UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6872 / April 11, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-18649

In the Matter of the Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on behalf of ROGER T. DENHA For Consent to Associate with SkyOak Wealth, LLC	ORDER GRANTING AMENDED APPLICATON FOR CONSENT TO ASSOCIATE

Roger Denha was an investment adviser representative of BKS Advisors LLC ("BKS"), an investment adviser registered with the Commission. In 2018, to settle administrative and cease-and-desist proceedings filed against him, Mr. Denha consented to a Commission order barring him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[1] After filing an initial application to associate in December 2021, on October 14, 2022, Mr. Denha filed his pending amended application (the "Application") for consent to associate with SkyOak Wealth, LLC ("SkyOak"), a Commission-registered investment adviser.

Mr. Denha has established that permitting his association with SkyOak is in the public interest. We conclude Mr. Denha made this showing for the reasons set forth below, and, accordingly, grant his Application.

I. Background

A. Mr. Denha Consented To A Bar From The Securities Industry

In an order dated August 17, 2018, the Commission, among other things, barred Mr. Denha from association with "any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization."[2] The

[1] *In the Matter of Roger T. Denha*, Investment Advisers Act of 1940 Release No. 4988, 2018 WL 3955492, at *3 (Aug. 17, 2018) (settled order) [hereinafter, "*Denha Order*" or the "Order"].
[2] The Order also prohibited Mr. Denha from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a

Commission barred him after finding that, while associated with BKS, Mr. Denha engaged in fraudulent trade allocation, or "cherry-picking." He purchased securities in an omnibus account and waited to allocate the trades between himself and his clients until after he had an opportunity to determine whether the securities had increased in value. He then disproportionately allocated the profitable trades to his favored accounts (including his personal and family accounts) and disproportionately allocated the unprofitable trades to other clients. Mr. Denha consented to entry of the Order. He neither admitted nor denied the Commission's findings. The Order did not provide Mr. Denha with a right to apply for reentry to the securities industry after a specified period of time.

The Commission further ordered Mr. Denha to cease and desist from committing or causing violations or future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5(a) and 10b-5(c) thereunder and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") and ordered him to pay $412,230 in disgorgement and $35,388 in prejudgment interest plus a $169,000 civil penalty. BKS also consented to the entry of a Commission order, finding that it, among other violations, failed reasonably to supervise Mr. Denha.[3]

B. Mr. Denha's Application

Mr. Denha filed his Application pursuant to Rule 193 of the Commission's Rules of Practice, which sets forth the procedure by which a barred individual may seek the Commission's consent to associate with certain entities, including a registered investment adviser. Mr. Denha seeks to associate with SkyOak as an investment adviser representative. The terms and conditions of his proposed employment are set out in: (1) the "Written Statement by SkyOak Pursuant to [Commission] Rule [of Practice] 193(c)(4)"; (2) an affidavit Mr. Denha furnished as required by Commission Rule of Practice 193(c) ("Affidavit"); and (3) the "Proposed Enhanced Supervision Plan for Roger Denha," attached as Exhibit A to his Affidavit.

SkyOak affirms that Mr. Denha would be subject to enhanced supervision. This enhanced supervision would include daily reviews of Mr. Denha's transactions and positions, pre-approval of his personal securities transactions, surveillance of his e-mails, periodic and documented compliance training, and a strict prohibition on his acting in any role as a supervisor, manager, or trainer. SkyOak represents that Mr. Denha's investment recommendations would be made within a models-based asset allocation management platform, which is implemented by an outsourced Chief Investment Officer. Also, his positions would be allocated and reviewed in advance of any block trades, a control specifically designed to prevent the cherry picking of trades that formed the basis of Mr. Denha's enforcement action. Moreover,

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registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, and from participating in any offering of a penny stock. *Id*. at *3-4.

[3] *See In the Matter of BKS Advisors LLC*, Advisers Act Release No. 4987, 2018 WL 3955493, at *1-4 (Aug. 17, 2018) (settled order). In addition to finding that BKS failed reasonably to supervise Mr. Denha, the Order found that BKS willfully violated Sections 206(2), 207, and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and ordered, among other relief, that BKS cease and desist from committing or causing violations of such provisions and that it pay a $75,000 civil penalty. *Id*. at *4-5.

Mr. Denha would be required to execute all of his transactions through SkyOak's trading and investment team.

Mr. Denha would be directly supervised through SkyOak's internal compliance program. Mr. Denha would be monitored by Ann Zemann, SkyOak's Chief Compliance Officer ("CCO"). Ms. Zemann is listed as CCO in SkyOak's Form ADV, and she provides compliance services through her third-party firm, Stile Compliance ("Stile"). Ms. Zemann has over 20 years of compliance experience. Mr. Denha would also be monitored by Kevin Zemann, Stile's Program Implementation Director, and supervised by Jeremy Brandt, SkyOak's Managing Partner and Deputy CCO. The Application represents that none of these individuals, nor SkyOak, has a disciplinary history.

