SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 93847 / December 21, 2021

Admin. Proc. File No. 3-19662

In the Matter of

JONATHAN MORRONE

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the securities laws. *Held*, it is in the public interest to bar respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

Richard M. Harper II for the Division of Enforcement.

On January 15, 2020, we instituted an administrative proceeding against Jonathan Morrone, pursuant to Section 15(b) of the Securities Exchange Act of 1934, to determine whether the statutory predicate for an administrative remedy was satisfied and whether remedial action would serve the public interest. The order instituting proceedings ("OIP") alleged that Morrone had been permanently enjoined from violating Sections 5 and 17(a) of the Securities Act of 1933 and Exchange Act Sections 10(b) and 15(a) for misconduct that occurred while Morrone acted as an unregistered broker in the sale of Bio Defense Corporation securities.[1] Morrone failed to file an answer to the OIP, failed to respond to the Division of Enforcement's motion for entry of default and sanctions, and failed to respond to an order to show cause why he should not be found in default. We now find Morrone to be in default, deem the allegations of the OIP to be true, and bar him from the securities industry.

I. Background

A. The Commission issued an OIP against Morrone.

The OIP alleged that, in a civil action the Commission brought against Morrone, a federal district court had entered a final judgment permanently enjoining him from future violations of Securities Act Sections 5 and 17(a) and Exchange Act Sections 10(b) and 15(a).[2] According to the OIP, Morrone served as a senior vice president of Bio Defense from approximately 2004 through 2012 and was associated with various brokerage firms as a registered representative between 1994 and 2007.[3] While it operated, Bio Defense's purported business was the development and sale of a machine that allegedly disinfected mail contaminated by bioterrorism pathogens.[4] Both the OIP and the complaint the Commission filed in the civil action alleged that, from August 2008 to at least October 2010, Morrone engaged in a fraudulent offering of unregistered Bio Defense securities, and that he acted as an unregistered broker in their unlawful sale.[5] The OIP also alleged that, in 2008, the Texas State Securities Board ordered Morrone to cease and desist from offering to sell Bio Defense securities in violation of the Texas Securities Act.[6]

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 Morrone

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1 *Jonathan Morrone*, Exchange Act Release No. 87974, 2020 WL 260277 (Jan. 15, 2020).

2 15 U.S.C. §§ 77e, 77q(a), 78j(b), 78*o*(b). Although not alleged in the OIP, the final judgment also permanently enjoined Morrone from future violations of Exchange Act Rule 10b-5. Final Judgment at 2, *SEC v. Morrone*, Civ. A. No. 12-11669-DPW (D. Mass. Sept. 6, 2019); *see also* 17 C.F.R. § 240.10b-5.

3 *Morrone*, 2020 WL 260277, at *1.

4 *Id.*

5 *Id.*

6 *Id.*; *see also* Agreed Cease and Desist Order, *In re Bio Defense Corp.*, 2008 WL 916881, at *1–2 (Tex. State Sec. Bd. Mar. 28, 2008).

to file an answer within 20 days of service, as provided by Commission Rule of Practice 220(b).[7] The OIP informed Morrone that, if he failed to answer, he may be deemed in default, the allegations in the OIP may be deemed to be true, and the Commission could determine the proceeding against him. Morrone was properly served with the OIP on May 1, 2021, pursuant to Rule of Practice 141(a)(2)(i),[8] but did not answer it.

B. The Division moved for entry of default and sanctions.

On July 19, 2021, the Division filed a motion requesting that the Commission find Morrone in default and bar him from the securities industry. In support of its motion, the Division submitted a copy of the district court's final judgment in the civil action.

Before it entered the final judgment, the district court granted in relevant part the Commission's motion for summary judgment against Morrone.[9] In its decision, the court found that, in 2008, the Texas State Securities Board's action and a separate investigation by the Commonwealth of Massachusetts into Bio Defense's sale of securities in Massachusetts without proper registration prompted the company to shift to selling stock via an overseas boiler-room scheme.[10] In connection with these efforts, Morrone and his co-defendants hired Brett Hamburger despite knowing that he had been convicted of conspiracy to commit securities fraud and agreed to pay him weekly a 12.5% commission on funds raised for Bio Defense.[11] Hamburger learned of a company that could raise investor money quickly in Europe and informed Morrone and others at Bio Defense that the company would charge a 75% fee for money raised.[12]

Morrone worked with Hamburger to prepare an investor packet that did not disclose the fundraiser's fee.[13] When consulted, Bio Defense's outside counsel advised Morrone and others that a 75% fee was "completely unheard of," "exorbitantly high," and something "no legitimate,

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7 17 C.F.R. § 201.220(b).

