceeds from sales of Sunset's stock for the conspirators' personal use and benefit. As part of the conspiracy, Horn and others made material misrepresentations about how investors' funds would be used and Sunset's assets and lines of business. The district court sentenced Horn to 100 months in prison and three years of supervised release and ordered him to pay $1,469,702 in restitution jointly and severally with his co-defendants.[2]

B. The Commission instituted this proceeding against Horn.

The order instituting proceedings ("OIP") alleges that Horn was criminally convicted of one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349; one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371; and four counts of securities fraud in violation of Securities Act Sections 17(a) and 24[3] and 18 U.S.C. § 2. The OIP further alleges that, between October 2014 and April 2016, Horn acted as an unregistered broker by directly soliciting investors to purchase shares of Sunset's stock and receiving compensation. And the OIP alleges that Sunset's stock was a penny stock as defined in the Exchange Act.

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 Horn to file an answer to the allegations within 20 days after service, as required by Rule of Practice

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1 *Jeffrey Alan Horn*, Exchange Act Release No. 99254, 2023 WL 11647136 (Dec. 29, 2023).

2 *See* Amended Judgment at 3–4, 7–8, *United States v. Watson*, No. 21-CR-60019 (S.D. Fla. Jan. 3, 2023), ECF No. 225. We hereby take official notice of the district court's amended judgment in the criminal case against Horn. *See* Rule of Practice 323, 17 C.F.R. § 201.323 (authorizing the Commission to take official notice "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 the Commission's authority to take official notice of federal district court orders).

3 15 U.S.C. §§ 77q(a) and 77x.

220(b).[4] The OIP informed Horn that if he failed to answer, he could be deemed to be in default, the allegations in the OIP could be deemed to be true, and the proceeding could be determined against him upon consideration of the OIP.[5]

C. Horn 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.

Horn was properly served with the OIP on February 8, 2024, pursuant to Rule of Practice 141(a)(2)(i).[6] Horn then sent to the Division a document he titled a "response," in which he stated that he "contests [ ] all allegations set forth in File No. 3-21822," and that "any and all future legal matters shall be directed to" his legal counsel. Horn did not file this response with the Commission's Office of the Secretary, as required by the Commission's Rules of Practice.[7] Instead, the Division filed a notice with the Office of the Secretary that contained Horn's response, along with two other items: (1) an email exchange with the attorney that Horn identified, who stated that he only represents Horn in his criminal appeal and not in this proceeding; and (2) a letter from the Division to Horn forwarding that email exchange and advising Horn of the Division's view that his response did not constitute an answer and that he must serve filings with the Commission's Office of the Secretary.

After the Division provided this correspondence, the Commission issued an order to show cause why Horn should not be deemed in default and why this proceeding should not be determined against him due to his failure to properly file any documents in this proceeding with the Commission or otherwise defend this proceeding.[8] The order directed Horn to file any response to the order, including any answer, within 45 days.[9] The show cause order warned Horn that, if the Commission found him to be 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.[10] Horn did not respond to the order and has not otherwise appeared or defended this proceeding.

The Division subsequently filed a motion requesting that the Commission find Horn in default and bar him from associating in the securities industry and from participating in an

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4 17 C.F.R. § 201.220(b).

5 *Horn*, 2023 WL 11647136, at *2; *see also* Rule of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

6 *Jeffrey Alan Horn*, Exchange Act Release No. 99999, 2024 WL 1722644, at *1 (Apr. 22, 2024); Rule of Practice 141(a)(2)(i), 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").

7 *See* Rule of Practice 151(a)–(b), 17 C.F.R. § 201.151(a)–(b) (requiring all papers required to be served on other parties to be contemporaneously filed with the Commission by filing the paper with the Secretary).

8 *Horn*, 2024 WL 1722644.

9 *Id.* at *1.

10 *Id.*

offering of penny stock. Less than a month after filing that motion, the Division filed a notice advising the Commission that Horn had refused delivery of the envelope containing its motion for default, which the Division had sent to Horn first via United States Postal Service priority mail and then UPS Next Day Delivery.[11] Horn has not responded to the Division's default motion.[12]

II. Analysis

A. We deem Horn to be 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 to be 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."13 Horn has not answered the OIP, responded to the show cause order or the Division's motion for default, or otherwise appeared and defended this proceeding.

Horn's mailing to the Division did not comply with the Commission's Rules of Practice, which require papers to be filed with the Commission's Secretary and require a party to "specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation" in the OIP—none of which Horn's mailing did.[14] Even if we were to consider Horn to have properly filed an answer, however, he then failed to respond to an order to show cause and the Division's motion for default and sanctions. In fact, he has never filed any document in the proceeding with the Commission or its Office of the Secretary. Horn's refusal to accept delivery of the Division's motion for default further suggests that he has decided not to participate in this proceeding.

