Initial Decision Release No. 1370
Administrative Proceeding
File No. 3-17959

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

In the Matter of

Gregory Reyftmann

Initial Decision of Default
March 25, 2019

Appearances: John V. Donnelly III and Christopher R. Kelly
for the Division of Enforcement,
Securities and Exchange Commission

Before: Cameron Elliot, Administrative Law Judge

Summary

Gregory Reyftmann, who worked for a broker-dealer, led two schemes that defrauded investors by falsifying trade execution prices and the number of shares transacted. A district court imposed an injunction against Reyftmann as a result of his misconduct. This initial decision bars him from associating with any broker or dealer and from participating in an offering of penny stock.

Procedural Background

On May 1, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Section 15(b) of the Securities Exchange Act of 1934. The OIP alleges that the district court in *SEC v. Leszczynski*, No. 1:12-cv-7488 (S.D.N.Y.), permanently enjoined Reyftmann from violating the antifraud provisions of the federal securities laws. OIP at 3.

A different administrative law judge was originally assigned to this proceeding and issued an initial decision, which was declared final by the Commission. *Gregory Reyftmann*, Initial Decision Release No. 1233, 2018

WL 722362 (ALJ Feb. 6, 2018), *finality order*, Exchange Act Release No. 83259, 2018 SEC LEXIS 1160 (May 16, 2018). The Commission vacated the decision and its finality order following the Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018). *See Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 WL 4003609, at *1, *5 (Aug. 22, 2018). The matter was then reassigned to me to provide Reyftmann with the opportunity for a new hearing. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2-3 (ALJ Sept. 12, 2018). I have proceeded under the Commission's instruction not to give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued by the prior administrative law judge. *Pending Admin. Proc.*, 2018 WL 4003609, at *1.

Reyftmann was re-served with the order instituting proceedings on November 8, 2018, and his answer and proposal for the conduct of post-*Lucia* proceedings were due by December 3, 2018. *Gregory Reyftmann*, Admin. Proc. Rulings Release No. 6328, 2018 SEC LEXIS 3223, at *1 (ALJ Nov. 15, 2018). Respondent did not answer or file a proposal. I issued Respondent an order to show cause by December 24, 2018, but he did not respond. *Gregory Reyftmann*, Admin. Proc. Rulings Release No. 6399, 2018 SEC LEXIS 3509, at *1 (ALJ Dec. 13, 2018).

I therefore find Reyftmann in default and deem the allegations in the OIP to be true. 17 C.F.R. §§ 201.155(a)(1)-(2), .220(f); *Pending Admin. Proc.*, 2018 WL 4003609, at *1. This proceeding will be determined upon consideration of the record, which includes the deemed-true facts in the OIP and the twelve exhibits supporting the Division of Enforcement's motion for default and sanctions against Reyftmann filed on February 13, 2019.

Findings of Fact

From February 2005 until July 2010, Reyftmann was a registered representative with Linkbrokers Derivatives LLC, a registered broker-dealer doing its principal business in New York City. OIP at 1-2; Mot. Ex. 2 at 4. Linkbrokers worked mostly with market counterparties and institutional customers dealing in equities and fixed income products. OIP at 4.

Reyftmann managed Linkbrokers' "Cash Desk." *Id.* at 4. Between 2003 and 2009, Reyftmann obtained Series 7, 24, 55, and 63 securities licenses. Mot. Ex. 2 at 3; *see* OIP at 1.

From at least 2005 through at least February 2009, Reyftmann and other Linkbrokers employees working on the Cash Desk defrauded customers of $18.7 million by engaging in two schemes that falsified trade execution

prices and the number of shares transacted in over 36,000 customer transactions. OIP at 4, 6. Forty percent of the Cash Desk's revenue during the relevant period was attributable to the fraudulent schemes. *Id.* at 6. Reyftmann led the fraud and encouraged his colleagues to participate in it. *Id.* at 4.

The first fraudulent scheme relied on undisclosed markups and markdowns in trade execution prices. For example, in February 2005, a customer asked Reyftmann to sell short 16,000 shares of Mercury Interactive Corp. *Id.* at 5; Mot. Ex. 6. Reyftmann sold the shares at $47.639 per share but told the customer that the sale price was only $47.539 per share, a difference of ten cents. Mot. Exs. 7-8; OIP at 5. Thus, on 16,000 shares, Reyftmann withheld $1,600 in profit from the customer. OIP at 5; *see* Mot. Ex. 7.

