UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19662

In the Matter of
JONATHAN MORRONE,
Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT JUDGMENT AND IMPOSITION OF SANCTIONS

Pursuant to Rules 155(a) and 220(f) of the U.S. Securities and Exchange Commission's Rules of Practice, the Division of Enforcement (the "Division") respectfully moves the Commission for the entry of a default judgment and the imposition of sanctions against Respondent Jonathan Morrone. In support of this motion, the Division submits the Declaration of Richard Harper.

I. INTRODUCTION

On September 10, 2012, the Commission filed a civil enforcement action against Morrone alleging that he violated the registration and anti-fraud provisions of the federal securities laws through his offer and sale of Bio Defense Corporation ("Bio Defense") securities in the United States and his participation in a boiler room offering fraud that sold the same securities to overseas investors. *See SEC v. Bio Defense Corp.*, 1:12-cv-11669-DPW (D. Mass.), ECF No. 1. After years of litigation, on September 6, 2019, the United States District Court for the District of Massachusetts issued a memorandum and order granting the Commission's motion for summary

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judgment and finding Morrone violated Sections 5 and 17(a)(1) and (3) of the Securities Act of 1933 (the "Securities Act") and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Rule 10b-5(a) promulgated thereunder (the "Exchange Act"). *See SEC v. Bio Defense Corp.*, 2019 WL 7578525, *1-6, 13-25 (D. Mass. Sept. 6, 2019), *aff'd sub nom.*, *SEC v. Morrone*, 997 F.3d 52 (1st Cir. 2021).[1] On the same date, the Court issued a final judgment permanently enjoining Morrone from future violations Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5. *Id.*, *31-32; *see also* Declaration of Richard Harper ("Harper Decl."), Exhibit 1 (Morrone Final Judgment, SEC *v. Bio Defense Corp.*, 1:12-cv-11669-DPW, ECF No. 157) at Sections I through IV (injunctive relief). Morrone filed a notice of appeal. *SEC v. Bio Defense Corp.*, 1:12-cv-11669-DPW (D. Mass.), ECF No. 166. On May 10, 2021, the First Circuit Court of Appeals issued an opinion affirming the District Court's grant of summary judgment. *SEC v. Morrone*, 997 F.3d 52, 62 (1st Cir. 2021). Based on the entry of the District Court's injunction, on January 15, 2020, the Commission issued an Order Instituting Administrative Proceedings pursuant to Section 15(b) of the Exchange Act (the "OIP"). Morrone was served with a copy of the OIP on May 1, 2021, but he has not filed an answer. Accordingly, pursuant to Rules 155(a) and 220(f) of the Commission's Rules of Practice, the Division submits that default judgment is appropriate and sanctions should be imposed.

II. PROCEDURAL HISTORY OF ADMINISTRATIVE PROCEEDING

The Commission issued the OIP in this matter on January 15, 2020. The Division of Enforcement hired a process server who made effective service of the OIP on Morrone on May 1, 2021. *See* Harper Decl., Exhibit 2 (Affidavit of Service); *see also* Rule 141(a)(2)(i) (service may

[1] The Court denied the SEC's motion to the extent that it sought summary judgment against Morrone as a control person of Bio Defense pursuant to Section 20(a) of the Exchange Act. *See Bio Defense Corp.*, 2019 WL 7578525, *29-30.

be made by delivering copy of order to individual). Pursuant to the Commission's Rules of Practice, Morrone's answer to the OIP was due twenty days from service of the OIP. *See* Rule 220(b). However, as of the date of this Motion, he has not filed an answer. Nor has he otherwise defended this proceeding.

III. FACTUAL BACKGROUND

Because Morrone has not timely answered, the Commission may deem true the allegations of the OIP. *See* Rule 155(a). Further, because Morrone's liability for violating the securities laws has already been determined in a fully litigated federal district court action, the Commission may rely on the factual and legal conclusions set forth in the District Court's summary judgment opinion. *See*, *e.g., Daniel Imperato*, Exchange Act Rel. No. 628, 2014 WL 3048126 (Jul. 7, 2014) (noting that "in assessing whether a bar is in the public interest, 'follow-on proceedings have long considered district court findings . . . . Courts have repeatedly approved this practice.'"); *Gann v. SEC*, 361 Fed.Appx. 556 (5th Cir. 2010) (in review of follow-on AP after fully litigated district court case, treating "the district court's findings of fact as conclusive and binding on the parties."); *Studer v. SEC*, 148 Fed.Appx. 58 (2d Cir. 2005) (noting that, in administrative proceeding, Respondent is "prohibited from relitigating the factual and legal conclusions of the district court regarding his violations of federal securities laws").

