

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 64142 /March 29, 2011

ADMINISTRATIVE PROCEEDING  
File No. 3-14197

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In the Matter of :  
: ORDER MAKING FINDINGS  
JOSEPH R. PORCHE :  
: AND IMPOSING REMEDIAL  
: SANCTIONS BY DEFAULT

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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Joseph R. Porche (Porche) on January 19, 2011, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleged that Porche participated in a fraudulent offering of unregistered securities, and, as a result, he was enjoined from future violations of various provisions of the Securities Act of 1933 (Securities Act) and the Exchange Act in SEC v. Porche, No 8:10-cv-01165-DOC (C.D. Cal.).

The Office of the Secretary and the Division of Enforcement (Division) have provided evidence that Porche was served with the OIP by U.S. Postal Service certified mail in accordance with 17 C.F.R. § 201.141(a)(2)(i) on January 24, 2011, and his Answer to the OIP was due by February 16, 2011. See OIP at 3; 17 C.F.R. § 201.220(b). To date, Porche has not filed an Answer to the OIP.

On March 11, 2011, the Division filed a Motion for Default seeking sanctions pursuant to Section 15(b) of the Exchange Act, with three exhibits (Motion). Exhibit A is the proof of service of the OIP on Porche; Exhibit B is the Judgment of Permanent Injunction and Other Relief (Default Judgment) in SEC v. Porche, filed on December 29, 2010; and Exhibit C is the Final Order Granting Plaintiff's Request for Default Judgment (Final Order) in SEC v. Porche, filed on December 20, 2010. Porche has not filed any opposition to the Motion. See 17 C.F.R. § 201.154(b).

The Division requests that Porche be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. (Mot. at 7.) Since Porche has not filed an Answer, responded to the Division's dispositive motion, or otherwise defended the proceeding, he is in default. See 17 C.F.R. §§ 201.155(a), .220(f). Accordingly, I GRANT the Division's Motion and find the following allegations of the OIP to be true. See 17 C.F.R. § 201.155(a). Official notice is taken of the proceedings in SEC v. Porche. See 17 C.F.R. § 201.323.

## FINDINGS OF FACT

From early 2008 to February 2009, Porche was the chief executive officer of Kensington Resources, Inc. (Kensington), an entity through which Porche and others solicited investors in American Environmental Energy, Inc. (AEEI), the purported “green energy” company to which investor funds were to be sent. (OIP at 1; Mot., Ex. C at 2.) Porche has never been registered with the Commission in any capacity. (Id.) Porche participated in the offering of AEEI stock, which is a penny stock. (OIP at 1.) Porche, fifty-two years old, is a resident of Irvine, California. (Id.)

On December 29, 2010, the Default Judgment was entered against Porche, permanently enjoining him from future violations of Securities Act Sections 5 and 17(a), Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5, in SEC v. Porche. (OIP at 2; Mot., Ex. B.)

Additionally, official notice is taken to the fact that in February 2001 Porche pled guilty to four counts of mail fraud, was sentenced to thirty-seven months in jail, followed by three years of supervised release, and ordered to pay \$200,000 in restitution in United States v. Porche, No. 2:99-cr-01177-WMB (C.D. Cal.).

The Commission’s complaint alleged that Porche participated in a fraudulent offering of unregistered shares of AEEI stock, in which Kensington raised over \$11 million from approximately 200 investors nationwide. (OIP at 2.) The complaint also alleged that when selling shares of AEEI, Kensington’s sales staff, which was hired by Porche, repeatedly made misrepresentations concerning payment of sales commissions and the use of proceeds. (Id.) Specifically, the complaint alleged that sales agents falsely told investors that commissions were limited to 10% of the funds raised and that 80% of the funds would be used by AEEI to conduct its green energy business. (Id.) The complaint also alleged that investors were provided a written Private Placement Memorandum that was reviewed by Porche that contained the same false information. (Id.) The complaint further alleged that, in reality, Kensington only sent AEEI \$315,000 of the \$11 million raised and used nearly all of the money raised to fund the lavish lifestyles of Porche and another Kensington principal, to pay 25% commissions to Kensington’s sale staff, and to pay for Kensington’s overhead. (Id.)

## CONCLUSIONS OF LAW

Section 15(b)(6) of the Exchange Act, authorizes the Commission to impose remedial sanction on a person associated with a broker or dealer at the time of the misconduct, consistent with the public interest, if the person has been enjoined from engaging in conduct in connection with the purchase or sale of any security. See 15 U.S.C. §§ 78o(b)(4)(C), 78o(b)(6)(A)(iii). Furthermore, Section 15(b)(6) also allows for the imposition of a remedial sanction on an associated person if the person was convicted within ten years of any felony involving the violation of 18 U.S.C. § 1341. See 15 U.S.C. §§ 78o(b)(4)(B)(iv), 78o(b)(6)(A)(ii). Sanctions include censure, placing limitations on the activities or functions of a person, suspension for a period not exceeding twelve months, or barring any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent,

or nationally recognized statistical ratings organization, or from participating in an offering of penny stock. The criteria for making public interest determinations are:

[t]he egregiousness of the defendant'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.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005.) Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Porche was a broker, although unregistered, within the meaning of the Exchange Act at the time of his underlying misconduct. Pursuant to Section 3(a)(4)(A) of the Exchange Act, Porche was a "person engaged in the business of effecting transactions in securities for the account of others." The fact that Porche was not associated with a registered broker or dealer during the time of his wrongdoing does not insulate him from a bar. See Vladislav Steven Zubkis, 86 SEC Docket 2618 (Dec. 2, 2005), recon. denied, 87 SEC Docket 2584 (Apr. 13, 2006).

While no findings of fact were made in the civil action underlying this proceeding, the OIP noted that Porche defrauded investors of over \$11 million, which occurred for approximately a year, where he violated both registration and antifraud laws. The district court noted in the Final Order that the alleged conduct was outrageous, and such fraudulent, illegal, and unethical conduct involving enormous sums of money shocks the conscience. (Mot., Ex. C at 6.) The district court concluded that:

The allegations suggest a carefully-planned and implemented strategy to defraud investors by Defendants' claims to investors that they were funding a "green energy" company when they were, instead, misappropriating funds to fund their lavish lifestyles.

(Mot., Ex. C at 7.) Porche has not participated in this proceeding, or the civil action, and therefore, has failed to provide assurances against future violations or to recognize the wrongful nature of his conduct.

Furthermore, the Commission has noted that "the fact that a person has been enjoined from violating the antifraud provisions 'has especially serious implications for the public interest.'" Michael T. Studer, 57 S.E.C. 890, 898 (2004) (quoting Marshall E. Melton, 56 S.E.C. 695, 713 (2003)). "Conduct that violates the antifraud provisions of the federal securities laws is . . . subject to the severest of sanctions under the securities laws." Jose P. Zollino, 89 SEC Docket 2598, 2608 (Jan. 16, 2007); Melton, 56 S.E.C. at 713. The existence of such an

injunction can indicate the appropriateness of a bar from participation in the securities industry. See Michael Batterman, 57 S.E.C. 1031, 1043 (2004); Melton, 56 S.E.C. at 709-710.

On this record, I find that the public interest factors indicate that Porche's continued participation in the securities industry will present opportunities for future violations and that bars are in the public interest.

### **ORDER**

IT IS ORDERED, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Joseph R. Porche is BARRED from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical ratings organization.

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Robert G. Mahony  
Administrative Law Judge