8 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "handing a copy of the order to the individual").

9 *SEC v. Bio Defense Corp.*, Civ. A. No. 12-11669-DPW, 2019 WL 7578525 (D. Mass. Sept. 6, 2009), *aff'd sub nom. SEC v. Morrone*, 997 F.3d 52 (1st Cir. 2021). We take official notice of these decisions pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323 (providing that official notice may be taken "of any material fact which might be judicially noticed by a district court of the United States"); *Am. Inv. Serv., Inc.*, Exchange Act Release No. 43991, 2001 WL 167861, at *1 n.1 (Feb. 21, 2001) (recognizing Commission's authority to take official notice of federal district court orders). The part of the Commission's motion for summary judgment against Morrone that the court denied did not impact any relief the Commission sought against Morrone in the litigation. *Bio Defense Corp.*, 2019 WL 7578525, at *31 n.28.

10 *Bio Defense Corp.*, 2019 WL 7578525, at *31.

11 *Id.* at *3, *31.

12 *Id.* at *3.

13 *Id.* at *4.

professional consulting group would charge," and strongly advised that Bio Defense not use the fundraiser to solicit investors.[14] Nonetheless, Bio Defense proceeded with the arrangement, as well as several other overseas fundraising arrangements with similarly high fees.[15]

Morrone subsequently prepared individual investor solicitation agreements based on information provided by the overseas call centers, mailed those agreements and packets to the prospective investors, received the completed agreements, and mailed out final stock certificates.[16] During the course of the overseas fundraising campaign, Morrone received complaints from multiple investors.[17] The chairman of Bio Defense's advisory board also told Morrone that he had heard about aggressive marketing, cold-calling, and boiler-room tactics used to sell Bio Defense stock through the overseas call centers and expressed great concern about these operations.[18] Nonetheless, Morrone continued to participate in the execution of the overseas fundraising efforts, which continued until October 2010.[19] Morrone, who was paid transaction-based compensation rather than a salary, received $607,928 in investment proceeds from Bio Defense over the five years before the Commission filed its complaint against him.[20]

The court found that there was no genuine dispute of fact that Morrone had engaged in multiple violations of the federal securities laws. First, the court found that Morrone engaged in the unlawful offer and sale of unregistered securities in violation of Securities Act Section 5(a) and (c).[21] The court explained that no registration statement was filed with the Commission for sales of Bio Defense stock and that Morrone was a necessary and substantial participant in the scheme to sell unregistered securities overseas.[22]

Second, the court found that Morrone effected transactions in the sale of Bio Defense securities without being registered with the Commission as a broker or dealer, in violation of Exchange Act Section 15(a).[23] The court explained that, from 2008 through 2010, Morrone's conduct rose to the level of regular participation in securities transactions at key points in the chain of distribution.[24]

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14 *Id.* at *6.

15 *Id.* at *5, *6, *23.

16 *Id.* at *19.

17 *Id.* at *6.

18 *Id.*

19 *Id.* at *5, *32.

20 *Id.* at *33.

21 *Bio Defense Corp.*, 2019 WL 7578525, at *13, *14, *15, *17.

22 *Id.* at *13, *15.

23 *Id.* at *17.

24 *Id.* at *19.

