SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6637 / July 15, 2024

Admin. Proc. File No. 3-20134

In the Matter of

PAUL HORTON SMITH, SR.

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violating the antifraud provisions of the 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:

Paul Horton Smith, Sr., pro se.

Gary Y. Leung for the Division of Enforcement.

On October 22, 2020, the Securities and Exchange Commission instituted an administrative proceeding against Paul Horton Smith, Sr., pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] We now find Smith 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 instituted the proceeding against Smith.

The order instituting proceedings ("OIP") alleged that Smith is a California-registered investment adviser representative and that, although he was associated with broker-dealers or investment advisers registered with the Commission from 1993 to 2000 and from 2007 to 2011, he is not currently registered with the Commission in any capacity. The OIP further alleged that, from at least January 2018 through May 2020, Smith offered and sold securities in his company, Northstar Communications, LLC ("Northstar"), in conjunction with his state-registered investment advisory firm, eGate, LLC ("eGate"), and his insurance and estate planning company.

In addition, the OIP alleged that, on October 19, 2020, a federal district court entered a final judgment against Smith in a civil injunctive action, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933,[2] Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder,[3] and Sections 206(1) and 206(2) of the Advisers Act.[4] According to the OIP, the Commission's complaint in the civil injunctive action alleged that Smith conducted a multiyear Ponzi scheme targeting senior citizens and engaged in other fraudulent conduct by offering and selling securities in Northstar.

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 Smith to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[5] The OIP informed Smith that if he failed to answer, he could be deemed in default, the proceeding could be determined against him upon consideration of the OIP, and the allegations in the OIP could be deemed to be true, as provided in the Rules of Practice.[6]

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1 *Paul Horton Smith, Sr.*, Advisers Act Release No. 5618, 2020 WL 6262345 (Oct. 22, 2020).

2 15 U.S.C. § 77q(a).

3 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

4 15 U.S.C. § 80b-6(1), (2).

5 17 C.F.R. § 201.220(b).

6 *See* Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

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

Smith was properly served with the OIP on December 6, 2022, pursuant to Rule of Practice 141(a)(2)(i),[7] but did not respond. On January 12, 2023, more than 20 days after service, the Commission ordered Smith to show cause by January 26, 2023, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[8] The show cause order warned Smith that, if the Commission found him 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.

In response to the show cause order, Smith filed a one-page letter, dated January 26, 2023, which stated that he "was unaware of any failure on [his] part to respond" and that he had been advised by his counsel not to testify in this proceeding because of a pending federal criminal case against him. Smith requested either that this proceeding be postponed until after the resolution of his federal criminal case or that "the loss of [his] licensing be deemed sufficient sanction." Smith's letter also stated that he had "not used any securities license or worked in the field since 2020" and that he would "not do so in the future."

On April 17, 2023, we issued an order denying Smith's motion to stay this proceeding pending resolution of his criminal case and directing Smith to show cause by May 1, 2023, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[9] The show cause order warned Smith that, if the Commission found him to be in default, the allegations in the OIP would be deemed true and the Commission could determine the proceeding against him upon consideration of the record. On June 16, 2023, after Smith did not respond to this show cause order, the Division of Enforcement filed a motion requesting that the Commission find Smith in default and bar him from the securities industry. The Division supported the motion with the allegations of the OIP, three declarations, and copies of the complaint and final judgment in the underlying civil action.

On November 17, 2023, having received no response to the Division's motion from Smith, we issued a renewed order for Smith to show cause by December 1, 2023, why the Commission should not find him in default due to his failure to file an answer, respond to the Division's motion for default and sanctions, or otherwise defend this proceeding.[10] The order

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[7] 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein").

[8] *Paul Horton Smith, Sr.*, Advisers Act Release No. 6215, 2023 WL 173352 (Jan. 12, 2023).

[9] *Paul Horton Smith, Sr.*, Advisers Act Release No. 6287, 2023 WL 2986240 (Apr. 17, 2023).

[10] *Paul Horton Smith, Sr.*, Advisers Act Release No. 6484, 2023 WL 8004579 (Nov. 17, 2023) (noting that it appeared that the April 17, 2023 order to show cause may not have been properly served on Smith). The renewed order to show cause was mailed to Smith's last known address, which was also the address at which the OIP was served on him by personal delivery to

reminded Smith 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. It also reminded Smith that failure to file an answer or to timely oppose a dispositive motion is also a basis for default. Smith did not respond. In fact, since his January 26, 2023 letter, Smith has not responded to any Commission orders, nor has he responded to the Division's motion for default and sanctions.

