UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21948

In the Matter of

MARK ALLAN PLUMMER,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND REMEDIAL SANCTIONS

Pursuant to the Order to Show Cause, AP Rulings Rel. No. 101311 (October 11, 2024) ("Show Cause Order"), the Division of Enforcement ("Division") hereby files this motion for default and remedial sanctions.

I. INTRODUCTION

This is a follow-on administrative proceeding based on the entry of a permanent injunction against Respondent Mark Allan Plummer ("Plummer"). Plummer was properly served with the Order Instituting Proceedings ("OIP") in this matter on August 19, 2024, and was required to file an answer by September 9, 2024, which he failed to do. On October 11, 2024, the Commission issued the Show Cause Order requiring Plummer to respond or face default. Respondent has not filed an answer, and thus, is in default. Therefore, the Division moves, pursuant to Rules 155(a)(2) and 220(f) of the Securities and Exchange Commission ("SEC")'s Rules of Practice, for a finding that Respondent is in default and for the imposition of remedial sanctions. The Division specifically requests that Respondent be permanently barred from association with any 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.

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II. BACKGROUND

A. Underlying Action

On February 20, 2024, a final judgment was entered by default ("Judgment") against Plummer, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) and of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and from aiding and abetting violations of Section 15(a) of the Exchange Act, in the civil action entitled *Securities and Exchange Commission v. Plummer, et al.,* Civil Action Number 3:21-CV-2331-B, in the United States District Court for the Northern District of Texas, Dallas Division (the "District Court Action"). *See* Declaration of Jennifer D. Reece ("Reece Dec.") attached hereto as "Exhibit A," at Ex. 4, Doc. 69 at ¶¶ I-III (Judgment). The Judgment also imposed against Plummer an officer and director bar and a conduct-based injunction, which permanently restrained and enjoined Plummer from directly or indirectly participating in the issuance, purchase, offer, or sale of any securities other than from purchasing securities listed on a national securities exchange for his own personal account. *See id.* at ¶¶ IV and V.

In the District Court Action, the Commission's complaint alleged that from November 2018 to September 2020 (the "relevant period"), Plummer, through Richmond Engineering, Inc. ("Richmond Engineering"), and Emilio Barrera, Jr. (a/k/a Mike Barrera) ("Barrera"), through PRT Consulting, LLC d/b/a Petroleum Resources of Texas ("Petroleum Resources"), engaged in a scheme to defraud more than 70 investors out of over $7 million through the unregistered offer and sale of interests in oil and gas well projects. *See* Reece Dec., Ex. 2, at ¶ 1 (Complaint). The complaint alleged that Plummer is a securities fraud recidivist who has been sanctioned for prior misconduct. *Id.* at ¶ 2. The complaint further alleges that Plummer played a critical role in the

fraudulent scheme, by among other things, hosting a weekly radio show about oil and gas investing that generated most of the investments by referring potential investors to Petroleum Resources without disclosing Plummer's hidden connection to the offerings. *Id.* at ¶ 5. The complaint further alleges that Plummer knowingly misused and misappropriated investor funds for improper purposes. *Id.* The complaint further alleges that Plummer provided substantial assistance to the Petroleum Resources sales team by drafting the offering materials and training the salespeople. *Id.*; *see also* OIP ¶ B.3 (summarizing the allegations in the district court complaint).

On August 18, 2023, the Commission filed a motion for monetary remedies and for entry of final judgment against Plummer ("Motion for Remedies") in the District Court Action, which was granted. *See* Motion for Remedies, attached hereto as Reece Dec., Ex. 2. On February 20, 2024, the district court entered findings of fact ("FOF") and conclusions of law ("COL") as to Plummer (*see* Reece Dec. Ex. 3, attached hereto), and entered a final judgment as to Plummer and Richmond Engineering, finding them liable, on a joint and several basis, for disgorgement of $3,437,500 and prejudgment interest of $333,903.01, and imposing a civil penalty of $1,718,750. *See* Reece Dec., Ex. 4, at ¶ VI.