Third, the court found that Morrone was liable under the antifraud provisions of Securities Act Section 17(a)(1), Exchange Act Section 10(b), and Exchange Act Rule 10b-5. These provisions all require scienter.[25] The court found that the failure to disclose the "exorbitant" commissions paid to the call centers was deceptive,[26] and that Morrone, who failed to disclose the 75% commission in the documents he drafted with Hamburger, "substantially participated in the scheme with scienter."[27] The court also found Morrone liable under Exchange Act Section 17(a)(3),[28] which does not require scienter.[29]

Morrone did not respond to the Division's motion for entry of default and sanctions. On August 2, 2021, the Commission ordered Morrone to show cause by August 16, 2021, why it should not find him in default due to his failure to file an answer, respond to the Division's motion, or otherwise defend this proceeding.[30] The Commission's order warned Morrone that if he were 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. Morrone did not subsequently answer the OIP or respond to the Division's motion or the show cause order.

II. Analysis

A. We hold Morrone 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."[31] Because Morrone has failed to answer or respond to the show cause order or the Division's motion for entry of default and sanctions, we find it appropriate to deem him in default and deem the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP, the materials submitted with the Division's motion, and the district court's summary judgment decision.

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25 *See* 15 U.S.C. § 77q(a)(1); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; *Aaron v. SEC*, 446 U.S. 680, 695–97 (1980) (concluding that scienter is required under Securities Act Section 17(a)(1)).

26 *Bio Defense Corp.*, 2019 WL 7578525, at *21.

27 *Id.* at *22.

28 *Id.* at *25.

29 *Aaron*, 446 U.S. at 689–700 (noting that a showing of scienter is not required to establish a violation of Securities Act Section 17(a)(3)).

30 *Jonathan Morrone*, Exchange Act Release No. 92549, 2021 WL 3410707 (Aug. 2, 2021).

31 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 [rule] within the time provided, such respondent may be deemed in default pursuant to [Rule 155(a)]").

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

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from the securities industry if we find, on the record after notice and opportunity for hearing, that (i) the person has been enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker or dealer, or in connection with the purchase or sale of any security; (ii) the person was associated with a broker or dealer at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[32]

Morrone has been enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker because the district court enjoined him from violating Exchange Act Section 15(a) by using interstate commerce "to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities without being registered as a broker or dealer or associated with a registered broker or dealer."[33] Morrone has also been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security because the district court enjoined him from violating Exchange Act Section 10(b) and Rule 10b-5 thereunder "in connection with the purchase or sale of any security."[34]

Morrone was also associated with a broker or dealer at the time of his misconduct. The OIP alleged that, from at least September 2007 to at least July 2010, Morrone acted as an unregistered broker in the unlawful sale of Bio Defense securities,[35] and we have deemed that allegation to be true as a result of Morrone's default. We also give preclusive effect to the district court's finding that Morrone acted as an unregistered broker.[36] Because Morrone acted as an unregistered broker, he was a person associated with a broker.[37]

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

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32 15 U.S.C. § 78*o*(b)(6)(A)(iii) (cross-referencing Exchange Act Section 15(b)(4)(C)); *id.* § 78*o*(b)(4)(C) (specifying injunctions against various actions, conduct, and practices). Exchange Act Section 15(b)(6) also authorizes a bar from participating in an offering of penny stock, but the Division did not request such a bar and we do not impose one here.

33 Final Judgment at 5, *SEC v. Morrone*, Civ. A. No. 12-11669-DPW (D. Mass. Sept. 6, 2019).

34 *Id.* at 1–2.

35 *Morrone*, 2020 WL 260277, at *1.

36 *Bio Defense Corp.*, 2019 WL 7578525, at *19; *see also, e.g.*, *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *3 (Mar. 1, 2017) ("We give preclusive effect in this proceeding to a district court's summary judgment findings supporting an injunction.").

37 *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a "person associated with a broker" in Exchange Act Section 3(a)(18)).

likelihood that the respondent's occupation will present opportunities for future violations.[38] Our public interest inquiry is flexible, and no one factor is dispositive.[39] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[40]

We have weighed all these factors and find an industry bar warranted to protect the investing public. Morrone's misconduct was egregious and recurrent. As the district court found, Morrone participated in the knowing execution of an overseas boiler room, in which well over half of investor money was diverted to the boiler-room operators.[41] Morrone profited from this scheme, which caused millions in investor losses over two years, by taking a portion of the investors' money.[42] Indeed, Morrone was "integral to the fraud" as he helped prepare and disseminate the information investors received but took no steps to disclose the 75% fee.[43]

