SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 100660 / August 6, 2024

Admin. Proc. File No. 3-21220

In the Matter of

HUNG WAI "HOWARD" SHERN

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the antifraud provisions of the federal securities laws. *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 and from participation in any penny stock offering.

APPEARANCES:

Devon Leppink Staren and *Daniel J. Maher* for the Division of Enforcement.

On October 26, 2022, the Securities and Exchange Commission instituted an administrative proceeding against Hung Wai "Howard" Shern pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] We now find Shern to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity and from participating in an offering of penny stock.

I. Background

A. The Commission instituted this proceeding against Shern.

The order instituting proceedings ("OIP") alleges that Shern controlled five entities collectively referred to as "CKB." According to the OIP, in 2013, the Commission brought a civil action against Shern alleging that, between 2011 and 2013, he defrauded investors by misrepresenting that CKB was a profitable multi-level marketing company that sold web-based children's educational courses when, in fact, CKB was a pyramid scheme.[2] The OIP further alleges that in 2022, after granting summary judgment for the Commission, a federal district court permanently enjoined Shern from future violations of Sections 5 and 17(a) of the Securities Act of 1933 and Exchange Act Sections 10(b) and 15(a) and Rule 10b-5, and from participating in any pyramid scheme.

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Shern to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Shern that if he failed to answer, he could be deemed to be 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]

B. Shern failed to answer the OIP, respond to an order to show cause why he should not be found in default, or respond to a motion for a default and sanctions.

Shern was properly served with the OIP on January 5, 2024, pursuant to Rule of Practice 141(a)(2)(iv)(D),[5] but did not respond. On February 22, 2024, more than 20 days after service, the Commission ordered Shern to show cause by March 7, 2024, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[6] The show cause

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[1] *Hung Wai "Howard" Shern*, Exchange Act Release No. 96157, 2022 WL 15292823 (Oct. 26, 2022).

[2] *SEC v. CKB168 Holdings Ltd., et al.*, No. 1:13-cv-5584, ECF No. 1 (E.D.N.Y. Oct. 9, 2013).

[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)(iv)(D).

[6] *Hung Wai "Howard" Shern*, Exchange Act Release No. 99584, 2024 WL 755534 (Feb. 22, 2024).

order warned Shern that if the Commission found him to be 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. Shern did not respond to the show cause order.

On April 4, 2024, the Division of Enforcement filed a motion requesting that the Commission find Shern in default and bar him from associating in the securities industry and from participating in an offering of penny stock. The Division supported the motion with a copy of the district court's opinion granting summary judgment and its final judgment. Shern did not respond to the Division's motion.

In the opinion, the district court found that Shern was a founder and director of CKB, a pyramid scheme established in early 2011. According to the court, Shern knew that CKB was not a legitimate business when he represented to investors that CKB was a profitable multi-level marketing company selling web-based children's educational courses.[7] Shern knew, for example, "that CKB's products contained numerous defects, were hardly used, and were often a source of dissatisfaction to the few who did use them."[8] The court found that Shern also "must have known that CKB had no revenue attributable to retail sales."[9] Indeed, the court concluded that Shern "embraced the fact that CKB was a pyramid scheme," by doing "everything he could to attract investors, but virtually nothing to sell retail products."[10] The court found that Shern then "led a broad and diverse effort to suppress allegations that CKB was a pyramid scheme . . . despite knowing that promoters were making false claims and that, by January of 2013, government authorities were investigating CKB."[11] According to the district court, Shern also made misstatements to potential investors by telling them in 2012 that the company would have an initial public offering in two years, even while he made no preparations for CKB to go public.[12]

Based on this conduct, the district court concluded that Shern violated Securities Act Sections 5 and 17(a), and Exchange Act Sections 10(b) and 15(a) and Exchange Act Rule 10b-5.[13] The district court also concluded that Shern acted as an unregistered broker because he actively recruited investors, effected the purchase of CKB securities, and earned commissions on those sales. The district court's final judgment enjoined Shern from violating the provisions of the securities laws mentioned above and from participating in any pyramid scheme.[14] It also

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7 *SEC v. CKB168 Holdings Ltd.*, 210 F.Supp.3d 421 (E.D.N.Y. 2016).

8 *Id.* at 447.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.* at 429.

13 15 U.S.C. §§ 77e, 77q(a), 78j(b), 78*o*(a)(1); 17 C.F.R. § 240.10b-5.

14 *SEC v. CKB168 Holdings Ltd.*, No. 1:13-cv-5584, ECF No. 467 (E.D.N.Y. Aug. 12, 2022).

ordered Shern, CKB, and one other defendant, jointly and severally, to pay disgorgement of $137,238,985 and ordered Shern to pay a civil penalty of $13,700,000.