For these reasons, we find it appropriate to deem Horn to be in default and to deem the allegations of the OIP to be true. We base the findings that follow on the record, including the

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[11] The Division attached copies of the returned envelopes to its notice; the United States Postal Service envelope stated that it had been "refused" and was to be "return[ed] to sender," and the UPS envelope stated that "Receiver did not want, refused delivery."

[12] Notwithstanding Horn's refusal to accept the envelopes containing the motion for default, service of the motion for default was "complete upon mailing." Rule of Practice 150(e), 17 C.F.R. § 201.150(e); *see also* Rule of Practice 150(d)(2)–(3), 17 C.F.R. § 201.150(d)(2)–(3) (authorizing, where a person cannot reasonably serve electronically, service by mail or commercial courier service or express delivery service); *cf. Nikwei v. Ross Sch. of Aviation, Inc.*, 822 F.2d 939, 945 (10th Cir. 1987) ("[C]ourts view service by registered or certified mail as being complete when such is refused [through] the act of the defendant.").

[13] 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)).

[14] Rule of Practice 220(c), 17 C.F.R. § 201.220(c).

OIP and the evidentiary materials that the Division submitted with its motion for default, and the district court's amended judgment.

B. We find that barring Horn from the securities industry and from participating in penny stock offerings is in the public interest.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in an offering of penny stock if it finds, on the record after notice and opportunity for hearing, that (1) within ten years of the commencement of the proceeding, the person was convicted of a felony or misdemeanor that (a) involves the purchase or sale of any security or conspiracy to commit such an offense, or (b) arises out of the conduct of the business of a broker or dealer; (2) the person was associated with a broker or dealer at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[15]

1. The threshold requirements for imposing industry and penny stock bars are satisfied.

The record establishes the first two elements. Horn was convicted of multiple felonies that either involved the purchase or sale of a security (four counts of securities fraud) or conspiracy to commit such an offense (one count each of conspiracy to commit securities fraud and conspiracy to commit mail and wire fraud) within ten years of the institution of this proceeding.[16] Horn's convictions also arose from his conduct as an unregistered broker.[17] And because Horn acted as an unregistered broker at the time of his misconduct, he was a person associated with a broker.[18]

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[15] 15 U.S.C. § 78*o*(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78*o*(b)(4)); *see also id.* § 78*o*(b)(4)(B)(i) (discussing convictions for a felony or misdemeanor involving the purchase or sale of any security), (b)(4)(B)(ii) (discussing convictions arising out of the conduct of the business of a broker or dealer).

[16] *See, e.g.*, *Donald S. LaGuardia, Jr.*, Advisers Act Release No. 6739, 2024 WL 4373378, at *2 (Oct. 2, 2024) (holding that securities fraud constituted "an offense involving the purchase or sale of any security"); *Paul Geraci*, Exchange Act Release No. 100786, 2024 WL 3889002, at *2 (Aug. 21, 2024) (so holding for conviction for conspiracy to commit wire and mail fraud); *Hughe Duwayne Graham*, Exchange Act Release No. 100540, 2024 WL 3444131, at *3 (July 16, 2024) (so holding for conviction for conspiracy to commit securities fraud).

[17] *See* 15 U.S.C. § 78c(a)(4)(A) (defining "broker" as "any person engaged in the business of effecting transactions in securities for the account of others"); *see also Cindy Vandivier*, Exchange Act Release No. 100788, 2024 WL 3889003, at *2 (Aug. 21, 2024) (so holding where the respondent's conviction was based, in part, "on her assisting in and facilitating selling" securities); *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *2 (Jan. 23, 2017) (noting that respondents acted as unregistered brokers by soliciting investors, providing offering them with materials, and earning commissions from investors).

[18] *See, e.g.*, *Geraci*, 2024 WL 3889002, at *2 ("[B]ecause [the respondent] acted as an unregistered broker at the time of his misconduct, he was a person associated with a broker.");

2. We find that barring Horn from the securities industry and from participating in penny stock offerings is in the public interest.

In analyzing whether any remedial action is in the public interest, 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.[19] Our public interest inquiry is flexible, and no one factor is dispositive.[20] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[21] We have weighed these factors and conclude that an industry bar and a bar from participating in an offering of penny stock are warranted to protect the investing public.

