SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 77411 / March 21, 2016

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 4356 / March 21, 2016

Admin. Proc. File No. 3-16374

In the Matter of

DAVID R. WULF

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of wire fraud, bank fraud, and conspiracy, among other violations. *Held*, it is in the public interest to bar Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, transfer agent and from participating in a penny stock offering.

APPEARANCES:

David R. Wulf, *pro se.*

Jonathan S. Polish and *Ana D. Petrovic*, for the Division of Enforcement.

Appeal filed: August 31, 2015
Last brief received: December 9, 2015

David R. Wulf, the former chief executive officer of Wulf, Bates & Murphy ("WBM"), a registered investment adviser from 1986 to 2013, and a former registered representative and principal of Moloney Securities Company, Inc., a registered broker-dealer and investment adviser,[1] appeals from the decision of an administrative law judge. Following his conviction for wire fraud, bank fraud, wire fraud affecting a financial institution, and conspiracy to commit mail fraud affecting a financial institution, the law judge barred Wulf from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of a penny stock.

Wulf's conviction stemmed from WBM's role as investment adviser to various trusts and other entities that held or invested funds deposited by purchasers of prepaid funeral service and merchandise contracts. Wulf, through WBM, participated in a massive scheme to defraud contract purchasers and others through the misuse and misappropriation of funds deposited by purchasers, resulting in huge losses. We find that Wulf's conviction satisfies the statutory requirements of Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 for the imposition of industry and penny stock bars, and that, under all the circumstances, such bars are in the public interest.

I. Facts

A. Criminal Proceedings

On November 18, 2010, a grand jury for the Eastern District of Missouri issued an indictment (the "Indictment") against Wulf and five other defendants, charging them with conspiracy to violate Title 18, United States Code, Sections 1341 (frauds and swindles), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), and 1349 (attempt and conspiracy).[2] The allegations in the Indictment relate to Wulf's involvement in a fraudulent scheme involving National Prearranged Services, Inc. ("NPS"), a corporation that sold contracts for prearranged funeral services, and NPS's affiliates. According to the Indictment, from "sometime prior to 1992" and continuing into May 2008, the defendants (including Wulf) "devised . . . a scheme and artifice to defraud . . . purchasers of prearranged funeral contracts from [NPS], funeral homes which did business with [NPS], policy holders of [insurance company affiliates of NPS], and financial institutions which served as trustees of prearranged funeral trusts established by [NPS]." The Indictment alleged that NPS "eventually became unable to pay the obligations which it promised" contract purchasers because it "retain[ed] money received from purchasers . . . that should have been deposited into trust or paid as a premium to an insurance company."

NPS operated in several jurisdictions, with different state regulatory requirements. Missouri, where Wulf was based, required that contract purchasers' funds be deposited into trusts. These trusts, in turn, used purchasers' deposits to obtain life insurance, issued by NPS affiliates, to cover future funeral costs. In other states, NPS was permitted to sell life insurance directly to purchasers. Wulf and his co-conspirators "caused the value of these life insurance policies to be

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[1] Wulf was associated with Moloney from 1999 to 2013, with Birchtree Financial Services, Inc., from 1988 to 1999, and with American Capital Equities, Inc., from 1986 to 1988. He also was associated earlier with Shearson Lehman Brothers, Inc., and Merrill Lynch.

[2] Wulf's co-defendants pled guilty.

reduced and ultimately eliminated as a result of their failure to send all of the premiums" to the insurance companies, their use of loans against the policies that lowered the amount of available death benefits, and the surrender of large numbers of insurance policies.

The Indictment also alleged that the appointment of WBM as investment adviser to NPS funeral trusts "enabled" Wulf and others to cause trust funds "to not be invested in accordance with the standards for . . . prearranged funeral trusts as provided by Missouri law, but rather . . . to transfer money from such trusts to . . . Lincoln Memorial Services, Inc. and Forever Enterprises, Inc.," which were affiliates of NPS.[3] According to the Indictment, WBM received substantial fees through its involvement in the scheme, including approximately $1,000,000 in fees between 2002 and 2008.

