UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19195

In the Matter of

JOSE G. RAMIREZ, JR.,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT AND OTHER RELIEF

I. Introduction

The Division of Enforcement (the "Division") pursuant to Rule 155(a) and 220(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), moves for entry of an Order finding Respondent Jose G. Ramirez, Jr., in default and determining this proceeding against him upon consideration of the record. The Division sets forth the ground below:

II. History of the Case

The Commission issued the Order Instituting Proceedings ("OIP") on June 6, 2019 pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act").[1] In summary, the OIP alleges that Ramirez, while a registered representative of UBS Financial Services Incorporated of Puerto Rico ("UBS-PR"), a broker-dealer registered with the Commission, offered and sold millions of dollars of certain UBS-PR affiliated, non-exchange traded closed-end mutual funds ("CEFs") to certain customers while soliciting them to use non-purpose lines of credit ("LOCs") to purchase

[1] Exh. 1. *In Re Jose G. Ramirez, Jr.*, Exchange Act Rel. No. 86055 (June 6, 2019)

securities and fraudulently misrepresented the risks of this strategy to them. These underlying facts led to Ramirez's guilty plea in the criminal case against him.

On June 11, 2019, Ramirez was served with the Letter from the Secretary and the Order Instituting Proceedings.[2] Based on Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b), as noticed in Section IV of the OIP, Ramirez's Answer to the allegations contained in the OIP was due within 20 days after service, thus July 1, 2019 (Exh. 1 at 3). That date passed without a response from Ramirez.

III. Memorandum of Law

A. Ramirez's Criminal Case

On October 30, 2018, the U.S. Attorney's Office for the District of Columbia filed an Information against Ramirez charging him with one count of Bank Fraud in violation of Title 18 U.S.C. § 1344(1) and (2).[3] On November 16, 2018, he pled guilty to this charge.[4] On March 26, 2019, the district court sentenced Ramirez to 12 months and 1 day imprisonment and two-years supervised release.[5] On April 2, 2019, judgment was entered against Ramirez reflecting the sentence imposed.[6]

B. Facts

Based on Ramirez's default, the allegations of the OIP "may be deemed to be true." 17 C.F.R. § 201.155(a). Moreover, Ramirez's guilty plea binds him to the facts he admitted. *See Gary L. McDuff*, Exch. Act Rel. No. 74803, at 5 & n.18, 2015 WL 1873119 (Apr. 23, 2015); *Don Warner Reinhard*, Exch. Act Rel. No. 63720, at 11-12, 2011 WL 121451 (Jan. 14, 2011) (respondent

[2] Exh. 2 (Division's Notice of Filing Proof of Service with attachment)
[3] Exh. 3 (Information DE 1, *United States v. Ramirez-Arone,* 18-cr-00325-TFH (D.D.C.))
[4] Exh. 4 (Statement of Offense (DE 7) and Plea Offer and Agreement (DE 8))
[5] Exh. 5 (3/26/19 Minute Docket Entry)
[6] Exh. 6 (Judgment of Conviction (DE 21))

who pleaded guilty "cannot now dispute the accuracy of the findings set out in the Factual Basis for Plea Agreement); *Gary M. Kornman,* Exch. Act Rel. No. 59403, at 12, 2009 WL 367635 (Feb. 13, 2009) (criminal conviction based on guilty plea precludes litigation of issues in Commission proceedings), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010).

The OIP and the facts admitted pursuant to the plea agreement establish the following:

From approximately 2006 through 2013, Ramirez offered and sold millions of dollars of certain UBS-PR affiliated, non-exchange traded CEFs to certain customers while soliciting them to use non-purpose LOCs to purchase such securities and fraudulently misrepresented the risks of this strategy to them.[7] Ramirez knew that UBS-PR policy and the customers' agreements with UBS-PR's Utah-based affiliate, UBS Bank USA ("UBS-UT") did not allow customers to use proceeds from the LOCs for the purpose of purchasing securities. To circumvent these restrictions, Ramirez presented to certain customers a way to make additional money by using the LOCs to increase their holdings of the CEFs. Ramirez encouraged these customers to withdraw funds from their LOC accounts, deposit those funds into an account at another bank, wait several days, and then redeposit the funds from the outside bank account into a UBS-PR brokerage account and purchase CEFs.[8]

C. Entry of Default is Appropriate

Under Rule 155(a) of the Commission's Rules of Practice, a party who fails to file a timely answer "may be deemed to be in default" and the Commission "may 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 . . . ." 17 C.F.R. § 201.155(a). Here Ramirez has not filed an Answer. Therefore the proceeding should be determined against him based on the record.

[7] The criminal Information limited the same allegations from January 2011 through September 2013.
[8] Exh. 7 (Transcript of Plea Hearing, (DE 13) at pages 3 -5; 21 – 23).

The facts established by Ramirez's default and his guilty plea show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A), which provides in relevant part:

> With respect to any person . . . at the time of the alleged misconduct, who was associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—
>
> * * * *
>
> (ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph . . . .

