UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21726

In the Matter of **BRIAN BARTLETT AMOAH and ELBERT "AL" ELLIOTT,** **Respondent.**	**DIVISION OF ENFORCEMENT'S MOTION FOR A DECISION GRANTING AN ASSOCIATIONAL BAR BY DEFAULT**

Pursuant to Rules 155(a) and 220(f) of the Commission's Rules of Practice, the Division of Enforcement respectfully requests that the Commission issue a decision granting an associational bar by default against Respondent Brian Bartlett Amoah ("Respondent" or "Amoah"). More specifically, the Division requests that the Commission bar Amoah from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical ratings organization ("NRSRO").

I. BACKGROUND

A. District Court Proceedings Against Amoah

On September 14, 2022, the Commission filed a district court Complaint against Amoah and others, alleging that Amoah violated Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. (*See* Ex. A.) The Complaint alleged that Amoah conducted a fraudulent and unregistered offering of a crypto asset security called BXY while

acting as an unregistered broker, illegally raising at least $1.5 million in proceeds through unregistered offers and sales of BXY to around 100 individuals. (*See generally id.*)

On November 16, 2022, Amoah was served at his home via his brother with a Summons and a copy of the Complaint. But Amoah never filed an answer or a responsive pleading to the complaint.[1] The Commission then moved for the entry of a default judgment against Amoah, and supported that motion with the Declaration of Craig McShane, an accountant within the Division of Enforcement. (*See* Ex. B.) The District Court then entered a final default judgment against Amoah, imposing permanent injunctive relief and other financial remedies, on May 10, 2023. (*See* Ex. C.)

B. The OIP's Factual Allegations

On September 26, 2023, the Commission issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Exchange Act and Notice of Hearing ("OIP"). *See* Exchange Act Release No. 98526 (Sept. 26, 2023). Like the district court complaint, the OIP alleged specific details about Amoah's violations of the Securities Act and the Exchange Act.

In April 2017, Amoah became the president and sole owner of Chicago Crypto Capital LLC ("CCC"), an Illinois limited liability company that offered and sold crypto assets, including crypto asset securities. (OIP ¶ 3.) Meanwhile, a company called Beaxy Digital Ltd. ("Beaxy") was developing a trading platform for crypto assets called the Beaxy Exchange, and needed to fund that development. (*Id.* ¶¶ 6, 10.) Around August 2018, Amoah entered into an arrangement with Beaxy on behalf of CCC to sell BXY tokens. (*Id.* ¶ 10.) CCC and Beaxy agreed that CCC would sell BXY tokens to investors for up to $0.05 per token, but that CCC would pay Beaxy only $0.02 per

[1] Under Rule of Practice 323, the Commission may take judicial notice of the record in the district court action. *See* 17 C.F. R. § 201.343; *In re Conrad A. Coggeshall*, Exchange Act Release No. 97474, Advisers Act Release No. 6306, 2023 WL 3433398, at *2 n.6 (May 10, 2023) (relying on Commission filings in the district court docket).

token and retain the difference. (*Id.*) CCC was not required to sell or purchase any specific quantity of BXY; instead, its role was to sell BXY to retail investors to increase the number of users of the Beaxy Exchange and generally to raise money for Beaxy. (*Id.* ¶ 11.) This BXY offering was not registered with the Commission, did not satisfy any exemption from registration, and Amoah was not registered with the Commission as a broker or associated with a Commission-registered broker-dealer. (*Id.* ¶ 12.)

Still, from approximately August 2018 through December 2019, CCC sales representatives, including Amoah, offered and sold BXY tokens, raising at least $1.5 million from around 100 individuals, many of whom lacked experience investing in crypto assets and were not accredited investors. (*Id.* ¶ 13.) The sales staff made many cold calls to potential investors all over the U.S. (*Id.* ¶ 14.) During these marketing efforts, sales representatives promoted BXY's profit potential, using sales scripts and written marketing materials approved by Amoah. (*Id.* ¶¶ 15-16.) The sales staff ignored whether these prospective investors had any experience with crypto asset securities, and used aggressive sales language and tactics encouraged by Amoah. (*Id.* ¶¶ 16-17.)