Further, the Indictment alleged that Wulf and the other defendants "failed to disclose" to contract purchasers, funeral homes that did business with NPS, financial institutions which served as trustees of prearranged funeral trusts established by NPS, and others, "that large amounts of money were removed from [the] trusts . . . and used for purposes other than the payment of funeral services and merchandise, and investments authorized under Missouri law." For example, Wulf and others used trust funds to purchase publicly traded stocks held by Forever Enterprises at inflated prices. Wulf held stock in Forever Enterprises.

Before reaching a verdict, the jury was instructed that it could not find Wulf guilty of wire fraud, unless it found that Wulf "voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature, or participated in a scheme to obtain money, property or property rights by means of material false representations or promises . . ." and that he did so "with the intent to defraud." Similar instructions were given with respect to the bank fraud and mail fraud charges. As to the conspiracy charge, the jury was instructed that it needed to find that Wulf "reached an agreement or came to an understanding" with at least one other person "to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire fraud, or bank fraud." The jury was further instructed, with respect to the conspiracy charge, that it must find that Wulf "voluntarily and intentionally joined in the agreement or understanding" and "knew the purpose of the agreement or understanding."

On August 22, 2013, the jury found Wulf guilty on 18 counts in the Indictment, including bank fraud, wire fraud, wire fraud affecting a financial institution, and conspiracy to commit mail fraud affecting a financial institution. On November 18, 2013, judgement was entered against Wulf, who was sentenced to a term of imprisonment of 120 months, plus five years of supervised release, and ordered to pay, jointly and severally with the other defendants, restitution of $435,515,234.[4] The sentencing judge noted "the serious nature of the instant offense, which involved a conspiracy to commit mail fraud, bank fraud, and wire fraud, which affected financial institutions resulting in losses to the victims in the amount of $435,515,234."

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[3] According to the Indictment, Wulf permitted NPS "to use the statutory authority vested in WBM as the independent investment advisor to direct the banks which served as trustees to make transfers and distributions from the trust."

[4] He also was ordered to pay a special assessment of $100 per count, or a total of $1800. According to Wulf, he is currently incarcerated in a federal prison in Terre Haute, Indiana.

B. Proceedings before the law judge

On February 4, 2015, we issued an order instituting proceedings ("OIP") against Wulf. The Division of Enforcement alleged that Wulf was associated with a broker-dealer and an investment adviser from 1978 to 2013 and 1986 to 2013, respectively, and had been convicted of violating 18 U.S.C. §§ 1343, 1344, and 1349 by, among other things, "allow[ing] nearly $600,000 of the money invested by [contract] purchasers to be misdirected for the use by [NPS], and related entities and individuals, for their own benefit." The OIP directed that proceedings be instituted to determine (i) if the allegations are true, and (ii) what, if any, remedial action is appropriate in the public interest.

Following a prehearing conference, the Division moved for summary disposition.[5] The law judge denied the Division's motion, without prejudice, because he found that the Division "relie[d] extensively on the allegations" in the Indictment, which the law judge found were insufficient to establish whether the allegations in the OIP were true and with which to assess the public interest.[6] The Division subsequently renewed its motion for summary disposition, supplementing its support with additional exhibits, including the jury instructions in Wulf's criminal proceeding and transcripts of his direct and cross-examination in that proceeding.

The law judge granted the Division's renewed motion, holding that summary disposition was appropriate because the statutory requirements for a follow-on proceeding had been satisfied, and because Wulf's conduct "warrants imposition of the bars the Division seeks."[7] The law judge concluded that barring Wulf would serve the public interest, finding in the initial decision that Wulf and "his co-conspirators soaked up money through NPS and [and one of the funeral trusts] and then wrung hundreds of millions of dollars out of [that trust] until there was nothing left."[8] The bars were also appropriate, the law judge concluded, because Wulf's fraud lasted "at least sixteen years" and because Wulf "violated his fiduciary duty in a brazen fashion."[9] We agree.

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[5] Under our Rule of Practice 250, a motion for summary disposition may be granted "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250(b); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5 (Feb. 4, 2008) ("[C]ourts have upheld summary disposition where no genuine issue of material fact is in dispute.").

[6] *David R. Wulf*, Admin. Proceedings Ruling 2590 (Apr. 27, 2015).

[7] *David R. Wulf*, Initial Decision Release No. 824, 2015 WL 3898163, at *6 (Jun. 25, 2015).

