SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6630 / June 17, 2024

Admin. Proc. File No. 3-20282

In the Matter of

HAI KHOA DANG

OPINION OF THE COMMISSION

INVESTMENT ADVISER 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.

APPEARANCES:

David H. London for the Division of Enforcement.

On May 5, 2021, the Securities and Exchange Commission instituted administrative proceedings against Hai Khoa Dang pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] We now find Dang to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity.

I. Background

A. The Commission instituted the proceeding against Dang.

The order instituting proceedings ("OIP") alleges that, on April 19, 2021, a final judgment was entered against Dang, permanently enjoining him from future violations of Sections 206(1) and (2) of the Investment Advisers Act of 1940.2 The OIP alleges that, at the time of the underlying violations, Dang advised individual clients as an unregistered investment adviser. According to the OIP, the Commission's complaint in the injunctive action (the "Complaint") alleged that Dang defrauded a retired couple (the "Clients") by making trades in their names. Specifically, according to the OIP, the Complaint alleged that Dang employed an unauthorized and risky options trading strategy that reduced the value of the couple's accounts from nearly $2.2 million in February 2018 to approximately $27,000 in November 2019, while fabricating excuses for the Clients' losses and misrepresenting to them that their brokerage account statements did not reflect the true value of the couple's investments.

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 Dang to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).3 The OIP informed Dang that if he failed to answer, he could be deemed 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. Dang failed to answer the OIP or respond to a motion for default and sanctions, an order to show cause, or order requesting additional evidence and submissions.

Dang was properly served with the OIP on May 8, 2021, pursuant to Rule of Practice 141(a)(2)(i),5 but did not answer it. On November 9, 2021, the Division of Enforcement filed a motion requesting that the Commission find Dang in default and bar him from the securities industry. The Division supported the motion with the allegations of the OIP and with documents

---

1 *Hai Khoa Dang*, Advisers Act Release No. 5731, 2021 WL 1812172 (May 5, 2021).

2 *SEC v. Dang*, No. 3:20-cv-01353, 2021 WL 1550593, at *8 (D. Conn. 2021) (granting motion for default judgment and imposing injunction from future violations of 15 U.S.C. §§ 80b-6(1) and (2)).

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)(i) (providing that service of an OIP on an individual may be made by "handing a copy of the order to the individual").

from the civil action against Dang. These documents included the Complaint, the docket, the court's opinion, and the final default judgment. Dang did not respond to the default motion.

On September 13, 2023, more than 20 days after service of the OIP and after the Division filed its default motion, the Commission ordered Dang to show cause, by September 27, 2023, 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.[6] Dang was warned that, if he was 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. Dang did not respond to the order to show cause.

On October 17, 2023, the Commission issued an order requesting additional briefing and materials.[7] The order reminded Dang that, when a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record. On November 16, 2023, the Division filed a responsive brief and declarations from Jonathan R. Allen, the attorney who conducted the Commission's investigation of Dang, and from Mark Albers, a Commission forensic accountant who assisted with the investigation. Dang did not respond to the order requesting additional briefing and materials.

According to Allen's declaration, he based his declaration on his recollection of interviews he personally conducted with the Clients and his review of documents the Clients provided to the Commission in connection with its investigation. Allen stated that Dang began to manage the Clients' money in 2001, when he was associated with a registered entity, and that he continuously managed the Clients' money from then until the events that were subject to the district court action. Allen stated that he learned that Dang spoke to the Clients multiple times a year during this time; executed trades in the Clients' accounts; and, in December 2009, convinced the Clients to lend him $100,000. Allen stated that Dang never repaid their money, but that the Clients nevertheless "continued to allow [Dang] to manage their investment accounts."

According to Allen, Dang also recommended in November 2017 that the Clients open self-managed accounts at an online discount brokerage firm and transfer their retirement accounts away from the registered entity they had previously used and into the self-managed accounts. These self-managed accounts were to be managed by Dang "as an independent investment adviser," and "Dang recommended that they pay a 1% quarterly management fee to Dang directly and in cash." According to the declaration, the Clients asked Dang "if he had the necessary licensing, credentials, and certifications to manage these accounts," and Dang falsely told them that he did. Dang did not disclose to the Clients that Dang had allowed all his previous securities licenses and registrations to lapse and that he was not registered as an investment adviser. Nor did Dang disclose that he was subject to a December 2016 cease and desist order from the Connecticut Department of Banking based on a finding that Dang had engaged in

---

[6] *Hai Khoa Dang*, Advisers Act Release No. 6420, 2023 WL 5956359 (Sept. 13, 2023).

[7] *Hai Khoa Dang*, Advisers Act Release No. 6464, 2023 WL 6879346 (Oct. 17, 2023).

dishonest or unethical practices by borrowing money from brokerage firm clients (different than the ones at issue here), without providing notice to his then-employer.