Each of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Ramirez was associated with a broker-dealer—are satisfied here.

a. The Division Timely Filed this Action

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within "10 years" of the criminal conviction. *See Joseph Contorinis*, Exch. Act Release No. 72031, at 4-6, 2014 WL 1665995 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Ramirez was convicted in November 2018, and the OIP was issued in June 2019. Therefore, this matter was timely filed.

b. Ramirez Was Convicted of a Qualifying Offense

Under the Exchange Act, the Commission may sanction Ramirez for an offense that "involves the purchase or sale of a security," and "arises out of the conduct of the business of a broker, dealer [or others]." *See* Exchange Act Sections 15(b)(4)(B)(i) and (ii) and Section 15(b)(6)(A)(ii). Here, Ramirez's underlying conduct for his conviction for Bank Fraud "involves the purchase or sale of a security." The Information charges that Ramirez did knowingly execute, and attempt to execute, a scheme and artifice to defraud a financial institution as that term is defined in 18 U.S.C. § 20, et seq., to wit, UBS-UT a Utah-based subsidiary of UBS Financial Services, Inc., and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of UBS-UT, by means of false and fraudulent pretenses, representations, and promises, to wit, falsified non-purpose credit line applications. Furthermore, as alleged in the OIP, Ramirez was a registered representative of UBS-PR while committing the conduct in question. UBS-PR is broker-dealer registered with the Commission. Therefore, Ramirez's actions arose out the conduct of the business of a broker or dealer, and this condition is hence satisfied.

c. Ramirez Was Associated with Broker at the Time of the Misconduct

Exchange Act Section 15(b)(6)(A) requires that Ramirez have been associated with a broker or dealer at the time of the misconduct. Here, deemed admitted is the OIP's allegation that Ramirez was associated as a registered representative with UBS-PR, a broker-dealer registered with the Commission, from February 1997 through January 2014 (Ex 1 at 1-2) and his criminal Statement of Offense accepted for purpose of his plea indicates that "[d]uring all period of time relevant to the Information, Ramirez was employed as a registered financial advisor by UBS-PR" (Ex. 4 at 1). The OIP alleged Ramirez engaged in his fraudulent conduct from 2006 through 2013 (Ex. 1 at 1-2), and

in his plea, Ramirez admitted engaging in a scheme to defraud in which he reaped financial reward for such conduct from 2011 through September 2013 (Exh. 4; Exh. 7 at 21-23). Thus, Ramirez was associated "at the time of the alleged misconduct." *See Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010) ("The Commission properly relied on the ordinary meaning of alleged 'misconduct,' which refers to allegedly 'unlawful or improper behavior.'").

d. Industry and Penny Stock Bars Are Appropriate Sanctions

In determining whether "industry and penny stock bars . . . are in the public interest," the Commission

> considers, among other things, 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, Exch. Act Rel. No. 77411, at 5-6, 2016 WL 1085661 (Mar. 21, 2016) (quotation and alterations omitted). "Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry." *Frederick W. Wall*, Exch. Act Rel. No. 52467, at 8, 2005 WL 2291407 (Sept. 19, 2005) (quotation omitted); *accord Shreyans Desai*, Exch. Act Rel. No. 80129, at 6, 2017 WL 782152 (Mar. 1, 2017).

Here, these factors weigh in favor of industry and penny stock bars. First, Ramirez's actions were egregious. His conviction establishes that he knowingly and willfully engaged in a scheme to defraud by steering his customers to use LOCs to purchase CEFs and fraudulently misrepresented the risks of this strategy to them, knowing all the while that using the LOCs to purchase the CEFs was prohibited. Ramirez hence created a scheme to circumvent this prohibition by encouraging his customers to withdraw funds from the LOC accounts, deposit those funds into an account at another bank, wait several days, and then redeposit the funds from the outside bank account into a UBS-PR

brokerage account and purchase CEFs.

Second, this was not a one-time lapse in judgment: Ramirez's scheme continued for years and would not have stopped if not for the collapse of the Puerto Rican bond market which the CEFs were heavily tied to. Third, his level of scienter was extremely high, giving to a criminal conviction.

With respect to the fourth and fifth factors, notwithstanding his guilty plea, Ramirez has not participated in this matter, thus providing no assurances that he will avoid *future* violations of the law. Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar, . . . the existence of a violation raises an inference that it will be repeated." *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, at 10 n.50, 2013 WL 3864511 (July 26, 2013) (quotation and internal citations omitted). Ramirez has offered no evidence to rebut that inference.

Sixth, although Ramirez is currently in custody, he will be released in 2020,[9] and unless he is barred from the securities industry he will have the chance to again harm investors.

Finally, it serves the public interest to collaterally bar Ramirez from all association with the securities industry. Although as alleged in the OIP, Ramirez's scheme began prior to the July 2010 enactment of the Dodd-Frank Act, the collateral bars authorized therein may be imposed because his scheme extended into 2013.[10] *James Tagliaferri*, Securities Act Rel. No. 10308, at 10 n.44, 2017 WL 632134 (Feb. 15, 2017) ("Th[e] holding [of *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017),] does not affect our ability to impose a collateral bar based on misconduct after Dodd-Frank's effective date."). Accordingly, the Commission should bar Ramirez to the full extent permitted by the Dodd-Frank Act, even though certain of his conduct occurred prior to that statute's enactment.

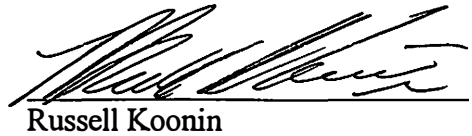
[9] (Exh. 8 – Federal Bureau of Prisons incarceration and release date information for Ramirez)
[10] Moreover, the criminal Information limits Ramirez's conduct from 2011 through 2013.

IV. Conclusion

For the reasons discussed above, the Division asks the Commission to sanction Ramirez by issuing a penny stock bar and barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

August 12, 2019

Respectfully submitted,



Russell Koonin
Regional Trial Counsel
Direct Line: (305) 982-6385
kooninr@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on this 12th day of August, 2019, on the following persons entitled to notice:

VIA USPS CERTIFIED MAIL
Guillermo Ramos-Luiña, Esq.
PO Box 22763, UPR Station
San Juan, PR 00931-2763

Russell Koonin
Senior Trial Counsel