[8] *Id.* at *9.

[9] *Id.* Wulf filed a motion to correct alleged manifest errors in the initial decision that was denied by the law judge. *David R. Wulf*, Administrative Proceeding Rulings Rel. No. 2979 (July 28, 2015).

II. Analysis

A. Threshold Statutory Requirements

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize administrative proceedings against any person who, among other things, was associated with a broker or dealer (Section 15(b)(6)) or an investment adviser (Section 203(f)) at the time of the alleged misconduct, and was convicted within 10 years of the commencement of the proceedings, of certain enumerated offenses, including any felony that involves the violation of Section 1343 of Title 18 (fraud by wire, radio, or television).[10]

As the CEO of WBM at the time of the conduct that led to his conviction, Wulf was associated with an investment adviser; he also was associated with Moloney, a registered broker-dealer. Therefore, the first threshold statutory requirement has been met under both Exchange Act Section 15(b)(6) and Advisers Act Section 203(f). The other threshold statutory requirement for a follow-on proceeding has been met because, in 2013, Wulf was convicted of violating Section 1343 of Title 18, which is within ten years before the date of the OIP, which was instituted on February 5, 2015.

Wulf does not dispute these facts, but argues that "[t]he SEC does not have jurisdiction over simple whole life and term insurance; they are not securities." Our authority to institute these proceedings is not dependent on whether the underlying instruments involved in the misconduct were securities; rather it arises from Wulf's criminal conviction for one or more offenses enumerated in Exchange Act Section 15(b)(6) and Advisers Act Section 203(f).[11]

B. A bar is in the public interest.

Under Exchange Act Section 15(b)(6) and Advisers Act Section 203(f), if the threshold statutory requirements are met, we may censure, place limitations on the activities or functions of, suspend for a period not exceeding 12 months, or bar the respondent from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization if we find that the relief is in the public interest.[12] In addition, under Exchange Act Section 15(b)(6), we may bar a respondent from participating in an offering of penny stock.[13]

We find that imposing industry and penny stock bars against Wulf are in the public interest. In analyzing the public interest, we consider, 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

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10 15 U.S.C. § 78o(b) and 80b-3(f).

11 In any event, the misconduct did involve securities. For example, as noted above, the Indictment alleged that the fraudulent scheme included the purchase of securities with funeral trust funds at inflated prices, which benefited scheme participants including Wulf.

12 15 U.S.C. § 78o(b)(6) and 80b-3(f).

13 15 U.S.C. § 78o(b)(6).

occupation will present opportunities for future violations.[14] Our "inquiry into . . . the public interest is a flexible one, and no one factor is dispositive."[15] We also consider the extent to which sanctions will have a deterrent effect.[16] Our "determination that a remedial sanction is in the public interest is based on the particular circumstances and entire record of the case."[17]

Wulf's participation in a criminal conspiracy to defraud purchasers of prearranged funeral contracts, funeral homes, financial institutions, and others demonstrates that industry and penny stock bars are in the public interest. His conduct was egregious. A jury convicted him for his involvement in a fraudulent scheme that caused victims to lose over $435 million. His conduct occurred over approximately 16 years. And, as the fiduciary ofan investment adviser that participated in a scheme that resulted in the misuse and/or misappropriation of hundreds of millions of dollar, he demonstrated a high degree of scienter. Moreover, he has not acknowledged any responsibility for his actions and has shown no remorse.[18]

Based on the egregiousness and duration of his conduct, his lack of remorse or acknowledgment of wrongdoing, and his current status as a person associated with a broker dealer and investment adviser, there appears to be a high likelihood that he would have an opportunity to harm investors in the future unless subject to a bar.[19]

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[14] *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *4 & n.18 (Apr. 20, 2012) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

[15] *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 4481515, at *15 (Dec. 21, 2007), *petition denied*, 334 F. App'x 334 (D.C. Cir. 2009) (per curiam), *cert. denied*, 559 U.S. 1008 (2010).

[16] *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 58 SEC 1197, 2006 WL 231642, at *8 & n.46 (Jan. 31, 2006) (stating that "[w]e also consider the extent to which the sanction will have a deterrent effect"); *see also PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007) (noting that "'[a]lthough general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry'") (quoting *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005)); *Steadman*, 603 F.2d at 1142 (stating that "the Commission also may consider the likely deterrent effect its sanctions will have on others in the industry").

