**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 93307 / October 13, 2021**

**ADMINISTRATIVE**
**PROCEEDING File No. 3-20622**

**In the Matter of**

**IBRAHIM ALMAGARBY,**

**Respondent.**

# MOTION BY DIVISION OF ENFORCEMENT FOR DEFAULT DISPOSITION AND FOR IMPOSITION OF REMEDIAL SANCTIONS

The Division of Enforcement ("Division"), pursuant to Rules 155(a) and 220(f) of the Securities and Exchange Commission's Rules of Practice and for the reasons set forth below and in the Declaration of Robert K. Gordon ("Gordon Dec."), respectfully moves for default disposition against Respondent Ibrahim Almagarby containing the following relief:

> barring Respondent Ibrahim Almagarby from engaging in activities with any broker, dealer, investment adviser, transfer agent, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization (NRSRO).



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## I. INTRODUCTION

On November 17, 2017, the Commission filed a complaint against Ibrahim Almagarby and his company, Microcap Equity Group, LLC ("MEG"), alleging that from January 2013 through July 2016, they operated as securities dealers without registering as such in violation of Section 15(a) of the Securities Exchange Act of 1934. *Securities and Exchange Commission v. Ibrahim Almagarby, et al.*, Case Number 17-62255-CIV-COOKE/HUNT (S.D. Fla.) (*"SEC v. Almagarby, et al."*). As to Almagarby, the complaint pled in the alternative that he was a control person of MEG and that, as such, he was jointly and severally liable for MEG's violation.

On August 17, 2020, the Court granted the SEC's motion for summary judgment against Almagarby and MEG, finding MEG to be a "dealer" within the meaning of Section 3(a)(5)(A) of the Exchange Act and not eligible for any statutory exception. (Ex. H to Gordon Dec.). The Court found that because MEG was unregistered, it had violated Section 15(a) of the Exchange Act, and it held Almagarby jointly and severally liable as a control person of MEG under Section 20 of the Exchange Act. (*Id.*).

On September 29, 2021, the Court entered an order pursuant to the SEC's motion for remedies. (Ex. A to Gordon Dec.). The Court adopted the Report and Recommendation of the Magistrate Judge (Ex. B to Gordon Dec.),

permanently enjoined Almagarby from future violations of Section 15(a)(1) of the Exchange Act, and imposed all of the other relief sought by the SEC against the Defendants including disgorgement, civil penalties, a penny stock bar, and other relief. (Ex. A to Gordon Dec.)

On October 13, 2021 the Commission issued the Order Instituting Administrative Proceedings ("OIP") pursuant to Section 15(b) of the Exchange Act. (Ex. C to Gordon Dec.). The OIP alleged that Almagarby had been enjoined from violations of Section 15(a) of the Securities Act and ordered a hearing to determine what administrative remedial sanctions against Almagarby were in the public interest. (*Id.*).

The SEC served Almagarby and his counsel with the OIP at his counsel's office by U.S. Postal Service certified mail. (Gordon Dec. ¶ 4 and Ex. D &E). Delivery was made to counsel's office on October 18, 2021. (*Id.*). Joshua Katz, Esq., counsel for Almagarby, acknowledged receiving the OIP in an email to SEC counsel (Ex. F to Gordon Dec.) and in a telephone call with them.[1] (Gordon Dec. ¶

[1]Days after the call, counsel for Almagarby filed a notice of appeal of the District Court's judgment to the Eleventh Circuit; the appeal is currently pending. (Ex. G, Gordon Dec.). The appeal does not affect the injunction's status as a basis for administrative action. *See In re Seghers*, 2007 WL 2790633 *3 (Sept. 26, 2007), citing *Elliott v. SEC*, 36 F.3d 86, 87 (11th Cir. 1994) ("Under the statutory language, existence of the injunction provides a ground for the bar adequate in itself."); *Michael T. Studer*, Securities Exchange Act Rel. No. 50411 (Sept. 20, 2004), 83 SEC Docket 2853, 2859 ("[T]he fact that [a respondent] is still litigating [an injunctive] action does not affect our statutory authority to conduct this

5). Pursuant to Rule 220(b) of the Commission's Rules of Practice, Almagarby's answer was due no later than November 8, 2021. Almagarby has not filed an answer or otherwise responded to the OIP. (Gordon Dec. ¶ 6). Accordingly, pursuant to Rule 155(a) and 220(f) of the Commission's Rules of Practice, the Division seeks default disposition and the imposition of the sanctions specified above.