Morrone also acted with scienter. Scienter is "a mental state embracing intent to deceive, manipulate, or defraud."[44] The district court found that Morrone acted with a "high degree" of scienter.[45] Morrone knew that the 75% call center commission was, in the view of Bio Defense's outside counsel, exorbitant and unacceptable, but despite "ample opportunity" failed to disclose that information in the investor packet he helped prepare.[46] Morrone also knew that the individual who had introduced Bio Defense to the call center operator had been convicted of conspiracy to commit securities fraud.[47] And Morrone did not disclose the fees even after he received complaints from investors and a warning from the chairman of Bio Defense's advisory board about the aggressive tactics used to solicit investors.[48] Accordingly, we find that Morrone's degree of scienter weighs heavily in favor of an industry bar.

The remaining factors also support the conclusion that an industry bar is warranted. Because Morrone failed to answer the OIP or respond to the show cause order or to the Division's motion, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. It appears that Morrone's occupation presents

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

39 *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

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

41 *Bio Defense Corp.*, 2019 WL 7578525, at *32, *34.

42 *Id.*

43 *SEC v. Morrone*, 997 F.3d 52, 62 (1st Cir. 2021).

44 *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976).

45 *Bio Defense Corp.*, 2019 WL 7578525, at *34.

46 *Id.* at *22; *see also Morrone*, 997 F.3d at 62 ("He knew about the exorbitant fee the call centers were charging and was warned by counsel that it should have been disclosed.").

47 *Bio Defense Corp.*, 2019 WL 7578525, at *22, *31.

48 *Id.* at *6; *Morrone*, 997 F.3d at 58.

opportunities for future violations because he acted as a broker during the period of his misconduct, previously worked as a registered representative, and offers no assurances about his future plans.[49] Morrone also appears likely to commit future violations because he engaged in the misconduct regarding the overseas call centers after he became subject to a cease-and-desist order by a state securities regulator concerning earlier domestic sales of Bio Defense securities.[50]

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, all the factors we consider demonstrate that Morrone is unfit to be in the securities industry and that an industry bar is necessary to remedy the continuing threat that Morrone poses to investors.[51] Accordingly, we conclude that it is in the public interest to bar Morrone from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[52]

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[49] *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 20, 2017) (expressing concern that respondent's occupation would present opportunities for future violations where he did not indicate that he planned to leave the securities industry).

[50] *See, e.g.*, *Philip A. Lehman*, Exchange Act Release No. 54660, 2006 WL 3054584, at *3 (Oct. 27, 2006) (finding that because "Lehman is a recidivist whose egregious actions evidence a high degree of scienter," and because "Lehman's misconduct is so similar to that for which he was recently sanctioned, we can only conclude that the sanctions imposed on him in the earlier proceeding failed to imbue him with any appreciation for the wrongfulness of his actions").

[51] *See Price*, 2017 WL 405511, at *5 (barring respondent on the ground that the misconduct underlying the respondent's injunction demonstrated that the respondent was unfit to participate in the securities industry and posed a risk to investors).

[52] The D.C. Circuit has held that certain bars from associating in capacities beyond the capacity in which the misconduct occurred cannot be imposed based on conduct that entirely pre-dated the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. *Bartko v. SEC*, 845 F.3d 1217, 1222–24 (D.C. Cir. 2017); *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015). Morrone's misconduct spanned from at least 2004 to October 2010. We find that the entirety of Morrone's conduct and a balancing of the factors discussed above demonstrate that a bar from associating with a broker or dealer is necessary to protect the public. We find that the conduct that post-dated the effective date of the Dodd-Frank Act in July 2010 demonstrates that a bar from associating in the additional capacities listed above is also necessary to protect the public. *See Bennett Grp. Fin. Servs. LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *4 n.34 (Mar. 30, 2017) ("Respondents' misconduct spanned 2009 to 2011, and we find that the conduct that post-dates the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act by itself warrants a bar from all these associations.").

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93847 / December 21, 2021

Admin. Proc. File No. 3-19662

In the Matter of

JONATHAN MORRONE

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that the Division of Enforcement's motion for default and other relief against Jonathan Morrone is granted; and it is further

ORDERED that Jonathan Morrone is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary