UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20305

In the Matter of

CLINTON MAURICE TUCKER II,

Respondent.

SUPPLEMENTAL BRIEF OF THE DIVISION OF ENFORCEMENT SUPPORTING ENTRY OF DEFAULT JUDGMENT AND SANCTIONS AGAINST RESPONDENT CLINTON MAURICE TUCKER II

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The Division of Enforcement ("Division") hereby files its supplemental brief and accompanying exhibits in support of its August 10, 2021 motion for default, pursuant to the Order of the Commission dated February 9, 2022.

FACTS

On February 9, 2022, the Commission ordered the Division to submit additional evidence in support of its August 10, 2021 motion for default in this matter and its request that the Commission enter industry and penny stock bars as to Respondent. In further support of its motion, the Division submits the sworn declaration of Laurie E. Abbott, attached here to as Exhibit A, as well as eleven exhibits to Ms. Abbott's Declaration pertaining to Respondent's conduct as alleged in the Order Instituting Proceedings in this matter. *See* Exhibit A, Declaration of Laurie E. Abbott ("Abbott Decl.") at ¶ 5. Ms. Abbott is a staff attorney in the Division in the Salt Lake Regional Office and was one of the members of the investigative team assigned to the Commission's investigation of Respondent Clinton Maurice Tucker II ("Tucker"), entitled *In the Matter of Clarity Communications Group*, Case Number SL-02789 (the "Investigation"), which resulted in, amongst numerous other actions, the district court action against Respondent, *Securities and Exchange Commission v. Clinton Maurice Tucker II*, Civil Action No. 8:20-cv-00875, filed on May 11, 2020 in the United States District Court for the Central District of California, and the instant administrative proceeding. *See* Abbott Decl. at ¶¶ 1-3. The facts set forth in Ms. Abbott's Declaration are based on Ms. Abbott's personal knowledge and experience with the Investigation; documents she reviewed in the course of the Investigation, her analysis (along with that of others on the investigative team) of the bank records of Respondent, his spouse, and two entities controlled by Respondent; witness interviews and testimony that she or other members of the investigative team conducted; witness and investor declarations that she or

other members of the investigative team obtained, some of which are attached to her Declaration as exhibits; and/or other information provided to her by other members of the investigative team. *See id*. at ¶ 4.

In sum, and as Ms. Abbott's Declaration states, the evidence adduced in the Investigation indicates that, from at least 2015 to 2019, Respondent defrauded investors in two ways. *Id*. at ¶ 9. *First*, Respondent participated in a matched trading scheme spanning approximately four years, pursuant to which certain shareholders of microcap companies paid, directly or indirectly, Respondent (and other solicitors or boiler room operators, many of whom were also charged in connection with the Investigation) to facilitate the sale of their shares through coordinated trades. *Id*. at ¶¶ 10, 12. The matched trading scheme generally worked as follows: individuals who owned large blocks of illiquid microcap securities (the "selling shareholders") would seek to sell their shares without causing the price of the shares to crash. *See id*. at 13; s*ee also* Exhibit 1 to Abbott Decl., Wolfson Decl. at ¶ 4; Exhibit 2 to Abbott Decl., Messier Decl. at ¶ 3; Exhibit 3 to Abbott Decl., Mallion Decl. at ¶¶ 2-6; Exhibit 4 to Abbott Decl., Scoratow Decl. at ¶ 4; Exhibit 5 to Abbott Decl., Hicks Tr. at 19:18—26:1. To do so, the selling shareholders hired the securities solicitation operations (e.g., boiler rooms), such as those run by Wolfson, Messier, Mallion, and Scoratow, and which employed Respondent as a sales agent, to cold call prospective investors and induce them to purchase shares of the same microcap companies the selling shareholders were seeking to dump. *Id*. If an investor agreed to purchase shares, information about the intended investment was relayed to the selling shareholder, and the selling shareholder determined a price and volume for the trade. *Id*. The sales agent—such as Respondent—then instructed the investor to enter a buy order at the coordinated price and volume. *Id*. Simultaneously, the selling shareholder placed an opposing sell order at the same price and

volume. *Id*. If the trade between the selling shareholder and the solicited investor successfully matched, the selling shareholder paid the securities solicitation operation a commission, a portion of which was paid to the sales agent, such as Respondent, who was responsible for the trade. *Id*. The investors who purchased the shares via Respondent, in the meantime, were unaware of the coordination of the sales agent with the selling shareholder, and believed they were entering into standard, open-market trades. *See id.*; *see also*, *e.g.,* Exhibit 6 to Abbott Decl., Raymond Decl. at ¶ 11; Exhibit 10 to Abbott Decl., Crabtree Decl. at ¶ 15. From 2015 to 2019, Respondent received a total of approximately $600,000 in commissions in connection with his work as a sales agent in this matched trading scheme. Abbott Decl. at ¶ 12.

Second, in the course of acting as a sales agent in the above-discussed matched trading scheme, Respondent also misappropriated at least $165,000 from at least six individuals from May 2015 to May 2019, pitching them on a variety of purported investment opportunities and inducing them to send checks or wire him funds directly to bank accounts he controlled. *See id*. at ¶¶ 17-19, 21; *see also* Exhibits 6-11 to Abbott Decl. (investor declarations). Respondent did not invest these funds as he represented; rather, he used the funds for personal expenses.[1] *See id*. at ¶¶ 20-21. Finally, at no point during the relevant period (at least 2015 to 2019) was Respondent either registered with the Commission as either a broker or a dealer, nor was he associated with a broker or dealer registered with the Commission. *Id*. at ¶ 16.

[1] Ms. Abbott's Declaration also indicates that Tucker may have raised an additional $120,000 in direct investments from at least eleven other individuals during the 2015-2019 time period; however, Commission staff was unable to confirm that the payments by those eleven individuals were, in fact, investor funds, either because the suspected investor was deceased, could not recall the purpose of the payment to Tucker, or because Commission staff was unable to locate and interview the suspected investor. However, bank records also indicate that Tucker used the $120,000 from these eleven suspected investors for personal expenses as well. Abbott Decl. at ¶ 22.

ARGUMENT

Section 15(b) of the Exchange Act "gives the Commission authority to impose collateral and penny stock bars against a respondent if (1) the respondent was associated with or seeking to become associated with a broker or dealer at the time of his misconduct; (2) the respondent has, as relevant here, been enjoined from any conduct in connection with the purchase or sale of a security; and (3) imposing a bar is in the public interest." *See Demitrios Hallas*, Initial Decision of Default Rel. No. 1358, 2019 WL 857547, at *4 (Feb. 22, 2019); *see also* 15 U.S.C. 78o(b)(4)(C), (b)(6)(A)(iii). The evidence provided to the Commission in support of its initial motion for default, as well as this supplemental brief,[2] satisfies each element above with respect to Respondent, and each element indicates that collateral and penny stock bars against Respondent are warranted.

1. Respondent Acted As A Broker In Connection With His Misconduct

Although Respondent was not registered as a broker at the time of his misconduct, he acted as a broker from at least 2015 to 2019.[3] *See* Abbott Decl. at ¶¶ 15-16. Section 3(a)(4) of the Exchange Act defines a "broker" generally as any person "engaged in the business of

[2] *See David E. Lynch*, Exchange Act Rel. No. 46439, 2002 WL 1997953, at *1 & n.12 (Aug. 30, 2002) (instructing that, "if additional evidence is adduced in a proceeding against a respondent" who is in default, "the decisionmaker properly should consider that evidence in the determination of the proceeding").

[3] *See Tzemach David Netzer Korem*, Exchange Act Rel. No. 70044, 2013 WL 3864511, at *8 (July 26, 2013) (stating that "[i]t is well established that we are authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding"); *Vladislav Steven Zubkis*, Exchange Act Rel.No. 52876, 2005 WL 3299148, at *6 (Dec. 2, 2005) (barring unregistered associated person of an unregistered broker-dealer from association with a broker or dealer and from participation in any penny stock offering, based on injunction prohibiting securities law violations); *see also Shreyans Desai*, Initial Decision Rel. No. 1044, 2016 WL 11104910, at *5 (Aug. 5, 2016), aff'd by Exchange Act Rel. No. 80129 (Mar. 1, 2017) ("It is irrelevant that [respondent] was unregistered in any capacity."); *Jenny E. Coplan*, Initial Decision Rel. No. 595, WL 1713067, at *1 (May 1, 2014) (imposing an industry bar by default where respondent was permanently enjoined from future violations of the antifraud and unregistered broker provisions of the securities laws and acted as an unregistered broker);

effecting transactions in securities for the account of others." In determining whether a defendant meets the definition of a broker, fact-finders look for "a certain regularity of participation in securities transactions at key points in the chain of distribution." *SEC v. Advance Body Imaging LP*, No. SACV071140DOCJTLX, 2009 WL 10673586, at *4 (C.D. Cal. Mar. 18, 2009) (internal quotation marks omitted); *see also SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003) (same).