From approximately 2004 through 2012, Morrone served as a Senior Vice President of Bio Defense Corporation, a Delaware corporation with a principal place of business in Boston, Massachusetts. OIP, at II.A.1 Bio Defense's purported business was the development and sale of a machine that allegedly disinfected mail contaminated by bioterrorism pathogens. *Id.* It has never had an offering of stock registered with the Commission. *See Bio Defense Corp.*, 2019 WL 7578525, *2 (noting lack of registration for Bio Defense securities).

From 1994 through August 2007, Morrone worked as a registered representative associated with various brokerage firms. OIP, at II.A.1 Although Morrone was associated with Financial Network Investment Corporation (NFIC), later known as Cetera, from April 2005 through August 2007 while simultaneously working at BioDefense, BioDefense did not have any securities approved for offer or sale through NFIC. Harper Decl., Exhibit 3 (Declaration of Harold Nahigian), ¶¶4-5. Further, Morrone never sought approval to offer any BioDefense security through the firm. *Id.*, ¶6. Accordingly, to the extent Morrone offered and sold BioDefense's securities during this period (as explained below), he did so "selling away" and was subject to liability for violating Section 15(a) of the Exchange Act. *See Roth v. SEC*, 22 F.3d 1108, 1109 (D.C. Cir. 1994); *SEC v. Ridenour*, 913 F.2d 515, 517 (8th Cir. 1990). Morrone's association with FNIC was terminated in August 2007 and he has not been associated with a registered broker or dealer since then. OIP, at II.A.1; *see also* Harper Decl., Exhibit 4 (Certified FINRA CRD for Morrone), pp. 3-5 (registration history).

When Morrone joined Bio Defense, he (like other Bio Defense executives) structured his employment relationship through a consulting company. Morrone's consulting company was named JM International, Inc. ("JMI"). *Bio Defense Corp.*, 2019 WL 7578525, at *1-2 n.2, and *18 n.27. Through JMI, Morrone received transaction-based compensation or commissions linked to a certain percentage of investment money the company received from investors. *Id.*, at *2. Bio Defense paid these commissions to JMI. *Id.*, at *2, 33. Neither Morrone, nor JMI has ever been registered with the Commission as a broker or a dealer. *Id.*, at *2.

From 2004 through 2007, Morrone offered and sold stock directly to investors in the United States. *Bio Defense Corp.*, 2019 WL 7578525, at *2, 13-17; *Morrone*, 997 F.3d at 55-56.[2] For example, in October 2007, Morrone participated in an investor conference call that was attended by an enforcement attorney of the Texas Securities Board. *Bio Defense Corp.*, 2019 WL 7578525, at *3, 14; *Morrone*, 997 F.3d at 56. During the call, Morrone and other Bio Defense executives encouraged investment in the company. They discussed the company's prospects for success and their potential government contracts and stated that the company planned to go public in 18 to 24 months. *Bio Defense Corp.*, 2019 WL 7578525, at *3. In March 2018, following a report by the Texas enforcement attorney, Bio Defense, Morrone and other participating officers agreed to the imposition of a cease-and-desist order from the Board requiring them to stop offering or selling Bio Defense stock in Texas because the securities were unregistered. *Id.*

In 2008, the Commonwealth of Massachusetts began an investigation into Bio Defense's sale of securities in Massachusetts without proper registration. While this investigation was underway, Bio Defense decided to begin soliciting private investors overseas. *Bio Defense Corp.*, 2019 WL 7578525, at *3.

In August 2008, Morrone and other Bio Defense company officers were introduced to the idea of selling stock overseas by Brett Hamburger ("Hamburger"), a business consultant who they knew had previously been convicted of conspiracy to commit securities fraud. *Bio Defense Corp.*,

[2] The Commission filed its complaint in 2012 and its motion for summary judgment in 2014, years before the Supreme Court's decision in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017). When the District Court issued its summary judgment decision in 2019, the Court, citing *Kokesh*, limited its consideration of violative conduct to the five-year period prior to the filing of the Commission's complaint on September 10, 2012, meaning that the Court's judgment is based on violations Morrone (and the other defendants) committed after September 10, 2007. *Bio Defense Corp.*, 2019 WL 7578525, at *10-11. Nevertheless, as noted in the text above and as found by the District Court, Morrone solicited investors for offers to purchase Bio Defense stock in the United States after September 10, 2007. *Bio Defense Corp.*, 2019 WL 7578525, at *3, 14. Further, as discussed *infra*, Morrone offered and sold Bio Defense stock stock through overseas boiler room offering fraud, which began in August 2008 and continued through October 2010. *Id.*, *3-5, 15-17.

2019 WL 7578525, at *3, 31; Morrone, 997 F.3d at 55-56. Hamburger told Morrone and the other Bio Defense officers that an overseas call center called Agile could help them raise money from foreign investors, but that it would be "very expensive" and that Agile charged a 75% fee for any investor funds raised. *Bio Defense Corp.*, 2019 WL 7578525, at *3; Morrone, 997 F.3d at 56. Bio Defense entered an agreement with Agile. *Id.*

Shortly thereafter, Morrone and his fellow Bio Defense executives met with outside counsel concerning the Agile agreement. *Morrone*, 997 F.3d at 56. Based on this conversation, counsel advised the company not to enter the agreement. Counsel advised Morrone and his fellow officers that the fact that Bio Defense would receive such a small portion of any investment was an "absolutely critical disclosure that would need to be made to any potential investor." *Id.,* at 56. On August 6, 2008, after having an opportunity to review the agreement, outside counsel sent an email to Morrone and the other Bio Defense officers stating that "the cost of [Agile's] funding is exorbitantly high" and that "no legitimate, professional consulting group would charge" such a high fee. *Bio Defense Corp.*, 2019 WL 7578525, at *5-6; *Morrone*, 997 F.3d at 56-57.

Despite these warnings, Morrone and his fellow Bio Defense officers collaborated with Agile to execute the foreign fundraising activities. *Bio Defense Corp.*, 2019 WL 7578525, at *3-4; *Morrone*, 997 F.3d at 56-57. Morrone was a key part of this collaboration. He provided Hamburger with a caller script, which did not disclose the 75% fee. *Morrone*, 997 F.3d at 57. Hamburger forwarded the script to Agile. *Id.* Morrone also sent a bullet-point list of "Key Corporate Updates" and a sample stock subscription agreement to Hamburger while Hamburger was meeting with Agile in Spain. *Id.* Morrone also provided Hamburger with a cover letter, signed by Morrone, to be used in sending subscription agreements to potential investors along with written payment instructions to guide investors on how to make payments to Bio Defense. *Id.* In

August 2008, Agile started the "EU Project," calling investors through its centers using the documents that Morrone and others had provided. *Id.* Once Agile found investors interested in Bio Defense, it would send their names and contact information to an email account Hamburger could access. *Id.* The information was then sent to Bio Defense officers, including Morrone, who would send subscription agreements from the United States to the potential investors. *Id.* When the investors signed the subscription agreements and sent them to Bio Defense, Morrone (and others) presented the agreements to Bio Defense's CEO for signature and then mailed stock certificates to the investors. *Id.*

Once Bio Defense received investor money, it paid 75% of the funds to Agile, then paid an additional 12.5% of the remaining funds to Hamburger, and then made commission payments to Morrone and other Bio Defense officers. *Morrone*, 997 F.3d at 57. After all of these payments, Bio Defense was left with less than 25% of the funds invested. *Id.* Morrone and other Bio Defense officers received weekly reports detailing the payments to Agile, Hamburger, and the Bio Defense company officers. *Id.* During the EU Project, Bio Defense raised around $3.3 million and paid approximately $2.5 million to Agile. *Id.* Following the EU Project, Bio Defense engaged in three other similar schemes, including payment of fees of either 70% or 75%, with companies other than Agile. *Id.* In these three following solicitation schemes, Bio Defense raised another $8.4 million dollars. During the course of these fund-raising projects, Morrone and his fellow Bio Defense officers received many investor complaints about abusive and deceptive sales tactics. *Bio Defense Corp.*, 2019 WL 7578525, at *5; *Morrone*, 997 F.3d at 58.

Despite these complaints, Morrone and his colleagues continued the call center fundraising operations. *Bio Defense Corp.*, 2019 WL 7578525, at *3-5; *Morrone*, 997 F.3d at 57-58. From

September 10, 2007 through the end of the overseas fundraising in February 2011,[3] Morrone received approximately $608,000 in commissions from investors funds. *Bio Defense Corp.*, 2019 WL 7578525, at *33; *Morrone*, 997 F.3d at 57-58.

IV. ARGUMENT

Morrone has not filed an answer to the Commission's OIP despite the passage of more than 70 days since receiving effective service. The Commission should find Morrone in default and enter judgment accordingly. Further, because Morrone engaged a repeated course of offering unregistered securities (targeting U.S. and, later, foreign investors) and also knowingly participated in a boiler room offering fraud that took millions of dollars from foreign investors, the Division submits that an industry-wide association bar is appropriate.

A. Entry of Default Judgment is Appropriate

Morrone received service of the OIP in this matter on May 1, 2021. *See* Harper Decl., Ex. 2 (Affidavit of Service). His answer was, therefore, due on or before May 21, 2021, twenty days after service. *See* Rule 220(b); *see also* OIP, §IV ("IT IS FURTHER ORDERED THAT Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this order . . . ."). As of the date of this Motion, Morrone has not filed an answer or otherwise defended this action. Harper Decl, ¶8.

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 the party upon consideration of the record, including the order instituting proceedings, the

[3] In *Kokesh v. SEC*, 137 S.Ct. 1635, 1644 (2017), the Supreme Court ruled that the SEC's disgorgement remedy is limited to the five-year statute of limitations period set forth in 28 U.S.C. §2462. Accordingly, in seeking disgorgement in the District Court litigation, the SEC limited its claim against Morrone to commissions he received on or after September 10, 2007 (five years prior to the filing of the complaint on September 10, 2012). *See* Bio *Defense Corp.*, 2019 WL 7578525, at *10-11, 33; *Morrone*, 997 F.3d at 57-58.

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." Here, because Morrone has failed to "answer . . . or to otherwise defend the proceeding," the Division submits that a default judgment should be entered against him, as is specifically contemplated by the Commission's Rules of Practice. *See* Rules 155(a) and 220(f).

B. An Industry-Wide Collateral Bar Against Morrone is in the Public Interest.

Exchange Act Section 15(b)(6)(A)(iii) authorizes the Commission to impose an associational bar against a respondent if (i) the individual was associated with a broker-dealer at the time of the alleged misconduct, (ii) the individual has been the subject of an injunction against acting as a broker-dealer or engaging in any conduct in connection with the purchase or sale of a security, and (iii) the bar is in the public interest. *See* 15 U.S.C. § 78o(b)(6)(A)(iii). Here, Morrone meets all the elements required for an associational bar.

First, for the purpose of Section 15(b), an "associated person" includes persons who act as an unregistered broker. *See Edward J. Driving Hawk*, 2010 WL 2685821, at *5 n.4 (Jul. 7, 2010), Notice of Finality, 2010 WL 3071381 (Aug. 5, 2010); *see also* 15 U.S.C. § 78c(a)(18) (defining an "associated person" of a broker-dealer to include any partner, employee, or person in direct or indirect control of a broker or dealer). And, as determined in the District Court summary judgment opinion, Morrone acted as an unregistered broker in the offer and sale of Bio Defense securities. *See Bio Defense Corp.*, 2019 WL 7578525, *17-19.

Second, as reflected in the final judgment entered against Morrone, the District Court has enjoined him from acting as an unregistered broker-dealer, in violation of Exchange Act Section 15(a), from offering or selling unregistered securities in violation of Section 5 of the Securities Act,

and from violating the anti-fraud provisions of both statutes. *See* Harper Decl., Ex. 1 (Final Judgment as to Morrone).