II. Analysis

A. We deem Shern to be 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 to be 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."[15] Because Shern has failed to answer or to respond to the show cause order or the Division's motion, we find it appropriate to deem him to be in default and deem the allegations of the OIP to be true. We also give preclusive effect in this proceeding to the district court's findings.[16] 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 that barring Shern from the securities industry and from participating in penny stock offerings is in the public interest.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in an offering of penny stock if it finds, on the record after notice and opportunity for hearing, that (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with broker activities, or in connection with the purchase or sale of any security; (2) the person was associated with a broker at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[17]

The record establishes the first two of these elements. Shern was enjoined from violating the antifraud provisions of the Securities Act[18] and the Exchange Act,[19] as well as from violating

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[15] 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" Rule of Practice 155(a)).

[16] *See, e.g.*, *Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *3 (Mar. 29, 2023) ("The doctrine of collateral estoppel precludes the Commission from reconsidering a district court's injunction, as well as factual . . . issues that were actually litigated and necessary to the court's decision to issue the injunction."); *cf. Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2015) (holding that respondent could not collaterally attack a consent judgment underlying the follow-on proceeding).

[17] 15 U.S.C. § 78*o*(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78*o*(b)(4)); *see also id.* § 78*o*(b)(4)(C) (specifying injunctions against various actions, conduct, and practices).

[18] 15 U.S.C § 77q(a).

[19] 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

Securities Act Section 5 and Exchange Act Section 15(a). Shern thus was enjoined from conduct in connection with the purchase or sale of a security (*i.e.*, committing securities fraud and engaging in an offering of unregistered securities without an applicable exemption from registration) and in connection with activity as a broker (*i.e.*, being an unregistered broker).[20] Because the district court found that Shern acted as an unregistered broker at the time of his misconduct, he was also associated with a broker at the time of his misconduct.[21]

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 the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[22] Our public interest inquiry is flexible, and no one factor is dispositive.[23] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[24]

We have weighed these factors and conclude that an industry bar and a bar from participating in an offering of penny stock are warranted to protect the investing public. Shern's misconduct was egregious and recurrent. The OIP's allegations, which we deem true, and the district court's opinion and its final judgment established that, over more than two years, Shern defrauded investors as a "primary architect" of a pyramid scheme. Shern did so with scienter; a finding necessary for the district court to conclude that Shern violated Exchange Act Section 10(b) and Rule 10b-5 thereunder.[25] Indeed, the district court found that Shern "embraced the fact that CKB was a pyramid scheme" and knew his misrepresentations to investors that CKB was a legitimate multi-level marketing company, among other misrepresentations, were untrue.[26]

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20 *See* 15 U.S.C. § 77e(a), (c) (prohibiting unregistered offers and sales of securities); 15 U.S.C. § 78*o*(a) (prohibiting unregistered brokers from effecting transactions in securities).

21 *See 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)).

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

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

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

25 *See Aaron v. SEC*, 446 U.S. 680, 695-97 (1980) (violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder require a showing of scienter); *see also Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *8 (Dec. 12, 2013) ("[W]hen the injunctive complaint contains allegations that a respondent engaged in scienter-based offenses the respondent is precluded from arguing in a follow-on proceeding that he had no scienter." (internal quotation marks omitted)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

26 *See supra* note 8 and accompanying text.

And Shern took efforts to conceal the fact that CKB was a pyramid scheme.[27] Together with CKB and another defendant, Shern was ordered to disgorge net proceeds from that fraud of over $137 million.

Because Shern failed to answer the OIP or respond to the show cause order or 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. And it appears that Shern's occupation presents opportunities for future violations because he acted as an unregistered broker for more than two years and he offers no evidence about his current occupation or assurances of his future plans.[28]

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 Shern is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[29] Given that Shern has defaulted in this proceeding, he has not opposed the imposition of any particular associational bar or a bar from participating in an offering of penny stock. Because Shern poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any broker, dealer,

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[27] *See, e.g.*, *Korem*, 2013 WL 3864511, at *6 (reasoning that the respondent's "efforts to conceal his misconduct" were concerning and that the "various steps [the respondent] took within that period to advance the scheme demonstrate that it was not the product of a momentary lapse in judgment, nor done without deliberate thought"); *see also United States v. Triumph Capital Grp., Inc.*, 544 F.3d 149, 160 (2d Cir. 2008) ("[E]fforts to obstruct the investigation evidence a consciousness of guilt . . . .").

[28] *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 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).

[29] *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that the 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, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.[30]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners CRENSHAW, UYEDA and LIZÁRRAGA; Commissioner PEIRCE concurring in part and dissenting with respect to the imposition of a bar from participating in an offering of penny stock).

Vanessa A. Countryman
Secretary

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100660 / August 6, 2024

Admin. Proc. File No. 3-21220

In the Matter of

HUNG WAI “HOWARD” SHERN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Hung Wai “Howard” Shern is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Hung Wai “Howard” Shern is barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Vanessa A. Countryman
Secretary