II. Discussion

We grant Mr. Denha's Application because it establishes that it is in the public interest to permit him, a person subject to an unqualified bar, to reenter the securities industry.

A. Applicable Standard Of Review

The Commission imposes bars pursuant to Congressional mandates. For instance, Advisers Act Section 203(f) provides that the Commission, by order, "shall":

> censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated [engaged in specified misconduct].[4]

Section 15(b)(6) of the Exchange Act is worded similarly for any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock. For these persons the statute mandates that the Commission, by order, "shall":

> censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension,

[4] 15 U.S.C. § 80b-3(e); *see also* 15 U.S.C. §§ 80a-9(a) & (b).

> or bar is in the public interest and that such person [engaged in specified misconduct].[5]

Bars, such as the one imposed on Mr. Denha, serve important remedial purposes for the public interest and for investor protection. Bars encourage rehabilitation by separating the violator from the industry and environment that provided the opportunity for the underlying violation and by signaling to the violator that the Commission deemed remedial provisions prophylactically necessary. At the same time, by preventing association, bars mitigate the risk that violators present to investors and regulated entities, and limit the risk of personal recidivism.

The reentry process established under Rule 193 further allows the Commission to evaluate a violator's ongoing fitness for reassociation and to impose remedial conditions on any such association. The Commission is able to conduct such evaluations for each specific employment sought by the violator. The reentry process allows the Commission to ensure investors are protected by robust supervision at the regulated entity and that measures are in place to reduce the risk of recidivism.

Rule 193(d) requires that an applicant "shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest."[6] The burden rests with the applicant to make this showing.[7] To carry this burden, Rule 193 requires addressing the manner and extent of the supervision to be exercised over the applicant and the capacity or position in which the applicant proposes to be associated.[8] Consistent with this requirement, the Rule's Preliminary Note stresses as follows:

> The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to the imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.[9]

Rule 193 further requires an applicant to address: the passage of time since the imposition of the bar; any restitution or similar action taken to recompense persons injured by the misconduct that resulted in the bar; the applicant's compliance with the Order imposing the bar; the applicant's employment following the imposition of the bar; any relevant courses, seminars, or examinations completed after the bar to prepare for a return to the securities business; and any

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[5] 15 U.S.C. § 78*o*(b)(6)(A).
[6] 17 C.F.R. § 201.193(d).
[7] *Id*., § 201.193, Preliminary Note, §§ (a)(1) & (a)(2).
[8] *Id.*, §§ 201.193(e)(5) & (e)(6).
[9] *Id*., § 201.193, Preliminary Note, § (a)(1).

other information material to the application.[10] The factors allow the applicant to address, and the Commission to consider, any facts and circumstances particular to the applicant that are relevant to the public-interest inquiry. In addition to the factors, the Commission "will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest."[11]

In considering applications submitted pursuant to Rule 193, the Commission has distinguished between unqualified bars with no stated right to apply for reentry after a specified period of time—*i.e.*, the type of bar to which Mr. Denha consented—and qualified bars stating that an application for reentry may be made after a specified period of time. While both types of applicants for reentry must demonstrate that the request was consistent with the public interest, the Commission has historically required applicants with unqualified bars to demonstrate extraordinary circumstances to meet the public interest standard.[12] In *In the Matter of Victor Teicher*, we noted that, "absent extraordinary circumstances, a person subject to an unqualified bar will be unable establish that it is in the public interest to permit reentry to the securities industry . . . ."[13]

In *Teicher* and other cases, the Commission's approach may be perceived to have established an additional consideration in evaluating the Rule 193 factors or even to create an insurmountable hurdle to those applicants who can demonstrate, among other things, that it is otherwise in the public interest that they be able to reenter the industry with robust investor-protection conditions and supervision that addresses the risks presented by their prior conduct. The Commission recognizes that it is in the public interest to allow barred individuals to reenter the industry if their individual circumstances demonstrate rehabilitation and increased risk-controls to prevent recidivism, which will increase investor protection. In turn, readmissions will encourage other barred individuals who wish to reenter the securities industry to take similar steps toward rehabilitation, compliance, and remediation, and to seek enhanced supervision to reduce the risk of recidivism on reentry. As a result, we no longer intend to use the "extraordinary circumstances" test in evaluating applications for consent to associate under Rule 193.

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[10] *Id*., § 201.193(e).

[11] *Id*., § 201.193, Preliminary Note, § (a)(3).

[12] *See In the Matter of Victor Teicher*, Exchange Act Release No. 58789, 2008 WL 4587535, at *2 (Oct. 15, 2008) (Commission Op.); *In the Matter of Matthew D. Sample*, Exchange Act Release No. 75893, 2015 WL 5305992, at *5-6 (Sept. 10, 2015) (Commission Op.); *In the Matter of Daniel Sholom Frishberg*, Advisers Act Release No. 5682, 2021 WL 467231, at *3-4 (Feb. 9, 2021) (Commission Op.).