## II. FACTUAL BACKGROUND

Because Almagarby has not timely answered, the Commission may deem true the allegations of the OIP. *See* 17 C.F.R. §§ 201.155(a). The OIP alleges as follows:

From at least January 2013 and continuing through at least July 2016, Respondent was the sole principal of Microcap Equity Group LLC ("MEG"), an entity operating as a dealer while neither MEG nor Respondent were registered with the Commission as a dealer. During the time in which he engaged in the

proceeding."); *Joseph P. Galluzzi*, 55 S.E.C. 1110, 1116 n.21 (2002) ("[T]he pendency of an appeal does not preclude us from acting to protect the public interest."); *Ira William Scott*, 53 S.E.C. 862, 865 (1998) ( "The Advisers Act permits us to impose sanctions on the basis of a qualifying conviction. We need not await the outcome of any post-conviction proceeding in order to proceed."). If the appellate court reverses the District Court's judgment, Almagarby may seek to vacate any action based on that judgment. *Seghers*, 2007 WL 2790633 *3 (citing cases).

conduct underlying the complaint, Respondent was also not associated with an entity registered with the Commission as a broker or dealer. (Ex. C to Gordon Dec.).

On September 29, 2021, the Court entered a final judgment against Almagarby permanently enjoining him from future violations of Section 15(a)(1) of the Exchange Act in *SEC v. Almagarby, et al*., Case No. 17-62255-CIV-COOKE/HUNT, in the United States District Court for the Southern District of Florida. (Ex. A to Gordon Dec.).

The OIP stated that the complaint alleged that, from at least January 2013 continuing through at least July 2016, Almagarby and his doing-business-as company, MEG, effected transactions in, or induced or attempted to induce the purchase of sale of, securities while neither Almagarby nor MEG were registered with the Commission as a broker or dealer or, in regard to Almagarby only, while he was not associated with an entity registered with the Commission as a broker or dealer. (Ex. C to Gordon Dec.).

The District Court made the following findings of fact in its order ruling on the parties' cross-motions for summary judgment (Ex. H to Gordon Dec):[2]

[2] Material findings in an injunctive proceeding may not be collaterally attacked in an administrative proceeding. *See, e.g., In Re Ted Harold Westerfield*, 199 WL 100954 n.22 (March 1, 1999) (citing cases); *In Re Joshua D. Mosshart*, 2021 WL 517422 *2 (February 11, 2021) (Commission does not permit a respondent to

Almagarby formed MEG in January 2013. (*Id.* at 1). From January 2013 through July 2016, he was the sole owner, officer, employee, and controlling person of MEG. (*Id.*). MEG's business model was based on obtaining shares from microcap companies ("issuers") at a discount and selling them in the market at a profit. MEG obtained shares by purchasing "aged debt"—either six months or one year old depending on the particular exemption sought from the registration provisions of the Securities Act of 1933—from the issuers' debtholders and obtaining the right to convert the debt into common stock of the issuers at a discount. (*Id.* at 2) Typically, the discount was 50 percent of the market price. (*Id.*). By obtaining shares in exchange for aged debt, MEG was able to sell the shares into the market pursuant to an exemption to the registration requirements of SEC Rule 144. (*Id.*).

MEG entered into written contracts and informal arrangements with "finders" who, for compensation, would identify, contact, and refer issuers with aged debt who were willing to assign some portion of their debt to MEG and repay MEG through the issuance of discounted shares. *(Id.* at 2-3). MEG's principal finder engaged sub-contractors, each of whom would typically call between 40 and 60 companies per day in attempting to find referrals for MEG. (*Id.*).

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relitigate issues addressed in previous civil proceeding against respondent) (citing cases).



