

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18893**

**In the Matter of**

**SALVADORE D. PALERMO,**

**Respondent.**

**MOTION BY DIVISION OF ENFORCEMENT FOR A FINDING THAT RESPONDENT  
PALERMO IS IN DEFAULT AND FOR IMPOSITION OF REMEDIAL SANCTIONS**

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EXHIBIT A: Complaint Securities and Exchange Commission v. Salvatore D. Palermo, Civil Action Number 1:18-CV-03747-TCB (United States District Court for the Northern District of Georgia) filed on August 6, 2018.

EXHIBIT B: Declaration of Mark Troszak and accompanying Exhibits 1-21

EXHIBIT C: Final Judgment in Securities and Exchange Commission v. Salvatore D. Palermo, Civil Action Number 1:18-CV-03747-TCB (United States District Court for the Northern District of Georgia) entered on October 22, 2018.

## **I. BACKGROUND**

On November 9, 2018, this matter was instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”). Respondent Salvatore D. Palermo (“Respondent” or “Palermo”) was served with the Order Instituting Proceedings (“OIP”) on February 11, 2019, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice. *See Salvatore D. Palermo*, Admin. Release No. 34-868819, 2019 WL 4171271 (Aug. 29, 2019). Palermo had twenty days to file an answer, but failed to do so. As of the date of this motion, Palermo has not filed an answer.

By Order to Show Cause, Palermo was ordered to show cause by September 12, 2019 why the Commission should not find Palermo in default due to his failure to file an answer or to otherwise defend this proceeding. *Id.* Palermo failed to file anything with the Commission by September 12, 2019, or at any time thereafter, providing any reason or cause as to why he should not be found in default and have this proceeding determined against him.

This proceeding arises from a District Court action that the Commission previously filed against Palermo. Specifically, on August 6, 2018, a Complaint for Injunctive and Other Relief was filed against Palermo alleging that he knowingly entered a series of fictitious sales of certain financial instruments which resulted in J.P. Turner’s creating and maintaining inaccurate financial books, records and reports in violation of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder. *See* Exhibit A (Complaint); *see also* Exhibit B (Declaration of Mark Troszak (“Troszak Decl.”)). The Complaint alleged that Palermo, between at least August 2014 and March 2015, entered certain fictitious sales orders in J.P. Turner’s books, records and electronic trading systems despite knowing that the named counterparty/purchaser had never

agreed to buy the instruments in order to circumvent J.P. Turner's internal inventory policy. *See* Exhibit A (Complaint).

On October 22, 2018, a Final Judgment was entered by default against Palermo, permanently enjoining him from future violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder, as well as imposing a civil penalty of \$75,000. *See* Exhibit C (Final Judgment).

Accordingly, the Division now moves pursuant to Rules 155(a)(2) and 220(f) for a finding that the Respondents are in default, and the imposition of remedial sanctions. The Division submits that the Respondents should be barred from associating with a broker, dealer, investment advisor, transfer agent, nationally recognized statistical rating organization (NRSRO), or investment company.

## **II. PALERMO'S SCHEME TO CREATE AND BOOK SHAM ORDERS**

Palermo worked for J.P. Turner & Company, LLC ("J.P. Turner") from February 2003 until his termination in July 2015, spending the last five years of that time as a fixed income trader with J.P. Turner. (*See* Troszak Decl., ¶ 2, Exhibit 1). Prior to his employment at J.P. Turner, Palermo worked for several broker-dealers, and he has held Series 7, 24 (principal), and 63 licenses since the 1980s. (*See id.*, Exhibit 2).

J.P. Turner was a Georgia limited liability company with its principal place of business in Atlanta, Georgia. (*See id.*, ¶ 3, Exhibit 3). J.P. Turner was registered with the Commission as a broker-dealer until April 4, 2016, when its withdrawal Form BDW (filed earlier in February 2016) became effective. (*See id.*, Exhibit 4).

In 2003, Palermo joined J.P. Turner, after being employed for seventeen years in the Atlanta area with several different broker-dealers. (*See id.*, ¶ 4, Exhibit 1).

In approximately 2010, after seven years of managing a retail book of business, Palermo transitioned to J.P. Turner's fixed income desk as a trader. (*See id.*, ¶ 5, Exhibit 5). In this position Palermo serviced the fixed income product requirements of J.P. Turner registered representatives and their customers by locating and trading with third-party buyers and sellers of fixed income products. (*Id.*)

As a fixed income trader Palermo frequently worked with a certain J.P. Turner registered representative ("Broker") who regularly invested clients in a fixed income financial instrument called a market-linked certificate of deposit ("MLCD"). (*See id.*, ¶ 6, Exhibit 6).