[17] *Marshall E. Melton*, Advisers Act Release No. 2151, 56 SEC 695, 2003 WL 21729839, at *2 (July 25, 2003).

[18] *See Eric S. Butler*, Exchange Act Rel. No. 65204, 2011 WL 3792730, at *4 (Aug. 26, 2011) ("unwillingness to acknowledge the wrongfulness of the [misconduct] . . . raises serious concerns about the likelihood that [respondent] will engage in similar misconduct if presented with the opportunity").

[19] *See, e.g., Alfred Clay Ludlum, III*, Advisers Act Rel. No. 3628, 2013 WL 3479060, *5 (July 11, 2013) ("Given the scope and severity of [investment adviser's] misconduct . . . an appropriate sanction against him should include a bar from associating with any investment adviser, plus a bar from associating with any broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.").

After examining the record, we find no facts or circumstances that might mitigate this risk to investors. Therefore, we have determined to bar Wulf from associating with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent, and from participating in an offering of penny stock.[20]

C. Wulf's Arguments

Wulf's main argument on appeal is that, notwithstanding the conviction, he is innocent.[21] According to Wulf, "[t]he losses of the corpus of the trust were due to the theft by [others]; not by any action on my part. I had no knowledge of the fraud nor did I take part in any of it." Wulf blames his conviction on the "horrid performance" of his attorney and "serious prosecutorial misconduct" which, he claims, included withholding exculpatory evidence, using "known forged letters as critical evidence" and "omit[ing] vital exculpatory facts pertinent to [his] innocence."

While a respondent in a follow-on proceeding may put forward mitigating evidence concerning the circumstances surrounding the underlying misconduct, he is not permitted to

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[20] The law judge imposed a full collateral bar on Wulf, including bars against associating with a municipal advisor or rating agency, in accordance with the expanded authority granted in the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted in 2010. But, because bars against associating with a municipal advisor or rating agency cannot be imposed retroactively and because Wulf's actions predate Dodd-Frank, we do not impose them here. *See Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015) (holding that bar from associating with a municipal advisor or rating agency was impermissibly retroactive when imposed based on pre Dodd-Frank conduct).

[21] In response to the Division's motion for summary disposition, Wulf provided a copy of "the rebuttal section" of a 2014 motion he filed in the district court in accordance with 28 U.S.C. Section 2255, which permits a sentence to be challenged based on a claim that it violates the "Constitution or the laws of the United States." He did not include the exhibits to this motion "due to high volume" but submitted with his appeal certain "additional documents since the original review." These include a 2011 "interview" by an FBI official of a Missouri state examiner and a computer disc containing, he asserts, "approx. 400 pages" of documents. Under Rule of Practice 452, motions to adduce additional evidence must "show with particularity that such evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." Because Wulf cannot collaterally challenge his conviction in this proceeding, we do not find that this evidence is material or relevant to our decision; nor has he explained why he did not adduce it earlier, *i.e.*, before the law judge.

Wulf also argues that we should delay action against him "until the resolution of [his] US 2255" which, he states, is currently pending. But, "[a]s we have repeatedly held . . . the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related 'follow-on' administrative proceedings." *Thomas D. Melvin, CPA*, Exchange Act Rel. No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015). In the event Wulf's motion is granted or his convictions otherwise vacated, he can seek to vacate the remedial action we are taking here. *See, e.g., Gregg Becker*, Exchange Act Rel. No. 67795, 2012 WL 3866562, at *1 (Sept. 6, 2012) (vacating bar that had been imposed based on criminal conviction after conviction vacated).

contest the basis for the conviction.[22] Wulf's continued assertion that he was ignorant of the scheme, and innocent, are inconsistent with his conviction and the judgment entered against him. As we have long held, "follow-on proceedings based on a criminal conviction are not an appropriate forum to 'revisit the factual basis for,' or legal defenses to, the conviction."[23]