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Upon receipt of a conversion notice, the issuers would arrange for their transfer agents to deposit the requested shares into one of MEG's brokerage accounts. (*Id.* at 3). MEG had no fewer than six brokerage accounts into which it received deposits of shares from the issuers that had executed convertible notes or debentures to MEG. (*Id.*). Following the deposit of the shares into MEG's brokerage accounts, MEG's brokers sold the shares into the market pursuant to Almagarby's instructions. (*Id.*).

Almagarby typically converted issuer debt into shares within two weeks of obtaining the right to do so, and he usually sold the shares in one to two weeks once he received them. (*Id.*). Almagarby did not conduct research on the companies whose shares he acquired because his stated goal was to "turn [his] money around as fast as possible." (*Id.*).

During the relevant period, MEG engaged in at least 57 purchases of aged debt from the debtholders of at least 38 different issuers. (*Id.*). MEG received deposits of shares into its brokerage accounts on no fewer than 167 occasions as a result of issuing conversion or reset notices. (*Id.*). MEG completed no fewer than 962 sales of shares. MEG received approximately 8.5 billion shares, and the total number of shares MEG sold during this period exceeded 7.6 billion. (*Id.*). MEG purchased no less than approximately $1,115,000 of outstanding debt from the issuers and obtained more than $2.8 million in proceeds from selling shares



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obtained pursuant to the convertible debentures and related documents. (*Id.*). MEG used the proceeds from the sales of the shares to fund additional purchases of aged debt. (*Id.*).

## III. ARGUMENT

Almagarby has not filed an answer to the Commission's OIP despite the passage of more than seven months since it was served. (Gordon Dec. ¶ 6). The Commission should find Almagarby in default and enter judgment accordingly.

### A. Entry of Default is Appropriate

The SEC initiated service of the OIP on Almagarby and his counsel on October 13, 2021, and the OIP was received at counsel's office on October 18, 2021. (Gordon Dec. ¶¶ 4-5). Almagarby's answer was due no later than November 8, 2021, twenty days after service. (*See* Ex. C to Gordon Dec. at §IV). As of the date of this motion, Almagarby has not filed an answer or otherwise defended this action. (Gordon Dec. ¶ 6).

Commission Rule of Practice 155(a) provides that "[a] party to a proceeding may be deemed to be in default and the Commission or the hearing officer may 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, if that party fails . . . [t]o answer, to respond to a dispositive motion within the time provided, or to otherwise defend the proceeding." 17

C.F.R. § 201.155(a). When a party defaults, the Commission may determine the proceedings against that party upon consideration of the record without holding a public hearing. Commission's Rules of Practice, Rules 155 and 180. Here, because Almagarby has failed to "answer . . . or otherwise defend the proceeding," a default judgment should be entered against him, as provided by the Commission' Rules of Practice. *See* 17 C.F.R. § 201.220(f) (respondent who fails to file an answer within the required time may deemed in default pursuant to 17 C.F.R. § 201.155(a)).

B. The Commission Is Authorized to Sanction Persons Who Are Enjoined From Acting As An Unregistered Dealer

Section 15(b)(6)(A)(iii) of the Exchange Act provides, in part, that "the Commission, by order, shall censure, place limitations on the activities or functions of [any person who is associated, or at the time of the alleged misconduct was associated with a broker-dealer] 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, . . . if the Commission finds . . . [that such a sanction] is in the public interest" and that such person "is enjoined from any action, conduct or practice specified in subparagraph (c) of paragraph 4," which includes being enjoined from acting as a broker or dealer, or willfully violating any provision of the Securities Act. 15 U.S.C. §§ 78o(b)(6)(A)(i) and

(iii), 78o(b)(4)(C), 78o(b)(4)(D). Almagarby has been enjoined from acting as an unregistered dealer. As a control person of an unregistered dealer, Almagarby is subject to the Commission's follow-on proceeding authority pursuant to Exchange Act § 15(b)(6). *See, e.g., In the Matter of James S. Tagliaferri*, 2017 WL 632134 *5 (February 15, 2017). Imposition of a collateral bar prohibiting Almagarby from participating in the securities industry is in the public interest and should be entered.