In return for its solicitation efforts, CCC was compensated through a markup CCC charged of up to 150% on each BXY token it sold to investors. (*Id.* ¶ 18.) And CCC handled the investors' funds and held BXY tokens for investors, without first purchasing any BXY from the issuer for later resale. (*Id.* ¶ 19.) But CCC salespeople failed to inform investors about that markup, or about a subsequent markup that CCC charged once BXY tokens were freely trading on certain crypto asset trading platforms. (*Id.* ¶¶ 20-21.) Amoah also failed to inform potential investors about the commission that he personally was earning, instead representing that funds from the sale would be used by Beaxy. (*Id.* ¶ 23.) In reality, CCC and Amoah used some of the proceeds that CCC retained from the BXY offering to fund Amoah's personal expenses, including travel, dining, and

Amoah's wedding flowers, as well as to compensate CCC's salespeople and purchase BXY for CCC's own account. (*Id.* ¶ 24.)

On top of making false representations about markups and commissions, Amoah also failed to deliver BXY tokens that had been prepurchased by certain investors. (*Id.* ¶ 25.) Even though certain investors repeatedly contacted Amoah to request delivery of their BXY tokens, Amoah failed to answer their requests, falsely promised to look into their requests while failing to follow up, or gave various excuses why he could not deliver the requested tokens. (*Id.*)

Finally, in the fall of 2019, Amoah told investors that he expected BXY to generate large returns, but he failed to tell those same investors that he was aware of serious financial and operational problems at Beaxy that threatened the viability of Beaxy and the BXY crypto asset security. (*Id.* ¶ 27.)

C. Amoah's Failure to Defend this Administrative Proceeding

After the OIP issued, Amoah was served with the OIP at his residence on December 9, 2023. *See* Status Report Regarding Service of Order Instituting Proceeding (Jan. 3, 2024). Amoah has since failed to answer or otherwise defend this proceeding. *See* Second Status Report Regarding Service of Order Instituting Proceeding (Feb. 14, 2024); Third Status Report Regarding Service of Order Instituting Proceeding (Mar. 27, 2024). The Commission then issued an Order to Show Cause, requiring Amoah to explain why he should not be found in default and this proceeding determined against him.[2] *See* Exchange Act Release No. 99885 (Apr. 2, 2024). To date, Amoah has not responded.

[2] The Division also sent Amoah a copy of the Order to Show Cause by email.

II. ARGUMENT

Under Section 15(b) of the Exchange Act, the Commission may impose remedial sanctions on a person associated with a broker, dealer, or investment adviser, consistent with the public interest, if the associated person has been permanently enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities. *See* 15 U.S.C. § 78o(b). The Commission should exercise that authority against Amoah here.

A. Amoah Is In Default, so the Factual Allegations of the OIP Should Be Deemed True

Under Rule 155(a) of the Commission's Rules of Practice, "a party to a proceeding may be deemed to be in default and the Commission . . . 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 . . . to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding. . . ."[3] *See* 17 C.F.R. § 201.155(a). Amoah was served with the OIP in December 2023, but to date has not appeared or filed a response in this proceeding. Nor has Amoah responded to the Commission's Order to Show Cause. Amoah is thus in default and all the factual allegations against him in the OIP should be deemed true. *See In re Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *2 (March 29, 2023) (deeming allegations of OIP as true against respondent in default).

Here, the allegations of the OIP establish that: (1) Amoah offered and sold BXY, a crypto asset security, without registering it with the Commission nor satisfying any exemption

[3] The OIP expressly advised Amoah of this possibility: "If Respondent[] fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent[] may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true."

from registration; (2) Amoah was not registered with the Commission as a broker nor associated with a Commission-registered broker-dealer, yet acted as a broker of BXY (by among other things, selling BXY on behalf of Beaxy in exchange for commissions and markups on each transaction); (3) Amoah raised at least $1.5 million from around 100 individuals from the offers and sales of BXY while engaging in fraud and misrepresentations (including about the amount and use of the markup and commissions charged, the financial and management problems at BXY's issuer in late 2019, and the delivery of prepurchased BXY to certain investors); and (4) Amoah was enjoined by the U.S. District Court for the Northern District of Illinois from future violations of the registration and antifraud provisions of the Securities and Exchange Acts. (*See* OIP ¶¶ 1-27.) The allegations of the OIP, accepted as true, therefore prove Amoah's violations of the securities laws.