The record establishes that Horn's misconduct was egregious, recurrent, and done with a high degree of scienter. From October 2014 to April 2016, Horn conspired with others to defraud prospective investors in Sunset and to misappropriate proceeds from sales of Sunset's stock. As part of the conspiracy, Horn acted as an unregistered broker by offering and selling Sunset stock to individual investors, instructing investors on where to wire funds for stock purchases, and receiving and paying commissions from investors' funds. Horn also made materially false statements and omissions to investors. For example, Horn sent multiple investors private placement memoranda falsely stating that no broker's or finder's fees would be paid for investments, when in fact the majority of the proceeds from selling Sunset stock went to members of the conspiracy, and Horn himself both received commissions from investors' funds and paid commissions from those funds to others who found investors that ultimately invested. The private placement memoranda also falsely stated that Sunset was worth more than half a billion dollars and had precious gemstones that had been appraised as being worth hundreds of millions of dollars, when evidence presented at trial established that the appraisal had been falsified by another member of the conspiracy. The conspiracy ultimately defrauded investors of more than $1,469,702, and Horn personally received $25,900 in commissions.

The record also establishes that Horn acted with scienter.[22] A jury convicted Horn of one count each of conspiracy to commit wire and mail fraud and conspiracy to commit securities

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Perres, 2017 WL 280080, at *3 (holding that the fact that the respondent "acted as an unregistered broker also establishes that he was associated with a broker for purposes of Exchange Act Section 15(b)(6)").

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

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

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

[22] *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).

fraud, both of which require a specific intent to defraud.[23] The evidence introduced at Horn's criminal trial also indicates that he acted with scienter. The evidence showed that Horn actively participated in the conspiracy, sending multiple investors private placement memoranda that contained false statements about Sunset's assets and lines of business and the purported lack of commissions that would be paid, when he knew that most sale proceeds went to the co-conspirators.

Because Horn failed to answer the OIP, or to respond to the show cause order or the Division's motion, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. Horn's occupation may present opportunities for future violations because he acted as an unregistered broker during the period of his misconduct, he offers no assurances about his plans following his release from prison, and, absent a bar, he would have the opportunity to participate in the securities industry and commit further violations in the future.[24]

These concerns are not diminished by the condition of Horn's three-year supervised release that prohibits him from engaging "in any business that offers securities, investments, or business opportunities to the public." Although that condition will restrict Horn's ability to participate in the securities industry while he is on supervised release, the condition does not fully bar Horn from the industry.[25] For example, the condition would not bar Horn from acting as an investment adviser as long as the adviser did not itself offer securities or other investments.[26] Moreover, the condition will expire when Horn completes his supervised release,

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[23] *See United States v. Downing*, 297 F.3d 52, 57 (2d Cir. 2002) (holding that conspiracy under 18 U.S.C. § 371 requires that "the defendant knowingly participated in the conspiracy with the specific intent to commit the offenses that were the objects of the conspiracy"); *see also United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1118 (D.C. Cir. 2009) (recognizing that mail and wire fraud "require specific intent to defraud"); *Geraci*, 2024 WL 3889002, at *3 (holding that a conviction for conspiracy under 18 U.S.C. § 1349 requires "the specific intent to defraud").

The jury also convicted Horn of four counts of securities fraud under 18 U.S.C. § 2 and Securities Act Section 17(a), 15 U.S.C. § 77q(a). One can violate Section 17(a) through either scienter-based conduct under Section 17(a)(1) or negligent conduct under Section 17(a)(2) and (3). *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 856 (9th Cir. 2001). The jury's verdict did not specify which prong it found that Horn had violated.

[24] *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (expressing concern that respondent's occupation would present opportunities for future violations where he did not indicate that he planned to leave the securities industry).

[25] *Cf. Korem*, 2013 WL 3864511, at *8–9 (imposing collateral bar in addition to injunction and penny stock bar imposed by district court where injunction and penny stock bar did not fully bar respondent from securities industry).

[26] *See* 15 U.S.C. § 80b-2(a)(11) (defining "[i]nvestment adviser" as "any person 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, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities").

after which he could participate in the securities industry in any capacity and commit further violations.[27]

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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 Horn is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[28] Horn participated in a conspiracy to defraud investors in Sunset stock, a penny stock, that caused more than $1.4 million in harm. Given that Horn has defaulted in this proceeding, he has not opposed the imposition of any associational bar or a bar from participating in an offering of penny stock. Because Horn poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.[29]

An appropriate order will issue.

By the Commission (Acting Chairman UYEDA and Commissioners PEIRCE and CRENSHAW).

Vanessa A. Countryman
Secretary

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[27] *See Kimm Hannan*, Advisers Act Release No. 5906, 2021 WL 5161855, at *3 (Nov. 5, 2021) (citing *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (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] *See 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).

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102505 / February 28, 2025

Admin. Proc. File No. 3-21822

In the Matter of

JEFFREY ALAN HORN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Jeffrey Alan Horn is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Jeffrey Alan Horn is barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Vanessa A. Countryman
Secretary