Among the activities that indicate a person may be a broker are: (1) holding oneself out as a broker; (2) soliciting investors to purchase securities; (3) receiving commissions as opposed to salary; (4) being involved in negotiations between the issuer and the investor; (5) making valuations as to the merits of the investment or giving advice; (6) being an active rather than passive finder of investors; (7) selling, or previously having sold, the securities of other issuers, and, (8) supervising a securities sales force. *See, e.g., SEC v. Hansen*, 1984 WL 2413 at *10, *26 (S.D.N.Y. April 6, 1984); *Martino*, 255 F. Supp. 2d at 283; *SEC v. Benger*, 697 F. Supp. 2d 932, 944-45 (N.D. Ill. 2010) (citing the factors discussed in *Hansen* and noting that they were "not designed to be exclusive"); *SEC v. Carver*, No. SACV0800627CJCRNBX, 2008 WL 11343057, at *5 (C.D. Cal. June 19, 2008) ("The solicitation of investors to purchase securities, the receipt of transaction-related compensation, and leading the sales effort are evidence of being engaged in the business of effecting transactions in securities for the accounts of others."). No one factor is determinative and the Commission is not required to prove all the factors to establish that an individual or entity acted as a broker. *See, e.g., SEC v. Battoo,* 158 F. Supp. 3d 676, 695-97 (N.D. Ill. Jan. 25, 2016).

The evidence submitted by the Division shows that Respondent acted as broker by participating at key points in the offer, purchase and sale of microcap securities, soliciting

prospective investors by telephone, recommending that prospective investors purchase certain microcap securities, discussing potential returns, and receiving transaction-based compensation. *See* Abbott Decl. at ¶15; *see also* Exhibits 6-11 (investor declarations); *see also Desai*, 2016 WL 11104910, at *5 (finding that the respondent acted as an unregistered broker by "actively soliciting potential investors, possessing investor funds, and receiving compensation for the transactions."). While working for at least seven securities solicitation operations over at least a four-year period, Respondent actively cold-called numerous prospective investors, pitched them on the value of a particular investment, instructed them on the price and volume at which to place their buy orders, and received over $600,000 in commission payments on the investments he brought in. Abbott Decl. at ¶¶ 12-16. Respondent solicited investors with respect to multiple securities. *See* Exhibits 6-11 to Abbott Decl. In at least one instance, Respondent held himself out as or implied that he was a broker, telling an investor that he had no complaints on his SEC record. *See* Abbott Decl. at ¶ 15; *see also* Exhibit 8 to Abbott Decl, Brinker Decl. at ¶ 18. This evidence establishes that Tucker acted as a broker in connection with his misconduct.

2. Respondent Was Permanently Enjoined From Violations Of The Federal Securities Laws In Connection With His Unregistered Broker Activity

A final judgment was entered against Respondent in *Securities and Exchange Commission v. Clinton Maurice Tucker II* on November 16, 2020, permanently enjoining him from future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b–5], and Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], relating to Respondent's involvement in the offer and sale of numerous microcap companies over a period of at least five years while he was neither registered with the Commission as a broker or dealer nor associated

with a broker or dealer registered with the Commission. *See* OIP at II.1-3; Exs. 1 and 2 to Division's Motion and Memorandum of Law Supporting Entry of Default Judgment Against Respondent Clinton Maurice Tucker II. This injunction meets the requirements of Exchange Act Section 15(b)(6)(A)(iii) and satisfies this element.

3. Collateral Associational And Penny Stock Bars Are In The Public Interest

To determine whether a sanction is in the public interest, the Commission should look to the six factors set forth in *Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979) *aff'd on other grounds,* 450 U.S. 91 (1981): (a) the egregiousness of the defendant's actions; (b) the isolated or recurrent nature of the infraction; (c) the degree of scienter involved; (d) the sincerity of the defendant's assurances against future violations; (e) the defendant's recognition of the wrongful nature of his conduct; and (f) the likelihood that the defendant's occupation will present opportunities for future violations. *See Brian Michael Berger*, Initial Decision Rel. No. 1346, 2019 WL 446432, at *3 (Feb. 5, 2019). The "inquiry into…the public interest is a flexible one, and no one factor is dispositive." *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009) (quoting *David Henry Disraeli*, Securities Act Rel. No. 8880, 2007 WL 4481515, at *15 (Dec. 21, 2007), *pet. denied*, 334 F. App'x 334 (D.C. Cir. 2009) (per curiam)), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). "In most cases involving fraud, the public-interest analysis will weigh in favor of a severe sanction." *Berger*, 2019 WL 446432, at *3 (citation and quotation omitted); *see also Talman Harris and Victor Alfaya*, Initial Decision Rel. No. 1402, 2020 WL 5407727, at *8 (Sept. 2, 2020) (noting that "from 1995 to [September 2020], there have been over fifty litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred").