B. The Institution of this Proceeding, the Service of the OIP, and Respondent's Failure to Answer

On May 22, 2024, the Commission issued the OIP. *In re Plummer,* Exchange Act Rel. No. 100207 (May 22, 2024). The OIP alleged that Plummer was the President and owner of Richmond Engineering, a Texas limited liability company based in Richardson, Texas, through which Plummer offered and sold interests in oil and gas wells. *Id.* The OIP further alleged that Plummer is a securities fraud recidivist who has been sanctioned for prior misconduct. *Id.* The OIP further alleged that on February 20, 2024, a final judgment was entered by default against Plummer,

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permanently enjoining him 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 from aiding and abetting violations of Section 15(a) of the Exchange Act. *Id.*

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. *Id.* It directed Plummer to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b). *Id.* The OIP informed Plummer that if he failed to answer, he could be deemed in default, the allegations in the OIP could be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP. *Id.*

Respondent was properly served with the OIP in this matter on August 19, 2024, and was required to file an answer by September 9, 2024, which he failed to do. *See* Show Cause Order. On October 11, 2023, the Commission issued the Show Cause Order requiring Plummer to respond or face default. *See id.* Respondent has not filed an answer, and thus, is in default. *See* SEC Rule 155(a)(2).

III. ARGUMENT

A. Respondent is in Default and the Allegations of the OIP May Be Deemed to Be True.

Because Respondent has not responded to the OIP, he is in default. Rule 155(a) of the Commission's Rules of Practice states:

> 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 [] to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . . .

SEC Rule 155(a). Moreover, the OIP itself provides: "If 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 at pp. 2-3).

Respondent was properly served with the OIP on August 19, 2023, and has failed to answer. *See* Show Cause Order. Under Rule 155(a), the allegations of the OIP may thus be deemed true and the hearing officer may determine the proceedings against the party upon consideration of the record, including the order instituting proceedings. *See, e.g., In re Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *2 (March 29, 2023) (deeming allegations of OIP true as against respondent in default); *In re Barrera,* Exchange Act Release No. 101639, at p. 3 (Nov. 14, 2024) (same).

B. Imposition of a Permanent Bar is Warranted.

Section 15(b)(6) of the Exchange Act authorizes the Commission to impose an associational bar against a respondent if, among other things: (1) at the time of the alleged misconduct, he was associated with a broker[1]; (2) he is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C); and (3) a bar is in the public interest. *See* Exchange Act, Section 15(b)(6).

The first two factors are established by the Complaint, FOF and COL, the allegations in the OIP, and the Final Judgment entered in the District Court Action. Specifically, the Complaint alleged, and the district court found, that during the relevant period, Plummer was associated with,

[1] Under Exchange Act Section 3(a)(18), a person associated with a broker or dealer includes persons who control or operate under common control with a broker or dealer. Exchange Act Section 3(a)(18) [15 U.S.C. § 78c(a)(18)]; *In re Barrera,* Exchange Act Rel. No. 101639 (Nov. 15, 2024).

i.e., controlled or operated under common control with, Barrera and Todd Stewart Breitling ("Breitling"), who were unregistered brokers. *See* Reece Dec. Ex. 1 (Complaint) at ¶¶ 2-5, 33-37, 74-82, 95; *see also* Reece Dec. Ex. 3, FOF at ¶¶ 4-7, 11-13 and COL at ¶¶ 3-5. The Complaint alleged, and the district court found, that Plummer at times controlled the activities of, and at other times operated under common control with, Barrera and Breitling by referring investors from his radio show, providing them with investor document templates and investor updates, and running sales trainings for the salesmen. *See* Reece Dec. Ex. 1 at ¶¶ 73-82; *see also* Reece Dec. Ex. 3, FOF at ¶¶ 4-7, 11-13 and COL at ¶ 3-5, 10. Further, the OIP alleges, that Plummer owned and controlled Richmond Engineering, and is a securities fraud recidivist. OIP at II.A.1. In addition, Plummer was enjoined from: (1) future violations of the antifraud provisions of the federal securities laws; (2) aiding and abetting violations of the broker-registration provisions of the federal securities laws; and (3) directly or indirectly participating in the issuance, purchase, offer, or sale of any securities other than from purchasing securities listed on a national securities exchange for his own personal account. Reece Dec. Ex. 4 (Final Judgment) at ¶¶ I-IV.

