SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 5906 / November 5, 2021

Admin. Proc. File No. 3-19245

In the Matter of

KIMM C. HANNAN

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of securities fraud on 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:

Timothy J. Stockwell and Charles J. Kerstetter for the Division of Enforcement.

On July 11, 2019, we instituted administrative proceedings against Kimm C. Hannan, pursuant to Section 203(f) of the Investment Advisers Act of 1940, to determine whether the statutory predicate for an administrative remedy was satisfied and whether remedial action would serve the public interest.[1] The order instituting proceedings ("OIP") alleged that Hannan had been convicted of defrauding nine individuals while associated with an investment adviser. Hannan failed to file an answer to the OIP, failed to respond to an order to show cause why he should not be found in default for failing to file an answer, and failed to respond to the Division of Enforcement's motion for entry of default and sanctions. We now find Hannan to be in default, deem the allegations of the OIP to be true, and bar him from the securities industry.

I. Background

The OIP alleged that, following a jury trial, Hannan was convicted in 2019 of defrauding nine individuals in a series of transactions between 2014 and 2017, in violation of Ohio Revised Code Section 1707.44(G), which prohibits fraud by a party who is purchasing or selling securities, and Section 1707.44(B)(4), which prohibits false representations in the sale of securities.[2] The OIP also alleged that Hannan was sentenced to a 20-year prison term and ordered to pay over $1.6 million in restitution. It alleged further that during the time of his misconduct Hannan was an investment adviser representative associated with an investment adviser registered with the Commission.

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 Hannan to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Hannan that if he failed to answer, he could be deemed in default, the allegations in the OIP could be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP.[4]

Hannan was properly served with the OIP on August 27, 2019, pursuant to Rule of Practice 141(a)(2)(i),[5] but did not answer it. On July 26, 2021, more than twenty days after service, Hannan was ordered to show cause by September 9, 2021, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[6] Hannan was warned that, if he was found 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. The order to show cause acknowledged the Division's January 16, 2020 motion

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1 *Kimm C. Hannan*, Advisers Act Release No. 5295, 2019 WL 3035536 (July 11, 2019).

2 Ohio Rev. Code Ann. § 1707.44.

3 17 C.F.R. § 201.220(b).

4 *See* Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

5 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "sending a copy . . . addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt").

6 *Kimm C. Hannan*, Advisers Act Release No. 5808, 2021 WL 3158391 (July 26, 2021).

requesting that the Commission find Hannan in default and bar him from the securities industry. The Division supported that motion with copies of the indictment, sentencing form, and judgment, together reflecting Hannan's criminal conviction for securities fraud. Hannan failed to answer the OIP, respond to the order to show cause, or respond to the Division's motion.

II. Analysis

A. We hold Hannan 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 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."[7] Because Hannan has failed to answer or respond to the order to show cause or the Division's motion, we find it appropriate to deem him in default and to deem the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP and the evidentiary materials that the Division submitted with its motion for default and sanctions.

B. We find an industry bar to be in the public interest.

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 (i) the person was convicted, within ten years of the commencement of the proceeding, of any felony or misdemeanor concerning the purchase or sale of any security; (ii) the person was associated with an investment adviser at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[8] Hannan was convicted on numerous counts of fraud and false representations in the purchase or sale of securities, a felony under Ohio state law, in 2019.[9] And the allegations of the OIP deemed true establish that Hannan was at the time of his misconduct a person associated with an investment adviser.

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 his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[10] Our

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[7] 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 § 201.155(a)").

[8] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)(2)(A), regarding crimes involving the purchase or sale of a security).

[9] *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "convicted" to include a verdict or a judgment if it "has not been reversed, set aside, or withdrawn").

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

public interest inquiry is flexible, and no one factor is dispositive.[11] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[12]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. Hannan's misconduct was egregious and recurrent. On dozens of occasions between 2014 and 2017, Hannan fraudulently sold securities to investment advisory clients or made materially false representations in the sale of securities to investment advisory clients, thereby causing his clients losses exceeding $1.6 million. For that conduct, he received a 20-year prison term. In connection with the same scheme, a jury found him guilty of theft committed "with purpose" and "knowingly" and that he specifically stole from investment advisory clients that included "elderly persons, disabled adults" and "active duty service members." The jury's findings thus show that Hannan acted with a high degree of scienter.[13]

Because Hannan failed to answer the OIP or respond to the order to show cause or to the Division's motion, he has made no assurances to us that he will not commit future violations or that he recognizes the wrongful nature of his conduct. It also appears that Hannan's occupation presents opportunities for future violations because for over fifteen years, including during the period of his misconduct, he was associated with a registered investment adviser. Although Hannan is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.[14]

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 Hannan is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[15] Because Hannan 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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[11] *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

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

[13] *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).

[14] *See, e.g.*, *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"); *see also, e.g.*, *SEC v. Monarch Funding Corp.*, No. 85-7072, 1996 WL 348209, at *9 & n.12 (S.D.N.Y. June 24, 1996) (noting that defendant had "not ceased his involvement with the securities industry" "while incarcerated, [and] has managed to remain involved in questionable ventures that have resulted in violation of the securities laws").

[15] *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[16]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, ROISMAN, LEE, and CRENSHAW).

Vanessa A. Countryman
Secretary

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

UNITED STATES OF AMERICA
before the
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In the Matter of

KIMM C. HANNAN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Kimm C. Hannan 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