Wulf further argues that he has "been denied due process." As support, he claims that evidence "rebutting" the criminal charges "has been ignored" and that he "was not given any specific charges to which [he] could defend [himself]." To the contrary, we have not ignored his arguments that he is innocent but, as discussed, find that such arguments are impermissible collateral attacks on his underlying conviction, and therefore cannot be considered in evaluating whether to impose a bar. We also reject his claim that he was not given notice of the basis of this proceeding. The OIP was based on allegations that Wulf had been criminally convicted in connection with WBM's role as an investment adviser to NPS and its funeral trusts. The OIP further notified Wulf that the proceedings would determine whether "remedial action is appropriate" against Wulf if the allegations concerning the conviction were established. These are unquestionably the issues raised by this case; there is no basis for Wulf's claim that he lacked adequate notice to prepare a defense.[24]

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[22] *See, e.g., Kornman*, 592 F.3d at 187 (recognizing Commission ruling that respondent was estopped from making "mitigation arguments" that were "essentially collateral attacks on his conviction"); *Elliot v. SEC*, 36 F.3d 86, 87 (11th Cir. 1994) (refusing to entertain a collateral attack in a follow-on proceeding). *See also United States v. Fabric Garment Co.*, 366 F.2d 530, 534 (2d Cir. 1966) ("[A] prior criminal conviction will work an estoppel in favor of the Government in a subsequent civil proceeding with respect to questions distinctly put in issue and directly determined in the criminal prosecution. . . [and, with a jury verdict,] issues which were essential to the verdict must be regarded as having been determined by the judgment.) (internal punctuations and citations omitted). We note that Wulf was told by the law judge, at the pre-hearing conference, that he "cannot attack a district court's judgment" in this proceeding. Wulf, at that time, acknowledged the law judge's explanation as "mak[ing] sense."

[23] *Butler*, 2011 WL 3792730 at *5 (citations omitted). We observed there that, as the Supreme Court has explained, collateral estoppel, among other things, "fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.* (citations omitted); *see, e.g., Brownson*, 2002 WL 1438186, at *3 (rejecting respondent's challenge to underlying conviction based on claim that he was '"heavily sedated . . . and hardly knew who he was or what was happening, and, if this had not been so, he would have discharged his counsel"').

[24] Wulf also asserts that he agrees "with two federal judges who stated that the process by which the SEC appoints its [administrative law] judges is 'likely unconstitutional.'" But we have previously and repeatedly rejected such arguments, *see, e.g., David F. Bandimere*, Securities Act Rel. No. 9972, 2015 WL 6575665, at *19 (Oct. 29, 2015) ("find[ing] that the appointment of Commission ALJs is not subject to the requirements of the Appointments Clause"), *appeal filed*, No. 15-9586, (10th Cir. Dec. 22, 2015), and do so again here. *See also Raymond J. Lucia Companies*, Exchange Act Rel. No. 75837, 2015 WL 5172953, at *21-23 (Sept. 3, 2015) (rejecting Appointments Clause challenge to Commission administrative process), *appeal filed*, No. 15-435 (D.C. Cir. Oct. 7, 2015); *Timbervest, LLC*, Investment Advisers Act Rel. No. 4197,

(continued…)

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For well over a decade, Wulf, acting in a fiduciary capacity, conspired with others to perpetrate a massive fraudulent scheme for which he was prosecuted criminally and convicted. The scheme resulted in huge losses to consumers, businesses, financial institutions, and others. Wulf's conduct reflects a total rejection of his legal and ethical duties as a securities professional, and demonstrates his risk to the public if he were to continue in such a professional capacity. In light of his conduct, and based on our consideration of all other relevant facts and circumstances, we conclude that it is in the public interest to bar Wulf from the securities industry and from participating in penny stock offerings. An appropriate order will issue.[25]

By the Commission (Chair WHITE and Commissioners STEIN and PIWOWAR).

Brent J. Fields
Secretary

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2015 WL 5472520, at *23-26 (Sept. 17, 2015) (same), *appeal filed*, No. 15-1416 (D.C. Cir. Nov. 13, 2015).

[25] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77411 / March 21, 2016

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 4356 / March 21, 2016

Admin. Proc. File No. 3-16374

In the Matter of

DAVID R. WULF

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that David R. Wulf be barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent and from participating in any penny stock offering.

By the Commission.

Brent J. Fields
Secretary