In addition, the Commission may consider other evidence supporting the allegations of the OIP, including documents from the Division's investigation. *See, e.g.*, *In re John Sherman Jumper*, Exchange Act Release No. 96407, Advisers Act Release No. 6193, 2022 WL 1736044, at *2 (Nov 30, 2022); *In re Don Warner Reinhard*, Exchange Act Release No. 63720, Advisers Act Release No. 3139, 2011 WL 121451, at *3-4 (relying on plea agreement and related documents). Here, the Division has submitted the same evidentiary declaration the district court relied on in granting the Commission a final default judgment against Amoah. The McShane declaration establishes that Amoah benefited by about $935,600 from his misconduct, while failing to produce records that would have permitted a more exact calculation. (Ex. B ¶¶ 11-17.)

B. Amoah Should Receive an Associational Bar

Section 15(b) of the Exchange Act authorizes the Commission to impose an associational bar against a person who: (1) at the time of the misconduct was acting as a broker; (2) has been made subject to an injunction; (3) should be barred if in the public interest. Here, all three of those predicates are satisfied. First, Amoah acted as a broker while committing the misconduct described above. Second, the district court imposed a permanent injunction against Amoah because of this misconduct. And third, as explained below, an associational bar against Amoah would serve the public interest.

In determining whether an associational bar is in the public interest, the Commission considers these factors:

> 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.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the extent to which the sanction will have a deterrent effect. *See In re Stanley C. Brooks*, S.E.C. Rel. No. 475, 2012 WL 6132660, at *3 (Dec. 11, 2012). A severe sanction is warranted when a respondent's misconduct involved fraud "because opportunities for dishonesty recur constantly in the securities business." *In re Anthony Tyrone Jones, Jr.*, S.E.C. Rel. No. 1088, 2016 WL 7210100, at *3 (Dec. 12, 2016).

Each of those factors weighs heavily in favor of imposing an associational bar against Amoah. His conduct was egregious, repeated, and involved a high degree of scienter. Amoah

repeatedly used his position as a broker to illegally solicit investments in an unregistered crypto asset security from individuals who had no little-to-no experience with that type of asset. For over a year, Amoah made a number of false and misleading statements, both orally and in writing, to BXY purchasers and potential purchasers—including about the markup and commissions charged and the financial and management problems at BXY's issuer in late 2019. He also refused to provide BXY tokens to investors who already paid for them in advance. Instead, Amoah kept almost $1 million for himself for his own personal spending.

Amoah also has failed—both in this administrative proceeding and in the preceding district court action—to demonstrate that he recognizes the wrongful nature of his conduct or make any meaningful assurances against future violations. Amoah is relatively young and has spent nearly his entire career promoting investments (whether commodities or crypto asset securities) to the public. As a result, any future employment opportunities in the securities industry are likely to present him with the temptation and possibility of new violations. Finally, by publicly sanctioning Amoah, the Commission would promote the well-being of investors in the securities markets by promoting both general and specific deterrence.

In short, the facts of this case fully support imposing an associational bar against Amoah.

OS Received 05/13/2024

IV. Conclusion

For these reasons, the Division of Enforcement respectfully requests that the Commission issue a decision granting an associational bar by default against Respondent Brian Bartlett Amoah under Rules 155(a) and 220(f) of the Rules of Practice. The Division also requests that Amoah be barred from any position in the securities industry under Section 15(b) of the Exchange Act.

Dated: May 13, 2024

By: */s/ Devlin N. Su*

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CERTIFICATE OF SERVICE

In accordance with the Commission's Rules of Practice, I hereby certify that I have caused a copy of this document to be served by email upon:

Brian B. Amoah
[redacted]

/s/ Devlin N. Su
Devlin N. Su