II. Analysis

A. We hold Smith 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."[11] Because Smith has failed to answer or respond to either the renewed order to show cause or the Division's motion, we find it appropriate to hold him in default and to deem the allegations of the OIP to be true. We decline, however, to deem true the underlying allegations of the civil-action complaint that were recited by the OIP because the OIP merely recounts the allegations in the complaint, rather than independently alleging that Smith engaged in particular conduct.[12] We also take official notice that Smith entered into a plea agreement and pleaded guilty to one count of wire fraud for misconduct related to the fraud alleged in the civil action.[13]

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his spouse and co-resident. Though not required by Commission rules, the renewed order to show cause was also emailed to Smith at the email address from which he sent the Commission his January 26, 2023 letter.

[11] 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 § 201.155(a)").

[12] *See Bruce C. Worthington*, Exchange Act Release No. 98789, 2023 WL 7039955, at *3 (Oct. 24, 2023) (declining to deem true the underlying allegations of a complaint where the OIP merely recounted those allegations). Moreover, because the judgment in the civil action was entered based on Smith's default, the facts alleged in the civil-action complaint have no preclusive effect in this proceeding. *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))).

[13] *See* Rule of Practice 323, 17 C.F.R. § 201.323 (permitting the Commission to take official notice of "any material fact which might be judicially noticed by a district court of the United States"); *William M. Apostelos*, Exchange Act Release No. 99539, 2024 WL 624007, at *1 n.3 (Feb. 14, 2024) (taking official notice of court records from a federal criminal proceeding). Here, we take official notice of the first superseding indictment, the plea agreement, and the minutes of Smith's change-of-plea hearing in Smith's federal criminal case. *See United States v. Smith*, No. 5:20-cr-120, ECF Nos. 51 (C.D. Cal. Sept. 21, 2022) (first

We base the findings that follow on the record, including the OIP, the evidentiary materials that the Division submitted in support of its motion for default and sanctions, and the materials of which we take official notice.

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

Advisers Act Section 203(f) authorizes the Commission to 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.[14]

The record establishes the first two of these elements. First, Smith was enjoined from conduct in connection with acting as an investment adviser,[15] and in connection with the purchase or sale of securities.[16] Second, Smith was also a person associated with an investment adviser during the time of his misconduct. Specifically, Smith was the president and control person of eGate, which was a California-registered investment adviser, during the period of his misconduct.[17]

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superseding indictment), 61 (C.D. Cal. Nov. 17, 2023) (plea agreement) (noting Smith's agreement to plead guilty to one count of wire fraud in violation of 18 U.S.C. § 1343), 65 (C.D. Cal. Jan. 8, 2024) (minutes of change-of-plea hearing) (noting that Smith pleaded guilty to one count of wire fraud). As noted above, Smith himself referred to the criminal proceeding in his January 26, 2023 letter to the Commission. Smith has not been sentenced yet. *Cf.* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "[c]onvicted" to include a "plea of guilty" if the plea "has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed").

[14] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4)); *see also id.* § 80b-3(e)(4) (specifying injunctions against various actions, conduct, and practices).

[15] *See* Advisers Act Section 206, 15 U.S.C. § 80b-6 (making it unlawful for "any investment adviser" to engage in specified conduct).

[16] *See* Exchange Act Section 10(b), 15 U.S.C. § 78j(b) (applying to conduct "in connection with the purchase or sale of any security"); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 (same).

[17] *See Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who is "in a position of control with respect to the investment adviser" thus "meets the definition of a 'person associated with an investment adviser"' under Advisers Act Section 202(a)(17)); Advisers Act Section 202(a)(17), 15 U.S.C. § 80b-2(a)(17). (defining "person associated with an investment adviser" to include "any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser"). *Compare* Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11) ("'Investment adviser' means any person who,

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 likelihood that the respondent's occupation will present opportunities for future violations.[18] Our public interest inquiry is flexible, and no one factor is dispositive.[19] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[20]

We have weighed all these factors and find an industry bar is warranted to protect the investing public. Smith's misconduct was egregious and recurrent. From at least July 2000 through May 2020,[21] Smith engaged in a Ponzi scheme that cost his victims millions of dollars. As Smith admitted in his plea agreement, he received over $24 million from over 200 clients to invest in Northstar. Knowing that his statements were false, Smith told these clients that Northstar was an annuity or something similar to an annuity, or that Northstar invested in real estate or the stock market. Smith also falsely told clients that the Northstar investments had a minimum rate of return and would be a safe investment. In fact, Smith never made any legitimate investments with the $24 million he received from his clients. Instead, he used the funds to repay earlier Northstar investors in an attempt to prevent the discovery of his ongoing Ponzi scheme. As a result of this scheme, over 100 of Smith's clients lost more than

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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, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . ."), *with* Cal. Corp. Code § 25009(a) (using identical language to define "investment adviser").

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

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

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

[21] This timeframe derives from Smith's plea agreement in his federal criminal case and is longer than the one alleged in the OIP. We may consider the plea agreement in assessing the public interest, even though the OIP does not contain any allegations concerning the criminal case or the plea agreement. *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *5 & n.21 (Jan. 14, 2011) (considering respondent's criminal conviction in assessing sanctions although the conviction was not referenced in the OIP); *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).

