INITIAL DECISION RELEASE NO. 1025
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17037

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of WAYNE L. PALMER	INITIAL DECISION OF DEFAULT June 13, 2016

APPEARANCE: Amy J. Oliver for the Division of Enforcement, Securities and Exchange Commission

BEFORE: James E. Grimes, Administrative Law Judge

Summary

In this initial decision, I grant the Division of Enforcement's motion for sanctions. Respondent Wayne L. Palmer is barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

Procedural Background

The Securities and Exchange Commission initiated this proceeding in January 2016, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934. OIP at 1; *see* 15 U.S.C. § 78*o*(b). This proceeding follows the action the Commission filed in *SEC v. National Note of Utah*, No. 12-CV-591 (D. Utah). The Division alleges the following in the OIP. From 2004 through 2014, Palmer raised over $140 million from over 600 investors through the offer and sale of securities of National Note of Utah, LLC. OIP at 1. During the relevant time period, Palmer, who was not associated with a registered broker-dealer, acted as a broker or dealer. *Id*. In December 2015, the United States District Court for the District of Utah permanently enjoined Palmer from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5. *Id*. at 2. The OIP also recites what the Commission alleged in its injunctive complaint. *Id*.

Palmer was served with the OIP but did not file an answer. *Wayne L. Palmer*, Admin. Proc. Rulings Release No. 3575, 2016 SEC LEXIS 414, at *1 (ALJ Feb. 4, 2016). As a result, I ordered him to show cause why this matter should not be determined against him. *Id*. Shortly after ordering Palmer to show cause, I held a telephonic prehearing conference. *Wayne L.*

Palmer, Admin. Proc. Rulings Release No. 3592, 2016 SEC LEXIS 493, at *1 (ALJ Feb. 10, 2016). Counsel for the Division appeared at the conference but Palmer did not. *Id.*

During the prehearing conference, I granted the Division leave to file a motion for sanctions. *Wayne L. Palmer*, 2016 SEC LEXIS 493, at *1. The Division filed a motion in March 2016. Its motion is supported by the district court's findings of fact and conclusions of law, Ex. A, and the district court's judgment, Ex. B. Palmer did not file an opposition to the Division's motion.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Commission Rule of Practice 323, 17 C.F.R. § 201.323. Because Palmer did not file an answer to the OIP, he is in default.[1] *See* 17 C.F.R. §§ 201.155(a), .220(f). As a result, I have accepted as true the factual allegations in the OIP. *See* 17 C.F.R. § 201.155(a). In making the findings below, I have applied preponderance of the evidence as the standard of proof. *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005) ("[I]t is well settled that the applicable standard . . . is preponderance of the evidence."), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).

Palmer was the sole owner of National Note and its managing member. Ex. A at 2; OIP at 1. He controlled all decisions concerning the use of investor funds and transfers from National Note's bank accounts. Ex. A at 3. From 2004 through 2014, Palmer raised over $140 million from over 600 investors by offering and selling National Note securities. OIP at 1; Ex. A at 4. Though he has never been registered with the Commission as a broker or dealer or been associated with a registered broker or dealer, Palmer acted as a broker-dealer when he offered and sold these securities. OIP at 1; Ex. A at 2-3, 10.

In addition to National Note, Palmer controlled roughly forty related entities that he formed. Ex. A at 3. After 2005, "National Note transacted business almost exclusively with the [forty] related entities." *Id.*

Palmer told investors that investment funds would be used "to buy and sell mortgage notes, underwrite and make loans, or buy and sell real estate." Ex. A at 3, 5. He induced

[1] I could also find Palmer in default for failing to attend the prehearing conference or for not responding to the Division's motion for sanctions. *See* 17 C.F.R. § 201.155(a)(1), (2), .221(f). Because I ordered Palmer to show cause only for failing to file an answer to the OIP, *see Wayne L. Palmer*, 2016 SEC LEXIS 414, at *1, I base the determination that Palmer is in default solely on his failure to file an answer to the OIP.

Palmer may move to set aside the default in this case. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

investors to purchase promissory notes that purported to pay 12% annual interest over a two to five year term. *Id*. Palmer asserted that investor principal was "guaranteed and risk free" and claimed that National Note could pay 12% interest because he invested investor "funds in projects and assets" that returned 18%. *Id.* at 3-4. In a brochure Palmer provided to some potential investors, he claimed that National Note would make its interest payments to investors even if "the property owner fails to pay on the loan" on an underlying investment project or asset. *Id*. at 4.