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 81 (1981); *In re Barrera,* Exchange Act Rel. No. 101639, at pp. 4-5 (*Steadman* factors used to determine whether a bar is in the public interest). These factors were addressed in the Motion for Remedies. Reece Dec., Ex. 2,

at pp. 10-11. Based on these arguments, the district court imposed third-tier penalties against Plummer. Reece Dec. Ex. 4 at ¶ VI (Final Judgment); *see also* Reece Dec. Ex. 3 at pp. 5, 7-9 (FOF and COL).

As to whether a permanent bar is appropriate in a follow-on proceeding, precedents hold that, "[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin and Joshua Shainberg,* Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), notice of finality, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

Over a two-year period, Plummer engaged in an egregious scheme to defraud more than 70 investors out of nearly $8 million through the unregistered offer and sale of interests in oil and gas projects. Reece Dec. Ex. 3, FOF ¶ 3. The Court found that Plummer's conduct, as described in the Complaint: (a) was egregious and recurrent; (b) reflected a high degree of scienter; (c) caused investor losses totaling over $7 million; and (d) created a significant risk of substantial losses to his investors. *Id.* at ¶ 9. In addition, the Court found that there was a significant likelihood that his conduct would recur. *Id.* at ¶ 10.

Further, Plummer has not acknowledged any wrongdoing; indeed, he has failed to respond to the OIP. The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. *Jonathan D. Havey, CPA,* Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *see also Kimm Hannan,* Advisers Act Rel. No. 5906, at 4, 2021 WL 5161855, *3 (Nov. 5, 2021) ("Because Hannan failed to answer the OIP or respond to the order to show cause or to the Division's motion, he has made no assurances to us that he will not commit future violations or that he recognizes the wrongful nature of his conduct."); *Oscar*

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Ferrer Rivera, Advisers Act Rel. No. 5759, at 6, 2021 WL 2593642, *4 (June 24, 2021) ("Although his guilty plea indicates that Ferrer might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses a risk to the investing public."). Moreover, the district court found that Plummer is a securities fraud recidivist who has been sanctioned for prior misconduct by FINRA, the Texas State Securities Board, and the SEC. *See* Reece Dec. Ex. 3 at ¶ 4; *see also* the OIP (alleging that Plummer is a securities fraud recidivist). In June 2019, the SEC filed a settled enforcement action against Plummer arising from fraudulent securities offerings related to two oil and gas projects, and while the earlier investigation was ongoing, Plummer continued to raise funds for two wells that were related to those projects. *Id.* While "[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 Rel. No. 70044, at 10 n.50, 2013 WL 3864511, at n.50 (July 26, 2013) (quotation and alternations omitted). Plummer has offered no evidence to rebut that inference. *See In re Barrera,* Exchange Act Rel. No. 101639, at p. 6 (discussing respondent's failure to refute the allegations).

Plummer's actions establish that, unless he is barred from the securities industry, he will have the chance to again harm investors.

III. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court grant this motion and bar Plummer from:

- association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- 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: November 21, 2024

Respectfully submitted,

[redacted]

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CERTIFICATE OF SERVICE

In accordance with Rule 150 and 151 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing *Division of Enforcement's Motion for Default and Remedial Sanctions* was served on the following persons on November 21, 2024, at his last known address by the method indicated:

By eFAP:
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

By US Mail:
[redacted]
Respondent, Pro Se

[redacted]
Jennifer D. Reece