SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 90401 / November 12, 2020

Admin. Proc. File No. 3-18866

In the Matter of

SAUL DANIEL SUSTER

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Criminal Conviction

Respondent was convicted of conspiracy to commit mail and wire fraud. *Held*, it is in the public interest to bar him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participation in any offering of penny stock.

APPEARANCES:

Andrew O. Schiff, Esq., for the Division of Enforcement.

On October 12, 2018, we instituted an administrative proceeding against Saul Daniel Suster, pursuant to Section 15(b) of the Securities Exchange Act of 1934, to determine whether the statutory predicate for an administrative remedy was satisfied and whether remedial action would serve the public interest.[1] The order instituting proceedings ("OIP") alleged that Suster had pleaded guilty to one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349 before the United States District Court for the Southern District of Florida.[2] After Suster did not answer the OIP, we issued an order to show cause why he should not be found in default.[3] Suster failed to respond to the show cause order or to the Division of Enforcement's subsequent motion for an order finding him in default and determining the proceeding against him. As a result, we now find Suster to be in default, deem the OIP's allegations to be true, and bar Suster from the securities industry and from participation in any offering of penny stock.

I. Background

The OIP alleged that, from approximately 2010 to 2017, Suster engaged in the business of effecting transactions in securities for the accounts of others by working as an unregistered broker and participated in offerings of penny stocks.[4] The OIP also alleged that, on March 19, 2018, Suster pleaded guilty to one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349.[5] The OIP alleged further that the count to which Suster pleaded guilty charged, among other things, that Suster defrauded investors and obtained money and property by means of materially false and misleading statements in connection with the penny stock sales, raising approximately $15 million from more than 150 investors.[6]

According to the OIP, investors were falsely told that the companies involved were profitable and safe, that their funds would be used for working capital and to pay for sales and marketing expenses, and that no commissions or fees would be charged to them.[7] Instead, investor funds were used to start new ventures, to pay new investors "dividends," and to pay

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1 *Saul Daniel Suster*, Exchange Act Release No. 84414, 2018 WL 4951795 (Oct. 12, 2018).

2 *Id.* at *1; *see United States v. Daniel Joseph Touizer*, Case No. 17-60286-CR-Bloom (S.D. Fla.), ECF No. 226.

3 *Saul Daniel Suster*, Exchange Act Release No. 85882, 2019 WL 2160139 (May 16, 2019).

4 *Suster*, 2018 WL 4951795, at *1.

5 *Id.*

6 *Id.*

7 *Id.* at *2.

Suster and his co-conspirators undisclosed commissions and fees.[8] Suster was sentenced to 30 months in prison and ordered to pay $321,638.77 in restitution.[9]

The OIP instituted proceedings to determine whether the allegations contained therein were true and whether remedial action was in the public interest.[10] The OIP directed Suster to file an answer to the allegations contained therein within 20 days after service, as provided by Rule of Practice 220(b).[11] The OIP informed Suster that if he failed to answer, he may be deemed in default, the proceedings may be determined against him upon consideration of the OIP, and the allegations in the OIP may be deemed to be true as provided in the Rules of Practice.[12] Suster was served with the OIP on March 22, 2019.

Suster did not file an answer to the OIP. On May 16, 2019, more than 20 days after service, Suster was ordered to show cause why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[13] Suster did not respond.

The Division subsequently moved to find Suster in default and determine the proceeding against him. It attached as exhibits to its motion several documents related to the criminal proceeding, which we have considered in assessing the need for sanctions. These documents include copies of the indictment, plea agreement, criminal judgment, and factual proffer. Suster did not respond to the Division's motion for an order finding him in default.

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8 *Id.*

9 *Id.* at *1; *United States v. Touizer*, Case No. 17-60286-CR-Bloom (S.D. Fla.), ECF No. 226. We take official notice of the amount of restitution ordered pursuant to Rule of Practice 323, 17 C.F.R. § 201.323.

10 *Suster*, 2018 WL 4951795, at *2.

11 17 C.F.R. § 201.220(b).

12 *See* Rules of Practice 155(a), 220(f), 17 C.F.R. § 201.155(a), .220(f).

13 *Suster*, 2019 WL 2160139, at *1.