By 2009, National Note was insolvent and Palmer began using new investment funds to pay interest to existing investors. Ex. A at 5-7. By the end of 2009, National Note's liabilities exceeded its assets by $24 million. *Id*. at 6. By July 2012, the figure had grown to $68 million. *Id*. Although Palmer knew National Note was insolvent, he continued to solicit investors to invest. *Id*. at 7. He did not, however, tell investors that National Note was insolvent or that funds invested would be used to make interest payments to existing investors. *Id*. Palmer also lied to potential investors, telling them that National Note's investors "had a lien and could foreclose on an asset in order to recover their investment." *Id*. at 8.

By late 2011, National Note stopped paying its investors. Ex. A at 5. Of the over $140 million invested in National Note, about $88.5 million was paid to investors in interest payments. *Id*. at 8. Palmer misappropriated at least $1.4 million "for his own personal gain." *Id*. at 11. As of June 25, 2012, National Note owed investors almost $52 million. *Id*. at 8.

According to the district court's docket, of which I take official notice under Rule 323, the Commission filed an injunctive complaint against Palmer and National Note in June 2012. Although neither National Note nor Palmer participated, the district court held a trial in November 2015. Ex. A at 2. After the trial, the court found that Palmer violated Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5. *Id*. at 9-10. It concluded that Palmer operated National Note as a Ponzi scheme and permanently enjoined Palmer from future violations of the provisions he violated. *Id*. at 10-11. The court ordered National Note to pay $51.9 million in disgorgement plus $13.2 million in prejudgment interest. *Id*. at 11. It ordered Palmer to pay over $1.4 million in disgorgement plus nearly $360,000 in interest. *Id*. Finally, the court assessed civil penalties of $900,000 against National Note and $1,050,000 against Palmer. *Id*. at 12-13.

Conclusions of Law

Section 15(b)(6) of the Exchange Act gives the Commission authority to impose a collateral bar[2] and penny stock bar against Palmer if, among other things, (1) he was associated with or seeking to become associated with a broker or dealer at the time of the misconduct at issue; (2) he was enjoined from engaging in or continuing conduct in connection with activity as

[2] A collateral bar is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014).

a broker or dealer or with the purchase or sale of any security; and (3) imposing a bar is in the public interest. 15 U.S.C. § 78o(b)(4)(C), (6)(A)(iii).

The above-factors are met in this case. In connection with his offering and selling of National Note's securities, Palmer acted as a broker-dealer. OIP at 1; Ex. A at 10. The fact that Palmer never registered with the Commission does not shield him from the determination that he acted as a broker-dealer. *See Daniel Imperato*, Exchange Act Release No. 74596, 2015 WL 1389046, at *4 (Mar. 27, 2015) ("Although Imperato was not registered as a broker or dealer or associated with a registered broker or dealer, we have authority to sanction persons, such as Imperato, who act as unregistered brokers."), *recons. denied*, Exchange Act Release No. 74886, 2015 WL 2088435 (May 6, 2015). Palmer, therefore, was associated with a broker-dealer—himself—at the time of his misconduct. *See David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472, at *100 (Oct. 29, 2015) (a broker is, by definition, a "person associated with a broker.").

In connection with his conduct as a broker-dealer and the sale of National Note securities, the district court enjoined Palmer from engaging in a scheme to defraud, selling unregistered securities, and acting as an unregistered broker-dealer. Ex. A at 9-10. Palmer was thus enjoined from engaging in or continuing conduct in connection with activity as a broker or dealer or with the purchase or sale of any security.

To determine whether imposition of a collateral or penny stock bar would be in the public interest, I must consider the public interest factors described in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See Toby G. Scammell*, 2014 WL 5493265, at *5. The public interest factors include:

> 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.

David R. Wulf, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016). Other relevant factors include the degree of harm resulting from the violation[3] and the deterrent effect of administrative sanctions.[4] The public interest "inquiry . . . is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, Investment Advisers Act of 1940 Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

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[3] *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at *26 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

[4] *David R. Wulf*, 2016 WL 1085661, at *4; *see Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, at *19 & n.107 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

Before imposing a bar, an administrative law judge must determine, based on the evidence presented, "whether such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (quoting *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016)). I must therefore "'review [Palmer's] case on its own facts' to make findings regarding [his] fitness to participate in the industry in the barred capacities." *Id.* (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). A decision to impose a bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'" *Id.* (quoting *McCarthy*, 406 F.3d at 189-90); *see also John W. Lawton*, 2012 WL 6208750, at *9 ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors.").