$13 million. Smith did all this while acting as an investment adviser who owed a fiduciary duty to his clients.[22] He thus repeatedly abused his position of trust by misusing his clients' funds.[23]

Smith also acted with a high degree of scienter.[24] The federal wire fraud statute to which Smith pleaded guilty requires specific intent to defraud.[25] Indeed, Smith admitted in his plea agreement that he acted with the intent to deceive and cheat by soliciting investments while misrepresenting how he planned to use the money.

Because Smith failed to answer the OIP or respond to either the renewed order to show cause or the Division's motion, in this proceeding he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. And although Smith's guilty plea may evidence some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses a risk to the investing public.[26]

If Smith reentered the securities industry, he would have opportunities to commit further violations.[27] In his January 26, 2023 letter, Smith claimed that he has not worked in the securities industry since 2020 and that he will not do so in the future. But, even accepting the sincerity of Smith's expressed current intentions, we still find a risk of future misconduct

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[22] *See Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *6 (June 17, 2011) ("Investment advisers and their associated persons have a fiduciary duty to their clients.").

[23] *See, e.g.*, *Conrad A. Coggeshall*, Exchange Act Release No. 97474, 2023 WL 3433398, at *3 (May 10, 2023) (finding respondent's conduct egregious and recurrent where, for around a year, he raised $700,000 from elderly investors without disclosing that he used the funds for personal expenses and to trade securities); *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.").

[24] *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (explaining that the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

[25] *See* 18 U.S.C. § 1343; *see also Charles K. Topping*, Exchange Act Release No. 98700, 2023 WL 6537830, at *3 & n.16 (Oct. 6, 2023) (acknowledging that wire fraud conviction under 18 U.S.C. § 1343 requires specific intent).

[26] *See Roman Sledziejowski*, Exchange Act Release No. 97485, 2023 WL 3433408, at *4 & n.28 (May 11, 2023) (citing *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility")).

[27] *See Tagliaferri*, 2017 WL 632134, at *6 (noting that "the securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence" (cleaned up)).

warranting a bar when weighed against the balance of the other public interest factors.[28] Smith worked in the securities industry for more than a decade and, without a bar, there is nothing to prevent him from entering the industry again.[29] These concerns are not diminished by the California Department of Financial Protection and Innovation's barring Smith on December 15, 2020, "from any position of employment, management or control of any investment adviser, broker-dealer, or commodity adviser."[30] If we were to decline to impose a bar, Smith would still be able to act as an investment adviser or to associate with a broker outside of California (as he did earlier in his career).[31]

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 Smith is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[32] Given that Smith has defaulted in this proceeding, he has not opposed the imposition of any associational bar.[33] Because Smith poses a continuing threat to investors, we conclude that it is in the public interest to bar him from

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[28] *See, e.g.*, *Donald J. Fowler*, Exchange Act Release No. 99084, 2023 WL 8469512, at * 3 (Dec. 5, 2023) (holding that a bar was in the public interest despite respondent's claim that he would not work in the securities industry in the future); *Korem*, 2013 WL 3864511, at *6 (same).

[29] *See Joseph Ricupero*, Exchange Act Release No. 62891, 2010 WL 3523186, at *7 (Sept. 10, 2010) (rejecting argument that a bar was unnecessary because applicant had left the securities industry since applicant could seek to reenter the industry).

[30] BrokerCheck Report for Paul Horton Smith, Sr., https://brokercheck.finra.org/individual/summary/2387799. We take official notice of Smith's BrokerCheck record pursuant to Rule of Practice 323. *See Sledziejowski*, 2023 WL 3433408, at *4 n.29 (taking official notice of BrokerCheck records and citing Rule of Practice 323, 17 C.F.R. § 201.323).

[31] Smith was associated with a broker-dealer outside of California from 1996 through 2000.

[32] *See Jaswant Gill*, Advisers Act Release No. 5858, 2021 WL 4131427, at *3-4 (Sept. 10, 2021) (finding that misconduct underlying respondent's injunction from violating the Exchange Act and Advisers Act demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

[33] In his January 26, 2023 letter, Smith "request[ed] that the loss of [his] licensing be deemed sufficient sanction." It is unclear whether Smith meant this as his consent to the Commission barring him from the securities industry, as merely referring to the 2020 bar imposed on him by the California Department of Financial Protection and Innovation, or as something else. To the extent that Smith's request was meant as an objection to the Commission's imposition of associational bars on him, however, we reject the objection for the reasons detailed herein.

association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[34]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

[34] *See Gill*, 2021 WL 4131427, at *3-4 (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. 6637 / July 15, 2024

Admin. Proc. File No. 3-20134

In the Matter of

PAUL HORTON SMITH, SR.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Paul Horton Smith, Sr. 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