1. Almagarby Was Enjoined From Acting As An Unregistered Dealer

Almagarby was enjoined on September 29, 2021 from acting as an unregistered dealer in violation of Section 15(a) of the Exchange Act. (Ex. A to Gordon Dec.). As alleged by the Commission, and as determined by the District Court, Almagarby was the control person of MEG—an unregistered dealer—when when it engaged in the regular business of buying and selling securities over a two-and-a-half-year period in connection with providing financing to publicly traded microcap companies, including penny stock companies. (Ex. C and H to Gordon Dec.).

2. Industry Bars Against Almagarby Are In The Public Interest

In considering the appropriateness of sanctions, the Commission is guided by the public interest factors identified in *Steadman v. SEC*, 603 F.2d 1126, 1140

(5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).[3] Those factors include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. *Id*. at 1140. The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *5 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co*., Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006).

The *Steadman* factors are flexible and no one factor is dispositive. *See Gary M. Kornman*, Admin. Proc. File No. 3-12716, SEC Release No. IA-2840, 2009 WL 367635, *6-7 (Feb. 13, 2009). The Commission must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and the decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent

[3] It is instructive that in regard to the permanent injunction, the civil penalties, and the penny stock bar imposed by the District Court, both the Magistrate Judge and the District Court considered the *Steadman* factors and determined after full briefing that these remedies were appropriate. (Ex. A, B and I to Gordon Dec.).

and the risk of future misconduct." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416 at *2 (Mar. 7, 2014) (internal quotation marks omitted). The Commission must consider whether the sanction will have a deterrent effect. *See Schield Mgmt Co. and Marshall L. Schield*, Admin. Proc. File No. 3-11762, 87 SEC Docket 695, 2006 WL 231642, *8 n.46 (Jan. 31, 2006) (stating that the selection of an appropriate sanction involves consideration of several elements, including deterrence).

Although a violation of Section 15(a) of the Exchange Act does not require proof of scienter, this fact alone does not tilt the balance against the associational bars sought. Almagarby's violation was egregious, occurring over at least two-and-half years and involving the flooding of billions of shares into the market and hundreds of securities transactions while operating as an unregistered dealer. As the courts have noted, the dealer registration requirement is "of the utmost importance in effecting the purposes of the Act" because it enables the Commission "to exercise discipline over those who may engage in the securities business and it establishes necessary standards with respect to training, experience, and records." *SEC v. Benger*, 2010 WL 918065 *9 (N.D. Ill. Mar. 10, 2010) (quoting *Celsion Corp. v. Stearns Mgmt. Corp.*, 157 F. Supp.2d 942, 947 (N.D. Ill. 2001); *Regional Props, v. Financial & Real Estate Consulting, Co.*, 678 F.2d 552,



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562 (5th Cir. 1982)). Although the violation was singular, it consisted of recurrent and continuing conduct and cannot be considered an isolated transgression.

While foreswearing future violations and expressing remorse, without more, are unlikely to result in the avoidance of sanctions, Almagarby has not even done this much in response to the OIP. Instead, after more than seven months, he has yet to file an answer. In addition, Almagarby is on record denying that his conduct required registration even *after* the Court found him liable, although he did state that he would "respect the Court's ruling." (Ex. J ¶7 to Gordon Dec.).

Regarding the threat of future violations, Almagarby is relatively young (32), and has a history of profiting from a microcap financing model predicated on dealer activity. Whether he will commit securities violations in the future is, of course, unknowable. It is may be relevant, however, that Almagarby continues to make filings with the Florida Division of Corporations and to remit fees to continue MEG in "active" status. In fact, he last did so on March 17, 2022. (Ex. L and O to Gordon Dec.). In addition, he maintains as "active" two other companies—Almagarby International LLC and Archstone Capital LLC—that he acknowledges were initially formed for the express purpose of transacting shares of stock of microcap companies. (Ex. K to Gordon Dec. at pp. 13-17).

On November 6, 2020, Almagarby contended in a sworn declaration to the District Court that he had kept MEG "active" only because he thought it would be



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inappropriate to dissolve it while the action was pending. (Ex. J ¶ 11 to Gordon Dec.). Despite the entry of a final judgment against him on September 29, 2021 (Ex. A to Gordon Dec),[4] however, on March 17, 2022 Almagarby made a new filing with the Florida Division of Corporations to continue MEG as an "active" company. (Ex. L to Gordon Dec.).