Allen further explained in his declaration that Dang told the Clients to provide their usernames and passwords so that he could access their accounts and make trades in their names. The Clients told Allen that Dang was aware that, because they had retired in 2009, they were living entirely on their pensions and investment income and were not interested in an aggressive risk profile for their investments. The Clients told Allen that, unbeknownst to them, Dang nevertheless "began aggressively trading options" and "frequently traded on margin" without their consent to do so. Allen stated that the Clients "grew increasingly panicked about the loss in value" in their accounts, but Dang blamed losses caused by his risky trading "on the political climate" or told them falsely that "there was value in the options that was not reflected in their reported balances and that this was the primary explanation for the large decreases in the values of their accounts."

Albers stated in his declaration that, as a forensic accountant in the Dang investigation, he calculated the amount of losses experienced in the Clients' investment accounts. Albers stated that he reviewed the Clients' account statements that Dang managed for them and determined that, for the period of February 2018 through November 2019, the total gain on equity trades in the Clients' accounts was $168,881, while the total options losses was $2,095,467—for a total loss to the Clients of $1,926,586.

II. Analysis

A. We hold Dang 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."[8] Because Dang has failed to answer or respond to the Division's default motion, the order to show cause, or the order requesting additional briefing and materials, we find it appropriate to deem him in default and to deem the OIP's allegations to be true.

That determination does not extend to the allegations in the underlying Complaint, however, because the OIP merely recounts those allegations, rather than independently alleging that Dang engaged in particular conduct.[9] Moreover, because the district court based its entry of

---

[8] 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)").

[9] *See Bruce C. Worthington*, Exchange Act Release No. 94557, 2022 WL 969939, at *2 (Mar. 30, 2022) (noting that, where an OIP recounts the allegations of a complaint instead of "independently alleg[ing] that [the respondent] engaged in particular conduct," entering a default against the respondent "would not appear to permit the Commission to deem true the allegations

the injunction on a default judgment, the facts alleged in the Complaint do not have preclusive effect here.[10] We base the findings that follow on the record, including the OIP and the additional materials that the Division submitted with its default motion and in response to our request for additional briefing and materials, of which we take official notice.[11]

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

Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from the securities industry 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 acting as an investment adviser or in connection with the purchase or sale of any security; (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[12]

The record establishes the first two of these elements. Dang was enjoined from conduct in connection with acting as an investment adviser and in connection with the purchase and sale of securities. The district court judgment permanently enjoined Dang from "violating, directly or indirectly, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2) . . . while acting as an investment director."[13] The allegations of the OIP deemed true establish

---

of the complaint"); *Clinton Maurice Tucker II*, Exchange Act Release No. 94208, 2022 WL 394644, at *1 (Feb. 9, 2022) (same).

[10] *See Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *2 (Apr. 23, 2015) (finding that because "'none of the issues is actually litigated"' in the case of a judgment entered by default, issue preclusion "'does not apply with respect to any issue in a subsequent action"' (quoting *Arizona v. California*, 530 U.S. 392, 414 (2000))).

[11] *See, e.g., Paul Hanson*, Exchange Act Release No. 99159, 2023 WL 8648841, at *2 n.11 (Dec. 13, 2023) (citing *Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 WL 21468604, at *5 n.20 (June 26, 2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions")).

[12] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(2) and (4), 15 U.S.C. § 80b-3(e)(2) and (4)); *see also id.* § 80b-3(e)(2)(A)-(B) (discussing convictions); *id.* § 80b-3(e)(4) (discussing injunctions).

[13] *SEC v. Dang*, No. 3:20-cv-1353, 2021 WL 1550593, at *8 (D. Conn. Apr. 19, 2021).

that Dang acted as an unregistered investment adviser.[14] Because Dang acted as an investment adviser, he necessarily also was a person associated with an investment adviser.[15]

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.[16] Our public interest inquiry is flexible, and no one factor is dispositive.[17] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[18]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. Dang's misconduct was egregious and recurrent. Dang was as an investment adviser, and thus a fiduciary, to his Clients.[19] But over a two-year period, Dang abused that trust by defrauding his Clients—a retired couple—by recommending that they open self-managed brokerage accounts for Dang to manage. Without their knowledge or informed consent, Dang caused the couple to sign account opening forms that elected aggressive risk profiles. Dang misrepresented that he was investing their money conservatively and would maintain at least $250,000 in cash. Instead, Dang engaged in a risky and unauthorized options trading strategy,

---

14 *See, e.g.*, 15 U.S.C. § 80b-2(a)(11)(defining "investment adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities"); *see also Koch v. SEC*, 793 F.3d 147, 157 (D.C. Cir. 2015) ("The definition of investment adviser does not include whether one is registered or not with the SEC. Hence, Koch could be primarily liable for violating the Advisers Act irrespective of registration with the Commission.") (citations omitted).

15 *Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *3 (Mar. 1, 2017) ("[T]he finding that Desai acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f).") (citing *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who acts "as an investment adviser in an individual capacity" is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an investment adviser'")).