[13] *Teicher*, 2008 WL 4587535, at *2 (denying motion to modify a bar order and stating, "we have made clear that, when an unqualified bar has been imposed, as is the case here, this 'evidences [our] conclusion that the public interest is served by permanently excluding the barred person from the securities industry . . . [and that], absent extraordinary circumstances, a person subject to an unqualified bar will be unable to establish that it is in the public interest to permit reentry to the securities industry.'") (emphasis in original) (quoting *Unqualified Bar Orders*, Exchange Act Release No. 34720, 1994 WL 544424 (Sept. 13, 1994)); *see also Frishberg,* 2021 WL 467231, at *5-6; *Sample*, 2015 WL 5305992, at *3-4.

Whether an applicant's reentry to the securities industry pursuant to the factors set forth in Rule 193 is in the public interest is by necessity a fact-intensive, individualized inquiry. This burden is appropriately heavy given Congress's recognition that the securities industry should be regulated for the protection of investors and in the public interest. Moreover, in considering whether to grant applications for reentry, the Commission will consider, and an applicant should address, all of the factors under Rule 193(e), taking into account the egregiousness and scope of the applicant's underlying violation, as set forth in Rule 193(a).

B. Application Of Rule 193

At the outset, the Commission cannot ignore the gravity of Mr. Denha's violations. Rule 193 requires that the Commission "*will* consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest."[14] The Commission found Mr. Denha's violations persisted over nearly five years, from January 2012 to November 2017.[15] The Commission found Mr. Denha willfully violated scienter-based anti-fraud provisions of the federal securities laws: Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder and Section 206(1) of the Advisers Act.[16]

Nonetheless, based on the Rule 193 factors, Mr. Denha has demonstrated that his reentry is in the public interest. First, over six years have elapsed since Mr. Denha's bar. Second, Mr. Denha timely paid his disgorgement, prejudgment interest, and civil penalty. As a result, a Fair Fund was available partially to reimburse the investors harmed by his misconduct.[17] Third, Mr. Denha complied with his bar since it was entered in 2018. Fourth, while Mr. Denha was not employed since the imposition of his bar, he actively performed charitable works and deeds. Fifth, Mr. Denha has demonstrated meaningful remorse. It appears he has learned from his misconduct and that he is committed to ensuring that he does not repeat his violations.

Most importantly, we consider the capacity in which Mr. Denha proposes to be associated and the manner and extent of the supervision to be exercised over him. The supervisory controls that will be in place for Mr. Denha as a SkyOak investment adviser representative are critically important to our decision to grant his Application. These supervisory controls are reasonably designed to prevent a recurrence of the conduct that led to the imposition of Mr. Denha's bar. SkyOak's enhanced supervision over Mr. Denha—including daily reviews of his transactions and positions, pre-approval of personal transactions, surveillance of his e-mails, required compliance training, his required use of a models-based asset allocation program,

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[14] *Id*., § 201.193, Preliminary Note, § (a)(3) (emphasis added).
[15] *Denha Order*, 2018 WL 3955492, at *1-3.
[16] *Id.* The Commission also found he violated Section 206(2) of the Advisers Act. Scienter is not required to establish a violation of Section 206(2), but rather may rest upon a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-195 (1963)).
[17] *See In the Matter of BKS Advisors LLC et al.*, Exchange Act Release No. 89113, 2020 WL 3428889, at *1 (June 22, 2020) (Fair Fund order) ("Since the total Harm Amount incurred by the Eligible Investors ($699,783.64) exceeds the amount currently in the Net Fair Fund the distribution from the available funds will be made on a pro-rata basis.").

and the additional controls in place for his placing of block trades—would provide safeguards against Mr. Denha's recidivism. SkyOak's willingness to hire Mr. Denha also signals that the firm's management feels comfortable there is no likelihood of recidivism by him.

In short, relying upon the representations in Mr. Denha's Application, the Commission concludes that he has made a satisfactory showing that the proposed association is consistent with the public interest, and, hence, that the Application meets the standard for relief set forth in Rule 193.

III. Conclusion

Mr. Denha has established that granting his Application is in the public interest. Accordingly, it is ORDERED that:

1. Mr. Denha's Application is granted; and
2. The Commission's consent permits Mr. Denha to associate with SkyOak Wealth, LLC as an investment adviser representative limited to the terms of association described in this Order. If Mr. Denha seeks to associate in any other capacity or to change any terms of association described in this order, he must submit a new application; provided, however, that if SkyOak Wealth, LLC makes a change in supervisory personnel and the change is not unacceptable to the Commission staff, notification will suffice. Notification of such a change must be submitted within 14 calendar days of the change to the Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549 and at ENF-Reentry@SEC.GOV.

By the Commission.

Vanessa A. Countryman
Secretary