II. Analysis

A. We hold Respondent in default and deem the OIP's allegations to be true.

Rule of Practice 155(a) provides that if a respondent fails "[t]o answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding," the respondent "may be deemed to be in default" and the proceedings may be determined against him based "upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true."[14] Because Suster has failed to answer the OIP and has not responded to either the order to show cause or to the Division's motion to find him in default, we find it appropriate to find him in default and to deem the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP and the evidentiary materials attached to the Division's motion to hold Suster in default.

B. We find it in the public interest to impose industry and penny stock bars on Suster.

Exchange Act Section 15(b)(6)(A) authorizes us to suspend or bar a person from the securities industry and from participating in the offering of penny stock if we find, after notice and opportunity for a hearing, that (1) the person was convicted within 10 years of the commencement of the proceeding of any offense specified in Exchange Act Section 15(b)(4)(B); (2) the person, at the time of the misconduct, was associated with a broker or dealer or was participating in an offering of penny stock; and (3) such a sanction is in the public interest.[15]

The first element is satisfied because Suster's conviction involved "the purchase or sale of any security" and occurred within 10 years of the commencement of this proceeding.[16]

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[14] 17 C.F.R. § 201.155(a); *see also* 17 C.F.R. § 201.220(f) (providing that, "[i]f a respondent fails to file an answer required by this rule within the time provided, such respondent may be deemed in default pursuant to Rule 155(a)").

[15] 15 U.S.C. §§ 78o(b)(4)(B), (b)(6)(A)(ii).

[16] *See* 15 U.S.C. §§ 78o(b)(4)(B)(i) (referencing convictions involving the purchase or sale of any security); *see also* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "convicted" to include a plea of guilty); *Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *8 (Mar. 7, 2014) ("[W]e agree with the Division that there is no reason for ascribing a different meaning to the word 'convicted' in the Exchange Act to the meaning given to that term in the Advisers Act.") (internal quotations and citation omitted), *petition granted in part on other grounds*, 845 F.3d 1217 (D.C. Cir. 2017); *Alexander Smith*, Exchange Act Release No. 3785, 1946 WL 24891, at *6 (Feb. 5, 1946) (holding that a plea of guilty constitutes a conviction for purposes of Exchange Act Section 15(b)).

The second element is satisfied because the OIP alleged that Suster acted as an unregistered broker and participated in penny stock offerings at the time of his misconduct. As discussed above, we deem the allegations of the OIP to be true because Suster is in default.

The record also supports finding that Suster acted as an unregistered broker. Under the Exchange Act, a "broker" is "any person engaged in the business of effecting transactions in securities for the account of others."[17] We have stated that "[a]ctivities that are indicative of being a broker include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation."[18] Suster regularly engaged in the business of effecting transactions in securities for approximately seven years. He solicited investors over the telephone and discussed stock offerings with them, often lying to potential investors. Although Suster was not always the "closer," he was considered the "fronter" and initiated the calls with investors. Furthermore, he received transaction-based compensation for his activities. These facts are sufficient to establish that Suster acted as a broker in connection with his offense.[19]

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17 15 U.S.C. § 78c(a)(4)(A).

18 *Anthony Fields, CPA*, Exchange Act Release No. 74344, 2015 WL 728005, at *18 (Feb. 20, 2015); *see also James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *4 (Feb. 15, 2017) (stating that "transaction-based compensation, or commissions are one of the hallmarks of being a broker-dealer") (internal quotations and citation omitted).

19 *See, e.g., Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *2 (Mar. 1, 2017) (finding that respondent acted as an unregistered broker by "actively soliciting potential investors, possessing investor funds, and receiving compensation for the transactions"); *Tagliaferri*, 2017 WL 632134, at *4 (finding that respondent acted as an unregistered broker because he "actively found investors," "was closely involved in negotiations with the issuers of the notes his clients purchased," and "received transaction-based compensation").

Because Suster acted as a broker at the time of the misconduct, he was a person "controlling . . . such broker" and therefore was a person associated with a broker.[20] And it is "well established that we are authorized to sanction an associated person of an unregistered broker-dealer . . . in a follow-on administrative proceeding."[21]

Turning to the third element, in considering the public interest, we focus on 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.[22] Our public interest

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[20] 15 U.S.C. § 78c(a)(18) (defining a "person associated with a broker or dealer" or "associated person of a broker or dealer" to mean "any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions) [or] any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer"); *see, e.g.*, *Tagliaferri*, 2017 WL 632134, at *5 ("Because we find that Tagliaferri himself met the definition of a 'broker,' we also find that he met the definition of a 'person associated with a broker' for purposes of Exchange Act Section 15(b)(6)"); *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (a finding that a person "acted as an unregistered broker also establishes that he was associated with a broker for purposes of Exchange Act Section 15(b)(6)"), *petition denied*, 695 F. App'x 980 (7th Cir. 2017); *Desai*, 2017 WL 782152, at *3 (same) (quoting *Perres*, 2017 WL 280080, at *3); *cf. Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (finding that a person who acts as an investment adviser in an individual capacity is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an investment adviser'").