Reyftmann knew the prices reported to customers were false because he and his colleagues knew the prices at which the trades were actually executed and created the fictitious prices. OIP at 5. He also knew that the purpose of reporting the fictitious prices to his customers was to make a profit above the agreed-upon commission. *Id.* Persons at Linkbrokers, including information technology personnel, explained to Reyftmann how the software accommodated the fraudulent scheme. *Id.*; *see* Mot. Exs. 9-10. By selectively engaging in the scheme only when the volatility in the market was sufficient to conceal the fraud, Reyftmann further showed he was aware that he was defrauding customers. OIP at 5.

Reyftmann and some of his colleagues also employed a second scheme to defraud customers. Sometimes, when an investor made a limit order (an order to buy or sell a security at a certain price or better), Reyftmann told others to take advantage of favorable intraday price movements to steal a piece of a profitable customer trade. *Id.* at 5-6. Reyftmann and his colleagues would execute the full limit order, but wait to report the trade to see if they could buy or sell the security at a better price. *Id.* at 6. If so, they would either buy back or resell shares at the lower or higher price, respectively, and pretend that those shares had never been sold. *Id.*

For example, in April 2007, Linkbrokers sold 22,576 shares of Qualcomm, Inc., at a customer's direction for an average share price of $45.75. *Id.* But less than an hour later, Linkbrokers bought back 3,000 shares for an average price of $45.35 and told the customer it was only able to sell 19,576 shares at the price the customer wanted. *Id.* Linkbrokers kept the approximately $1,200 profit from the 3,000 shares for itself. *Id.* Reyftmann and his associates knew that when they told customers that they were unable to fully execute the customers' orders, it was untrue. *Id.*

Reyftmann's compensation from Linkbrokers was directly tied to the Cash Desk's gross revenue. *Id.* at 7. He received bonuses because of the fraudulent schemes he ran. *Id.* Reyftmann's ill-gotten gains—that is, the portion of his bonus attributable to the fraudulent schemes—totaled $3,181,068, from 2005 through 2009. *Id.*; Mot. Ex. 12 at 3.

On February 9, 2015, the United States District Court for the Southern District of New York entered a final judgment by default in the civil action. OIP at 3; Ex. 1. The court enjoined Reyftmann from future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and ordered Reyftmann to disgorge $3,181,068 together with prejudgment interest of $989,072 and to pay a civil penalty of $4,555,000. OIP at 3; Ex. 1 at 2-3.

Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose a bar on Respondent if: (1) at the time of the alleged misconduct, he was associated with a broker or dealer; (2) he has been enjoined from "conduct . . . in connection with the purchase or sale of any security"; and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (b)(6)(A)(iii).

Reyftmann was enjoined and was associated with a broker-dealer

Reyftmann was associated with Linkbrokers, a registered broker-dealer, throughout the period of his misconduct. OIP at 1, 4. And Respondent was permanently enjoined from conduct in connection with the purchase or sale of any security by the district court's injunction against violating the antifraud provisions of the Securities Act and the Exchange Act. 15 U.S.C. § 78*o*(b)(4)(C); OIP at 3; Mot. Ex. 1 at 2-3.

Broker-dealer and penny stock bars are in the public interest

The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: 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. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

The public interest analysis is a "flexible" inquiry, and "no one factor is dispositive." *Kornman*, 2009 WL 367635 at *6 (quoting *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 5479036, at *15 (Dec. 21, 2007), *pet. denied*, 334 F. App'x 334 (D.C. Cir. 2009)). The Commission has also considered the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at *8 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 WL 21729839, at *2 (July 25, 2003). I have determined that it is appropriate and in the public interest to impose a broker-dealer and penny stock bar on Respondent.

Types of available industry bars

Reyftmann's association with a broker-dealer and fraudulent activities concluded before the July 22, 2010, effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). At that time, Exchange Act Section 15(b)(6), under which this proceeding was brought, permitted a respondent to be barred from association with a broker or dealer, but did not permit a respondent to be collaterally barred from all related industries. As such, I cannot impose a full collateral bar in this proceeding. *See SEC v. Bartko*, 845 F.3d 1217, 1224-26 (D.C. Cir. 2017) (holding that the Commission could not apply a collateral bar based on conduct that predated Dodd-Frank without making the industry-specific findings that were required under earlier statutory language).