MLCDs are Federal Deposit Insurance Corporation ("FDIC") insured certificates of deposit that tie their rate of return to the performance of one or more securities or market indexes, such as bond indexes, the Dow Jones Industrial Average or the Standard & Poor's 500 Index. (*See id.*, ¶ 7, Exhibit 7). MLCDs can be attractive to investors due to the possibility of higher returns than traditional CDs, while providing some "principal protection" for the original deposit amount via FDIC insurance. (*Id.*) However, MLCDs are riskier than traditional CDs due to their longer maturity (generally from five to twenty years), limited secondary market and exposure to market downturns (which may result in little to no investment return at maturity). (*Id.*)

Palermo would routinely buy and sell MLCDs and other fixed income products on behalf of Broker and other registered representatives at J.P. Turner. (*See id.*, ¶ 8, Exhibit 6). Palermo would utilize J.P. Turner's fixed income desk trading accounts to temporarily maintain positions in these products. (*See id.*, Exhibit 8). However, because the fixed income desk did not conduct proprietary trading (i.e. trading for its own profit), and to avoid market risk due to long term positions in fixed income financial products, J.P. Turner internal policy placed strict limits on how much inventory Palermo and the fixed income desk could hold in its accounts without



authorization by management. (*See id.*, Exhibit 9). During 2014 and 2015, J.P. Turner required that the fixed income inventory accounts be at zero at each month-end and not exceed approximately \$2 to \$4 million at any point during each month (again, subject to authorization by management.) (*Id.*)

Beginning in late 2012, and continuing through 2013, 2014 and into 2015, several of Broker's customers sought to sell certain MLCDs held in their accounts prior to maturity. (*See id.*, ¶ 9, Exhibit 10). However, the prevailing market price of the instruments was often significantly below par amount, which would result in a loss to these customers upon sale. (*See id.*, Exhibit 11).

To avoid such losses, Broker reached out to Palermo for assistance. (*See id.*, ¶ 10, Exhibit 12). Frequently, Palermo would agree to repurchase the MLCD at par value and hold them in J.P. Turner's fixed income inventory account. (*See id.*, Exhibit 13). Then, Palermo would seek to sell the MLCDs from the fixed income inventory to a third party at a price at or near par to avoid losses in the fixed income account. (*Id.*)

Although Palermo was occasionally able to sell the MLCDs at or near par value, locating a purchaser and completing a trade often took time and required Palermo to maintain multi-million dollar MLCD positions in the J.P. Turner fixed inventory account for weeks and in some cases months which were reflected in J.P. Turner's records showing the dates and amounts of MLCD transactions in J.P. Turner's fixed income inventory accounts ("Spreadsheet"). (*See id.*, ¶ 11, Exhibit 14).

Beginning in approximately August 2014, this time delay required Palermo to hold MLCD positions for longer periods of time (sometimes as long as several months), substantially increasing J.P. Turner's fixed income inventory position. (*See id.*, ¶ 12).

In order to comply with J.P. Turner's limits on fixed income inventory, while avoiding a loss due to market sales of the MLC D positions, for each month-end from August 2014 through March 2015, and on several occasions intra-month during that same period, Palermo entered fictitious sales of MLC Ds from the firm's inventory. (*See id.*, ¶ 13, Exhibit 15).

For each of these fictitious sales, Palermo named a large third-party broker-dealer as counterparty ("Purchaser"), and set the purchase price at par value (to avoid recording a loss). (*See id.*, ¶ 14, Exhibit 15). By entering these trades, Palermo was able to fraudulently remove the oversized MLC D inventory to comply with J.P. Turner's inventory restrictions, while avoiding selling the inventory at a loss. ((*See id.*, Exhibit 16, Exhibit 17, Exhibit 18). Although the removal of the inventory was temporary, as the fictitious sales would be ultimately be rejected by Purchaser and taken back into J.P. Turner's fixed income inventory, this process would take a few days' time. (*Id.*) This delay allowed Palermo to comply with the strict month-end inventory limitations (which did not allow any inventory to be held) and recover the inventory intra-month when J.P. Turner's policy allowed for several million dollars' worth of inventory holdings. (*Id.*)

By way of example, on Friday, February 27, 2015 at 4:10 p.m. the last business day of the month, Palermo entered the following four sales of MLC Ds with Purchaser as the purported counterparty:

- \$1,334,000 of Citibank MLC Ds at 100 (par);
- \$380,000 of United Community Bank MLC Ds at 100 (par);
- \$1,105,000 of Citibank MLC Ds at 100 (par); and
- \$620,000 of United Community Bank MLC Ds at 100 (par).