Regarding Almagarby International LLP and Archstone Capital LLP, Almagarby's reason for filing annual reports over the years to maintain them in "active" status in Florida is unknown. Almagarby initially formed these companies to conduct transactions in the stock of microcap companies. (Ex. K to Gordon Dec. at pp. 13-17). On March 17, 2022, Almagarby filed new annual reports for these companies with the Florida Division of Corporations to keep them active. (Ex. M and N to Gordon Dec.). Although it cannot be ruled out that Almagarby has legitimate reasons for continuing to keep the three companies active, his perpetuation of the companies, given the purpose for their formation, raises concerns. Moreover, the steps Almagarby took to extend the life of MEG following his November 6, 2020 sworn statement to the District Court do nothing to alleviate the concern (*See* Ex. J ¶ 11 to Gordon Dec.), especially since Almagarby has been subject to a penny stock bar since September 29, 2021.

[4] Amended February 15, 2022. (Ex. B to Gordon Dec.).

As noted, the Commission must consider harm to investors and to the marketplace in determining appropriate administrative sanctions. Almagarby's unregistered dealer activity was the cause of such harm. His injection of massive quantities of newly issued shares through unregistered dealer MEG significantly increased the issuers' total number of shares issued and outstanding, thereby diluting the value of the shares that those investors purchased. (*See* Ex. P ¶¶ 19-22 to Gordon and Ex. 6 thereto). The market price of shares almost always declined significantly between the date MEG executed the debt purchase agreement and the last day MEG sold shares of any particular issuer, even if MEG's activities were not necessarily the sole cause of the decline. (*See* Ex. P ¶¶ 11, 27 to Gordon Dec. and Ex. 3 thereto) (noting that the share prices of 23 of the 38 Issuers dropped 75% or more, with 15 of those Issuers suffering a 90% or more decline in share price). Investors who purchased shares from MEG thus saw the value of their share purchase significantly decline during MEG's and Almagarby's unlawful dealer activity. (*Id.*).

Finally, as noted, it is appropriate for the Commission to consider the deterrent effect of sanctions. Because operating as an unregistered dealer while providing dilutive financing to microcap companies (sometimes known as "toxic" or "death spiral" financing) has proliferated (*see* Ex. O ¶ 26 to Gordon Dec.), the Division has recently found it necessary to file multiple enforcement actions

against these unregistered dealers. *See, e.g*., *SEC v. Chicago Ventures Partners, LP, et al.*, SEC Rel. No. 24886, 2020 WL 5291429 (Sep. 3, 2020); *SEC v. Justin Keener, et al.*, SEC Rel. No. 24779, 2020 WL 1452508 (Mar. 24, 2020); *SEC v. John D. Fierro, et al.*, SEC Rel. No. 24748, 2020 WL 950737 (Feb. 26, 2020); *SEC v. River North Equity, LLC, et al.*, SEC Rel. No. 24419, 2019 WL 1124189 (Mar. 12, 2019); *Ironridge Global Partners, LLC, et al.*, Exch. Act Rel. No. 81443, 2017 WL 3588037 (Aug. 21, 2017) (settled order); and *IBC Funds, LLC,* Exch. Act Rel. No. 77195, 2016 WL 683557 (Feb. 19, 2016) (settled order). The violative conduct in these cases involves the same or a substantially similar business model as that used by Almagarby. The imposition of industry bars against Almagarby would deter him and others from engaging in unregistered dealer activity in the future.

## IV. CONCLUSION

For the reasons set forth herein, the Division requests that Commission find Almagarby in default and impose the requested industry-wide associational bars as authorized by Section 15(b) of the Exchange Act.



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Respectfully submitted,

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## Certificate of Compliance with Rule 154(c)

I hereby certify that the foregoing brief complies with Rule 154(c) of the Commission's Rules of Practice in that it contains 3,637 words, fewer than the 7,000 words permitted.

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## CERTIFICATE OF SERVICE

Undersigned Counsel for the Division of Enforcement hereby certifies that he has served a copy of the foregoing document by e-mail and United Parcel Service – Overnight Mail to the following:

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And has filed it using eFAP System (Electronically Filings in Administrative Proceedings).

This 2nd day of June, 2022.

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