Third, there is no doubt that barring Morrone is in the public interest. To determine whether an administrative remedy is in the public interest, the Commission considers the following 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 at 1334 n.29 (5th Cir. 1978)). Here, these factors weigh in favor of an associational bar. Morrone's conduct was egregious and repeated. Prior to joining Bio Defense, Morrone worked for years as a registered representative of broker-dealers. With this industry knowledge, Morrone repeatedly engaged in the offering and sale of unregistered stock to domestic and foreign investors. Instead of being chastened by the Texas Securities Board consent decree, Morrone and his collaborators simply continued their illegal activities by shifting the focus of their targets. Further, in participating in the overseas call center scam, Morrone acted with a high degree of scienter and self-interest. *See Bio Defense Corp.*, 2019 WL 7578525, *22. He knew of the 75% fee. *Id.* He was present when Bio Defense's outside counsel warned that Bio Defense's receipt of such a small percentage of invested funds was an "absolutely critical disclosure that would need to be made to any potential investor." *Morrone*, 997 F.3d at 56-57. Morrone also received counsel's follow-on email that informed him "no legitimate, professional consulting group would charge" such a high fee. *Id.* Yet, despite this knowledge, Morrone worked with Hamburger (whom he knew to have been previously convicted of conspiracy to commit securities fraud) to set up the overseas call centers with the scripts, key corporate information, and sample investor packets

necessary for soliciting investors. *See Bio Defense Corp.*, 2019 WL 7578525, *4, 15 (describing Morrone's conduct). From BioDefense's office in Boston, Morrone managed the distribution of offering documents that failed to disclose the excessive fees to targeted investors. *Id.* He also coordinated receipt of investor offers, the counter-signing of subscription agreements by BioDefense's CEO, and then facilitated the shipment of stock certificates to new investors. *Id.* And, Morrone personally benefited from these activities by receiving hundreds of thousands of dollars in commission payments while, at the same time, being aware of investor complaints describing the call centers' deceptive and abusive sales tactics. *See id.*, *6 (describing investor complaints), *33 (noting Morrone received $607,928 in investment proceeds). Further, as Morrone has not answered the OIP, he has not provided any recognition of the wrongfulness of his conduct or any assurances against future violations. On this record, the public interest would be well served by an associational bar.

Finally, the scope of the associational bar against Morrone should be the broad, industry-wide bar authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act., Pub. L. No. 111-203, 123 Stat. 1376 (2010). The Dodd-Frank law amended Exchange Act Section 15(b)(6) to "expand[] the categories of associational bars, allowing the Commission to impose a broad collateral bar on participation throughout the securities industry." *Vladimir Boris Bugarksi*, Exchange Act Rel. No. 66842, 2012 WL 1377357, *3 n.11 (Apr. 20, 2012). The amendments expanding the scope of the associational bar became effective July 21, 2010. *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 n.14 (Jan. 30, 2017). Where a Respondent's misconduct occurs before and after the effective date of the Dodd-Frank amendments, the Commission has upheld the imposition of a broad collateral bar as long as the violative conduct after July 21, 2010 supports an industry-wide bar. *See, e.g., George Charles Cody Price*, 2017 WL

405511, at *3 n.14 (Jan. 30, 2017); *Vladimir Boris Bugarksi*, 2012 WL 1377357, at *3 & n.11. Here, Morrone's participation of the overseas boiler room scam began in August 2008 and continued through October 2010. *See Bio Defense Corp.*, 2019 WL 7578525, *3-5 (describing overseas fundraising projects that ran through October 2010); *see also id.*, *33 (noting forensic accounting analysis showed Bio Defense continued receiving investor funds through February 2011). As Morrone's misconduct continued for approximately three months after the effective date of Dodd-Frank's amendments, it supports an industry-wide bar.

V. CONCLUSION

For the reasons set forth above, the Division requests that the Commission find Morrone in default and impose an industry-wide associational bar as authorized by Exchange Act Section 15(b)(6).

Respectfully submitted,

/s/Richard M. Harper II
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Certificate of Compliance with Rule 154(c)

I hereby certify that the foregoing brief is fewer than fifteen (15) pages and that the Division has, therefore, complied with Rule 154(c) of the Commission Rules of Practice.

/s/Richard M. Harper II
Counsel for the Division of Enforcement

Certificate of Service

I, Richard Harper, hereby certify that on July 19, 2021, I caused a true copy of the foregoing document to be served by UPS upon Respondent Jonathan Morrone at [redacted], Temple City, CA [redacted]. I also caused a copy to be sent by email to the Respondent Morrone's email address, [redacted].

/s/Richard M. Harper II
Counsel for the Division of Enforcement