[21] *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *8 (July 26, 2013) (citing, *e.g.*, *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *6 (Dec. 2, 2005)); *cf. Teicher v. SEC*, 177 F.3d 1016, 1017-19 (D.C. Cir. 1999) (finding that the authority under Section 203(f) of the Investment Advisers Act of 1940 to sanction persons who were associated with an investment adviser at the time of the underlying misconduct extended to persons associated with unregistered as well as registered advisers).

[22] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

inquiry is flexible, and no one factor is dispositive.[23] The remedy is intended to "protect the [trading] public from further harm," not to punish the respondent.[24]

We have weighed all these factors, and find industry and penny stock bars warranted. Suster's conduct was egregious and recurrent. Over an extended period, he participated in a criminal scheme to defraud over 150 individuals. During this period, Suster and his co-conspirators repeatedly lied to investors to get them to invest in various penny stocks. They stated falsely that the companies were a "safe" and "profitable" investment where "you won't lose money," that investor funds would be used for sales and marketing, working capital and general corporate purposes, and that no commissions or fees would be charged to investors. Suster also lied to some investors by telling them that he was a successful investor in the companies and that his investments made him a significant profit. These activities, which raised approximately $15 million, resulted in Suster pleading guilty to felony conspiracy to commit mail and wire fraud and to be sentenced to 30 months in prison.

Suster acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud."[25] Conspiracy to commit mail fraud or wire fraud requires proof that the defendant acted with the specific intend to defraud.[26] By pleading guilty, Suster admitted that, as alleged in the indictment, he "knowingly, and with the intent to defraud, devise[d], and intend[ed] to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made."

Suster has not offered assurances against future violations since he has defaulted in this proceeding. While Suster's plea agreement acknowledges his "recognition and affirmative and timely acceptance of personal responsibility," we find this consideration outweighed by the egregiousness of the misconduct, the recurrent nature of the violations, the degree of scienter

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23 *Korem*, 2013 WL 3864511, at *4.

24 *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

25 *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).

26 *United States v. Hagen*, 917 F.3d 668, 672 (8th Cir. 2019); *United States v. Holland*, 722 F. App'x 919, 925 (11th Cir. 2018); *United States v. Brooks*, 681 F.3d 678, 700 (5th Cir. 2012); *United States v. Pace*, 313 F. App'x 603, 606-607 (4th Cir. 2009); *United States v. Carlo*, 507 F.3d 799, 801 (2d Cir. 2007); *United States v. Smith*, 934 F.2d 270, 274 (11th Cir. 1991).

involved, and the failure to offer assurances against future violations.[27] Indeed, "absent the imposition of bars, [Suster] could return to a role in which he would present a risk of harming investors and the marketplace."[28]

"The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm."[29] Here, the record demonstrates that Suster is "unfit to participate in the securities industry" and that his "participation in it in any capacity would pose a risk to investors."[30] Accordingly, we find it in the public interest to bar Suster from associating 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 penny stock.

An appropriate order will issue.

By the Commission (Chairman CLAYTON and Commissioners PEIRCE, ROISMAN, LEE, and CRENSHAW).

Vanessa A. Countryman
Secretary

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27 *See, e.g.*, *Lawrence Allen Deshetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019) ("Although his guilty plea indicates that DeShetler might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that DeShetler poses a risk to the investing public.").

28 *Tagliaferri*, 2017 WL 632134, at *6.

29 *Deshetler*, 2019 WL 6221492, at *3.

30 *Tagliaferri*, 2017 WL 632134, at *6 (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90401 / November 12, 2020

Admin. Proc. File No. 3-18866

In the Matter of

SAUL DANIEL SUSTER

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Saul Daniel Suster is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Saul Daniel Suster is barred from participation in any offering of 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.

By the Commission.

Vanessa A. Countryman
Secretary