However, even though Reyftmann's misconduct did not involve penny stocks, I am permitted to impose a penny stock bar on him as requested by the Division. *See* Mot. at 10. Unlike the other industries covered by the collateral bar, the penny stock bar has been part of Section 15(b)(6) since 1990. *See* Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, § 504, 104 Stat. 931, 952-53 (1990). The plain language of the 1990 amendment remains fundamentally unchanged through the present, and there is no indication that *Bartko* limited the availability of the penny stock bar. *See Bartko*, 845 F.3d at 1225-26 (explaining that pre-Dodd-Frank, industry bars for broker-dealers, municipal securities dealers, transfer agents, and investment advisers were contained in four separate provisions of the Exchange Act and the Investment Advisers Act of 1940 without references to each other).

Public interest analysis

Turning to the public interest factors, Reyftmann's conduct was egregious and recurrent. The Commission considers misconduct involving

fraud to be particularly egregious and requiring a severe sanction. *See Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (stating that the Commission has "repeatedly held that 'conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws'" (quoting *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *5 (Apr. 20, 2012))), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Where a respondent has been enjoined from violating antifraud provisions of the securities laws, the Commission "typically" imposes a permanent bar. *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *8 (Oct. 29, 2014).

Using two fraudulent schemes over five years, Reyftmann and Linkbrokers received $18.7 million in fraudulent profits. OIP at 6. As noted, in one transaction alone, a customer lost $1,600 because Reyftmann lied about the sale price. *Id.* at 5; Mot. Exs. 6-8. In other transactions, Linkbrokers employees, at Reyftmann's direction, falsely told customers that they could only execute a portion of their limit orders when in fact Linkbrokers was pocketing a hidden profit from executing the entire order. OIP at 6. These schemes lasted years and involved over 36,000 transactions; Reyftmann personally received $3,181,068 in bonuses due to the frauds. OIP at 6-7. And Reyftmann did not just defraud customers on his own, but he encouraged his colleagues to join in the schemes. *Id.* at 4. Reyftmann's conduct seriously harmed investors and the marketplace.

Reyftmann showed a high degree of scienter because he knowingly created false prices for his customers in his markup-and-markdown scheme, and knowingly misstated the number of shares Linkbrokers was able to buy or sell in his limit-order scheme. OIP at 5-6. Regarding the first scheme, he also misrepresented the price that he and other employees paid to buy or sell stock only when there was sufficient volatility in the market that customers would not be able to tell that they were being defrauded, which shows scienter. *Id.* at 5. And Reyftmann understood that the company's software supported the fraud. *Id.*; Mot. Exs. 9-10. Moreover, the district court enjoined Reyftmann from violating Section 10(b) and Rule 10b-5—provisions which require a finding of scienter. OIP at 3; Mot. Ex. 1 at 2; *Aaron v. SEC*, 446 U.S. 680, 695 (1980).

Reyftmann has not participated in this proceeding to acknowledge the wrongfulness of his conduct or to make assurances against future violations. Although the mere existence of a past violation is not sufficient to justify sanctions, past conduct is evidence in a "broader inquiry into whether a person presents a future risk to the public." *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26,

2013) (quoting *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012), *vacated in part on other grounds by* Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016)). "[A]s the Supreme Court has recognized, the 'degree of intentional wrongdoing evident in a defendant's past conduct' is an important indication of the defendant's propensity to subject the trading public to future harm." *Lawton*, 2012 WL 6208750, at *9 (quoting *Aaron*, 446 U.S. at 701). Because Respondent is not incarcerated and has made no assurances about the legality of his future conduct, there is every reason to believe he could continue to put investors at risk. *See Reyftmann*, 2018 SEC LEXIS 3223, at *1 (finding service on Respondent at his address in France).

Weighing all the factors, there is substantial need to protect investors from Respondent and deter others from engaging in similar conduct. Associational bars have long been considered effective deterrence. *See Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, at *19 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). Even though Reyftmann's misconduct ended a decade ago, it was sufficiently egregious as to warrant a bar now. A broker-dealer and penny stock bar "will prevent [Respondent] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *20 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

Order

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

It is ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Gregory Reyftmann is BARRED from association with any broker or dealer and from participating in an offering of penny stock.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Pursuant to 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, then any 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. 17 C.F.R. § 201.360(d). 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.

Respondent 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.*

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Cameron Elliot
Administrative Law Judge