The Commission has explained that "because '[f]idelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud,' in most fraud cases the *Steadman* factors, such as egregiousness, scienter, and opportunity for future misconduct, will weigh in favor of a bar." *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 n.71 (Dec. 12, 2013) (alteration in original, internal citation omitted) (quoting *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *7 (Feb. 4, 2008)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). The Commission has "repeatedly held that 'antifraud injunctions merit the most stringent sanctions and that [the] foremost consideration must . . . be whether [the] sanction protects the trading public from further harm.'" *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) (alterations in original) (quoting *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *5 (July 26, 2013)). These considerations are animated by the fact that "[t]he securities industry presents a great many opportunities for abuse and overreaching, and [therefore] depends very heavily on the integrity of its participants." *Bruce Paul*, Exchange Act Release No. 21789, 1985 WL 548579, at *2 (Feb. 26, 1985).

Here, there is little doubt that collateral and penny stock bars are warranted. A Ponzi scheme necessarily entails inducing investment by repeatedly lying to investors, either affirmatively or by omission. And the longer the scheme goes on, the more the schemer must lie. A person who is willing to operate a long-term Ponzi scheme is thus committed to defrauding an ever-increasing number of people and lying to existing investors. Absent significant mitigating evidence, this sort of person should not be permitted to remain in the securities industry.

Such is the case with Palmer. He orchestrated a Ponzi scheme that operated for years and involved over 600 investors. He necessarily lied to hundreds of people, over and over again, about multiple subjects. He lied when he said investors' funds would be invested in actual projects or real estate, when with great frequency new investor funds instead went to existing investors or Palmer's pocket. He lied when he said investor funds were safe and secured by real estate. He lied by omission when he failed to disclose that National Note was insolvent and was operating as a Ponzi scheme. It is plain that Palmer is unsuited to remain in the industry and that the need to protect the investing public warrants imposing collateral and penny stock bars.

There can be no doubt that Palmer's conduct was egregious. Palmer lied to hundreds of investors about facts that were unquestionably material to their decisions to invest—the safety of their investment and what Palmer planned to do with their money. Indeed, the egregiousness of Palmer's conduct is underscored by the fact the district court ordered him to pay over $1.4 million in disgorgement plus nearly $360,000 in interest and imposed a civil penalty of $1,050,000.

There is also no doubt that Palmer acted with scienter. Ex. A at 12. Palmer did not inadvertently operate a Ponzi scheme. He knew or should have known National Note was insolvent when he continued to solicit investments. He knew or should have known that he was using new investor funds to pay existing investors. He necessarily knew he was not investing investor funds in the manner he represented.

Palmer's misconduct was recurrent and not isolated. He duped hundreds of investors over a period of years.

Palmer has made no assurances against future violations. He has not participated in this proceeding and elected not to participate in the district court's trial.

Palmer's occupation, if allowed to continue, would present opportunities for future violations. The Commission has held that "the existence of a violation raises an inference that" the acts in question will recur. *Tzemach David Netzer Korem*, 2013 WL 3864511, at *6 n.50 (alteration in original omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). If he were to continue working in the securities industry, Palmer's occupation would "present[] opportunities for future illegal conduct in th[is] . . . industry." *John W. Lawton*, 2012 WL 6208750, at *11. In combination with the lack of evidence that Palmer recognizes the wrongfulness of his actions and the fact that his actions were not isolated, this factor weighs in favor of collateral and penny stock bars.

Finally, imposing collateral and penny stock bars will serve as a general and specific deterrent.[5] It will deter Palmer and will further the Commission's interest in deterring others from engaging in similar misconduct.

Given the foregoing, I find that it is in the public interest to impose full collateral and penny stock bars against Palmer.

[5] Although general deterrence is not determinative of the question of whether the public interest weighs in favor of imposing an industry bar, it is a relevant consideration. *See Peter Siris*, 2013 WL 6528874, at *11 n.72; *see also PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007); *Guy P. Riordan*, 2009 WL 4731397, at *19 & n.107.

Order

The Division of Enforcement's motion for sanctions is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934, Wayne L. Palmer is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.[6]

Under Section 15(b) of the Securities Exchange Act of 1934, Wayne L. Palmer is BARRED from participating in an offering of 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.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule 111. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occurs, the initial decision shall not become final as to that party.

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James E. Grimes
Administrative Law Judge

[6] Because a portion of Palmer's misconduct occurred after July 22, 2010, the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, imposing a full collateral bar is not impermissibly retroactive. *See Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015) (holding on retroactivity grounds that the Commission cannot apply the Dodd-Frank amendments to bar a respondent from associating with municipal advisors and rating organizations based on conduct predating Dodd-Frank).