(*See id.*, ¶ 15, Exhibit 15, Exhibit 19).

By entering these four sales, Palermo removed \$3.44 million of inventory from the J.P. Turner's fixed income inventory at month end. (*See id.*, ¶ 16, Exhibit 15).

In early March 2015, following J.P. Turner's clearing firm advising that the trades had not been "recognized" or accepted by Purchaser, Palermo cancelled the trades, with the \$3.44 million of MLCD inventory returned to the J.P. Turner fixed income inventory. (*See id.*, ¶ 17, Exhibit 20).

In some cases Palermo issued fictitious sales for the same instrument numerous times, while effectively holding the instrument for several months. (*See id.*, ¶ 18, Exhibit 15).

In total, Palermo entered 48 fictitious sales totaling over \$24 million between August 2014 and March 2015. (*See id.*, ¶ 19, Exhibit 14).

Palermo's fictitious sales resulted in errors to J.P. Turner's books, records and reports from at least August 2014 to April 2015, including the creation and maintaining of inaccurate trade blotters which caused misstated asset and revenue account balances, and the filing of inaccurate FOCUS Reports with the Commission. (*See id.*, ¶ 20, Exhibit 15).

In July 2015, J.P. Turner terminated Palermo's employment noting on his Form U5: "Engaged in structured product transactions for the apparent purpose of concealing inventory positions." (*See id.*, ¶ 21, Exhibit 21).

### **III. ARGUMENT**

#### **A. The Respondent Failed To Answer After Properly Being Served And Is In Default**

Because the Respondent never responded to the OIP, he is in default. Rule 155(a) of the Commission's Rules of Practice states that:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration

of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: ...

- (2) to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . . .

Moreover, the OIP itself provides that “[i]f Respondent fails to file the directed Answer . . . , the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true . . . .” (OIP ¶ IV).

Rule 141(a)(2)(i) sets forth permissible methods of service of the OIP upon individuals, which include “delivering a copy of the order instituting proceedings to the individual,” and which defines “delivery” to include “handing a copy of the order to the individual; . . . .” Here, the Respondent was properly served with the OIP. *See Salvatore D. Palermo*, Admin. Release No. 34-868819, 2019 WL 4171271 (Aug. 29, 2019)

The Division requests that the Respondent be found to be in default, as he failed to timely file and serve an Answer after having been served with the OIP or respond in any way to the OIP.

#### **B. The Facts Alleged In The OIP Must Be Deemed True**

As stated in the OIP, failure to file a directed answer may result in the Respondent being deemed in default and the proceedings may be determined against them upon consideration of the OIP, the allegations of which may be deemed to be true. (OIP ¶ IV, *citing* Rules 155(a), 220(f), and 310). Those facts which may be deemed true include that:

1. Beginning in 2003, Palermo was a registered representative associated with J.P. Turner, L.L.C. (“J.P. Turner”), a now-defunct broker dealer formerly registered with the Commission.

2. Palermo worked at J.P. Turner from February 2003 until his termination in July 2015, working as a fixed income trader during the last five years of his employment there.
3. On October 22, 2018, a final judgment was entered against Palermo, permanently enjoining him from future violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Salvatore D. Palermo, Civil Action Number 1:18-CV-0747, in the United States District Court for the Northern District of Georgia.
4. The Commission's complaint alleged that, between at least August 2014 and March 2015, Palermo entered certain fictitious sales orders in J.P. Turner's books, records and electronic trading systems, despite knowing that the named counterparty/purchaser had never agreed to buy the instruments and that each sales order would ultimately be cancelled with the instruments being returned to J.P. Turner's inventory. The Commission further alleged that Palermo created these sham sales to temporarily remove the instruments from J.P. Turner's inventory in order to appear to comply with J.P. Turner's internal inventory policy, and that, as a result of these sham transactions, J.P. Turner made and maintained inaccurate trading and financial books and records, and filed with the Commission inaccurate Financial and Operational Combined Uniform Single ("FOCUS") Reports, which contain certain financial and operational information for the firm, for each month between at least August 2014 and February 2015.

As stated in Section III of the OIP, the purpose of this proceeding is not only to determine whether the above allegations are true, but what remedial action is appropriate in the public interest against the Respondents pursuant to Section 15(b) of the Exchange Act. As the allegations may be deemed true because the Respondent is in default, the remaining issue is the appropriate remedies to be imposed on them in the public interest.