Respondent's conduct was egregious. Over the course of four years, he defrauded numerous investors by inducing them to purchase illiquid microcap securities in the context of a matched trading scheme, while failing to disclose to those investors that they were not purchasing the securities on the open market. *See* Abbott Decl. at ¶¶ 10, 12-16. Matched trading have long been recognized as fraud proscribed by Section 10(b) and Rule 10b-5. *See Ofirfan Mohammed Amanat*, Exchange Act Rel. No. 54708, 2006 WL 3199181, at *8 & n.35 (citing *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 476-77 (1977) (imposing an association bar where respondent engaged in wash and matched trading, finding that respondent acted with scienter). Further, Respondent misappropriated funds from investors, apparently targeting vulnerable investors he identified in the course of his solicitations for such activity. *See* Abbott Decl. at ¶¶ 17-24; see also *Berger*, 2019 WL 446432, at *3 ("[Respondent]'s conduct was egregious. He diverted two clients' funds…for his own personal use…[and] induced a third client to give him $25,000 outside of their formal relationship for an investment that never existed."); *Hallas*, 2019 WL 857547, at *5 ("Misappropriation of client funds is quintessentially egregious conduct.").

Respondent's violations were recurrent and level of scienter high. Over the course of at least four years, Respondent repeatedly and regularly engaged in unregistered broker activity, fraud and misappropriation. While soliciting investors, Respondent deceived them by using aliases. *See SEC v. Contrarian Press, LLC*, No. 16-CV-6964 (VSB), 2019 WL 1172268, at *6 (S.D.N.Y. Mar. 13, 2019) (relying on defendants' use of a pseudonym and their taking "steps to hide their involvement" as evidence of a violation of Rule 10b–5(a) and (c)). Respondent also lied to at least one investor about his compensation, telling the investor he would not receive a commission but instead would be paid via warrants. *See Harris and Alfaya*, 2020 WL 5407727, at *7 (in a matter

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involving matched trading of thinly-traded penny stocks, finding that the failure to disclose enormous commissions was an omission of material fact); *SEC v. All. Leasing Corp.*, No. 98-CV-1810-J, 2000 WL 35612001, at *10 (S.D. Cal. Mar. 20, 2000), *aff'd,* 28 F. App'x 648 (9th Cir. 2002) (ruling that "30% commissions were so obviously important to an investor, that reasonable minds cannot differ on the question of materiality.") (internal quotation marks omitted).

Respondent has offered no assurances against future violations, nor any indication of recognition of the wrongful nature of his conduct. *See* Abbott Decl. at ¶ 25. Indeed, he failed to respond to the Commission staff during the Investigation, *see id*. at ¶ 8, and defaulted in the district court action as well. Given Respondent's violations, the egregiousness of those violations, the level of scienter shown by his conduct, and his lack of any assurances against future violations, if he is not barred from the securities industry, it is likely he will engage in future misconduct. *See Berger*, 2019 WL 446432, at *4 n.38 (quoting *Korem*, 2013 WL 3864511, at *6 & n.50 (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) ("[T]he existence of a violation raises an inference that it will be repeated." (alteration in original); *John A. Carley*, Securities Act Rel. No. 8888, 2008 WL 268598, at *22 (Jan. 31, 2008) (holding that "[o]ur finding that a violation is egregious 'raises an inference that [the misconduct] will be repeated"' (quoting *Geiger v. SEC*, 363 F.3d at 489)), *remanded on other grounds sub nom*. *Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).

CONCLUSION

For the reasons set forth above, the Division respectfully requests, pursuant to Rule 155 of the Rules of Practice, that the Commission grant the Division's Motion finding Respondent in default and enter an order barring him from: (a) associating with any broker, dealer, investment

adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and (b) participating in any offering of a 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.

Dated: March 18, 2022

Respectfully submitted,

Combs, Tracy Digitally signed by Combs, Tracy Date: 2022.03.18 13:43:54 -06'00'

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Service List

Pursuant to Rules 150 and 151 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing was served on each of the following, on March 18, 2022, in the manner indicated below.

Mr. Clinton Maurice Tucker II
[redacted]
Kansas City, MO [redacted]
Via U.S.P.S. First Class Mail

Combs, Tracy

Digitally signed by Combs, Tracy
Date: 2022.03.18 13:45:00 -06'00'

Tracy S. Combs