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

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

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

19 *See Bruce C. Worthington*, Exchange Act Release No. 98789, 2023 WL 7039955, at *4 & n.21 (Oct. 24, 2023) ("Because Worthington was acting as an investment adviser, he owed a fiduciary duty to his Client") (citing *Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *3 (June 17, 2011) ("Investment advisers and their associated persons have a fiduciary duty to their clients.")).

causing the value of the couple's accounts to plummet from more than $2.2 million in February 2018 to approximately $27,000 in November 2019, with the clients' total losses reaching almost $2 million. Dang then fabricated excuses for the losses, including misrepresenting that the clients' brokerage account statements did not reflect the true value of the couple's positions.[20]

Dang also acted with a high degree of scienter.[21] Dang demonstrated scienter by causing his clients to sign account documents that elected aggressive risk profiles, while leading the clients to believe he would invest conservatively and maintain a minimum amount of cash, and lying "on numerous occasions" about the value of the accounts.[22] When asked about losses reflected in brokerage statements, Dang fabricated excuses. And given that his fraudulent misconduct spanned multiple years, his behavior cannot be explained away as the product of mere negligence or innocent mistake.[23]

Because Dang failed to answer the OIP or respond to the Division's motion for default and sanctions or to the order to show cause and the order requesting additional evidence and submissions, he has made no assurances that he will not commit future violations or that he

---

[20] *See, e.g., Stephen Condon Peters*, Advisers Act Release No. 6556, 2024 WL 624010, at *3 & n.19 (Feb. 14, 2024) ("Peters's conduct was all the more egregious because he defrauded his investment advisor clients and, in so doing, violated his fiduciary duty and exploited the trust of his clients") (citing *Timothy S. Dembski*, Exchange Act Release No. 80306, 2017 WL 1103685, at *13 (mar. 24, 2017) ("Dembski's conduct was all the more reprehensible because it occurred in his capacity as an investment adviser."); *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious.").

[21] *See SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (scienter is "an intent to deceive, manipulate, or defraud"); *Aaron v. SEC*, 446 U.S. 680, 701 (1980) (the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

[22] *Cf. Dean Mustaphalli*, Advisers Act Release No. 6348, 2023 WL 4533808, at *4 & n.18 (July 13, 2023) (finding that respondent acted with a high degree of scienter where he knowingly made false representations to his clients about their investments) (citing *ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 65 (1st Cir. 2008) ("[T]he fact that a defendant knowingly made a false statement is 'classic evidence' of scienter.") (citation omitted)); *Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *5 (Mar. 26, 2010) (stating that "attempts to conceal misconduct indicate scienter"); *Justin F. Ficken*, Exchange Act Release No. 58802, 2008 WL 4610345, at *3 (Oct. 17, 2008) (finding that concealment of improper trading demonstrated scienter).

[23] *See, e.g.*, *SEC v. Merkin*, No. 11-23585-civ, 2012 WL 5245561, at *8 (S.D. Fla. Oct. 3, 2012) (finding that the defendant's conduct was "intentional and that he acted with scienter" because, among other things, he "repeated the false statements on at least four occasions"), *aff'd*, 628 F. App'x 741 (11th Cir. 2016); *Se. Indus. Loan Co.*, Securities Act Release No. 2726, 1941 WL 40736, at *10 (Nov. 29, 1941) (explaining that "innocent mistakes of a false and misleading character" are less probable where the falsity has been repeated in multiple instances).

recognizes the wrongful nature of his conduct. It appears that Dang's occupation presents opportunities for future violations because he acted as an unregistered investment adviser during the approximately two-year period of the misconduct at issue and had been advising his clients for nearly twenty years before the misconduct at issue. He offers no evidence of his current occupation or assurances about his future plans.[24]

Moreover, Dang has a history of unethical and dishonest practices in the securities business. These include: failing to repay a loan from a former client when Dang was employed at a registered broker-dealer, which both violated FINRA rules and led to a Cease and Desist Order issued by the State of Connecticut Department of Banking finding that Dang had engaged in dishonest or unethical practices in the securities business; taking (and not repaying) a $100,000 loan from the retired clients he defrauded here; advising clients as an unregistered investment advisor since 2006, despite telling clients that he continued to be employed with a registered investment adviser; and failure to report any of these prior transgressions to his clients.

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.[25] Here, the record establishes that Dang defrauded elderly investors and caused them to lose nearly $2 million. As a result, Dang has amply demonstrated that he is unfit to participate in the securities industry in any professional capacity and that an industry-wide bar is necessary to protect investors.[26] We therefore conclude that it is in the public interest to bar him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[27]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

---

24 *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).

25 *See, e.g., Peters*, 2024 WL 624010, at *5.

26 *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).

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6630 / June 17, 2024

Admin. Proc. File No. 3-20282

In the Matter of

HAI KHOA DANG

ORDER IMPOSING REMEDIAL SANCTIONS

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

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

By the Commission.

Vanessa A. Countryman
Secretary