### **C. The Appropriate Remedial Sanctions That Should Be Imposed Upon The Respondent In This Case**

Pursuant to Section 15(b)(6) of the Exchange Act, the Respondent should be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO).

Before imposing such a bar, the Commission or the administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the

industry in the barred capacities,” and the decision “should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct.” *Ross Mandel*, Exchange Act Release No. 71668, 2014 SEC Lexis 848 at (Mar. 7, 2014) 2014 SEC LEXIS 849, at \*8 (internal quotation marks omitted). Thus, an industry bar sanction cannot be predicated solely on the allegations in the complaint in a Commission’s civil action if the Respondent defaulted in that proceeding. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657 at \*3 (Apr. 23, 2015).

There are several well-recognized factors that are to be considered in determining the appropriate remedy in the public interest. Those factors are: (1) the egregiousness of the Respondent’s actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the Respondent’s assurances against future violations; (5) the Respondent’s recognition of the wrongful nature of their conduct; and (6) the likelihood that the Respondent’s occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of Bernath*, Initial Decision Release No. 993 at 4, 2016 SEC LEXIS 1222 \*10-11 (April 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers 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. *Bernath*, at \*4 and \*11, citing *In the Matter of Schield Mgmt Co.*, 58 S.E.C. 1197, 1217 n.46, 2006 SEC LEXIS 195, at \*35-36 (Jan. 31, 2006) (revoking adviser’s registration and barring majority owner from association).

Although no one factor is dispositive in determining the appropriate relief in the public interest, the record in the District Court action and the attached declarations and records establish the presence of each of the six *Steadman* factors.

Here, there can be little question that the conduct at issue was egregious, repeated and involved a high degree of scienter. As set forth in the accompanying Troszak Declaration and the supporting exhibits thereto, , between at least August 2014 and March 2015, Palermo repeatedly entered fictitious sales orders in J.P. Turner's books, records and electronic trading systems despite knowing that the named counterparty/purchaser had never agreed to buy the instruments and that each sales order would ultimately be cancelled with the instruments being returned to J.P. Turner's inventory, all for the purpose of temporarily removing them from J.P. Turner's inventory to circumvent J.P. Turner's internal inventory policy, which strictly limited the dollar amount of fixed income inventory that could be held at month end and at other times intra-month. Further, as a result of these sham transactions, J.P. Turner made and maintained inaccurate trading and financial books and records, and filed with the Commission inaccurate Financial and Operational Combined Uniform Single ("FOCUS") Reports, which contain certain financial and operational information for the firm, for each month between at least August 2014 and February 2015.

Further, the Respondent has made no assurance against future violations and has failed to recognize the wrongful nature of his conduct. Indeed, since he has defaulted on the underlying District Court action, and failed to show cause why this proceeding should not be determined against them, there is every reason to believe that he may engage in this sort of misconduct again. Given his misconduct and refusal to participate in any judicial proceedings related to it, and since

his present occupation is unknown, there is every reason to believe that Respondent may well have opportunities for future violations.

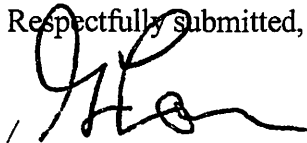
Finally, the violations are sufficiently recent to merit the requested sanctions. Palermo engaged in the misconduct in 2014 and 2015. A civil action was filed against him in District Court in August 2018, and a final judgment was entered against him on October 2018. *See* Exhibit A (Complaint); *see also* Exhibit C (Final Judgment). The Commission instituted this follow-on action on November 9, 2018.

#### IV. CONCLUSION

For the reasons set forth herein, Respondent Palermo should be found in default, and associational bars should be imposed against them.

Dated: October 10, 2019

Respectfully submitted,



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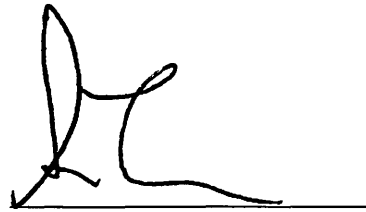


**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2019, I served the foregoing Motion by Division of Enforcement for Finding that Respondent Palermo Is In Default And For Imposition fo Remedial Sanctions to the following by the method of delivey indicated below:

Office of the Secretary (UPS and Facsimile)  
Securities and Exchange Commission  
100 F Street NE, Room 10900  
Mail Stop 1090  
Washington, DC 20549

Salvadore D. Palermo (UPS)  
[REDACTED]  
Atlanta, GA [REDACTED]

A handwritten signature in black ink, appearing to be 'M. Graham Loomis', written over a horizontal line.

M. Graham Loomis