SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 91301 / March 11, 2021

Admin. Proc. File No. 3-18893

In the Matter of

SALVADORE D. PALERMO

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of recordkeeping provisions of the federal securities laws. *Held*, it is in the public interest to bar respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

M. Graham Loomis for the Division of Enforcement.

On November 9, 2018, we instituted administrative proceedings against Salvadore D. Palermo, 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 (the "OIP") alleged that Palermo had been permanently enjoined from future violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder for misconduct that occurred while he was associated with a broker-dealer. Palermo failed to file an answer to the OIP, failed to respond to an order to show cause why he should not be found in default, and failed to respond to the Division of Enforcement's motion for entry of default and sanctions. We now find Palermo to be in default, deem the allegations of the OIP to be true, and bar him from the securities industry.

I. Background

The OIP alleged that a federal district court entered the permanent injunction against Palermo on October 22, 2018. According to the OIP, the Commission's complaint in the civil action had "alleged that, between at least August 2014 and March 2015, Palermo entered certain fictitious sales orders in [the] books, records and electronic trading systems" of a now-defunct broker-dealer, J.P. Turner & Company, LLC, with which he was then associated. The OIP alleged that, according to the complaint, Palermo did so "despite knowing that the named counterparty/purchaser had never agreed to buy the instruments and that each sales order would ultimately be cancelled with the instruments being returned to J.P. Turner's inventory." Palermo allegedly "created these sham sales to temporarily remove the instruments from J.P. Turner's inventory in order to appear to comply with J.P. Turner's internal inventory policy." As a result of Palermo's actions, according to the complaint, J.P. Turner allegedly "made and maintained inaccurate trading and financial books and records, and filed with the Commission inaccurate Financial and Operational Combined Uniform Single ("FOCUS") Reports, which contain certain financial and operational information for the firm, for each month between at least August 2014 and February 2015."

The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. The OIP directed Palermo to file an answer to the allegations contained therein within twenty days after service, as provided by Commission Rule of Practice 220(b).[2] The OIP informed Palermo that, if he failed to answer, he may be deemed in default, the allegations in the OIP may be deemed to be true as provided in the Rules of Practice, and the proceedings may be determined against him upon consideration of the OIP.[3] Palermo was properly served with the OIP on February 11, 2019.[4]

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1 *Salvadore D. Palermo*, Exchange Act Release No. 84564, 2018 WL 5881783 (Nov. 9, 2018).

2 17 C.F.R. § 201.220(b).

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

4 *See* Rule of Practice 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "handing a copy of the order to the individual").

Palermo failed to file an answer to the OIP. On August 29, 2019, more than 20 days after service, Palermo 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.[5] Palermo was warned that if he were found in default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against him upon consideration of the record. Palermo did not subsequently answer the OIP or respond to the show cause order.

On October 11, 2019, more than seven months after service on Palermo, the Division filed a motion requesting that the Commission find Palermo in default and bar him from the securities industry. The Division supported the motion with copies of the complaint filed in the civil action, the declaration of Division counsel Mark Troszak attaching documentary evidence from the Division's investigation giving rise to the civil action, and the district court's final judgment against Palermo. Palermo did not respond to the Division's motion.

II. Analysis

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

Rule of Practice 155(a) provides that if a party fails to "answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding," we may deem the party in default and "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."[6] Because Palermo has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to deem 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, the exhibits attached to the Division's motion for default and sanctions, and the exhibits attached to Troszak's declaration, which include excerpts from Palermo's Central Registration Depository records; Palermo's investigative testimony before the Division; Palermo's former supervisor's investigative testimony before FINRA; summaries of the broker's records for the transactions at issue; emails from the broker's clearing firm; and transcripts of Palermo's phone calls with a colleague and with a representative of the named counterparty to the fictitious transactions.[7]

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[5] *Salvadore D. Palermo*, Exchange Act Release No. 86819, 2019 WL 4073784 (Aug. 29, 2019).

[6] 17 C.F.R. § 201.155(a); *see also* Rule of Practice 220(f), 17 C.F.R. § 201.220(f) (providing that "[i]f a respondent fails to file an answer required by this section within the time provided, such respondent may be deemed in default pursuant to § 201.155(a)").

[7] *See, e.g.*, *Thomas J. Donovan*, Exchange Act Release No. 52883, 2005 WL 3299159, at *4-5 (Dec. 5, 2005) (imposing sanctions under Section 15(b)(6)(A)(iii) based on a default injunction where, "[f]ollowing entry of [the] injunction, and as part of these administrative proceedings," a record was developed that included documents and testimony that related to the misconduct at issue); *Lamb Bros., Inc.*, Exchange Act Release No. 14017, 46 SEC 1053, 1977 SEC LEXIS 715, at *12 (Oct. 3, 1977) (imposing sanctions based on a default injunction where

B. We find it in the public interest to impose an industry bar on Palermo.

Exchange Act Section 15(b)(6)(A)(iii) authorizes the Commission to suspend or bar a person from the securities industry if we find, on the record after notice and opportunity for hearing, that (i) the person was enjoined from engaging in or continuing any conduct or practice in connection with activities of a broker or dealer, or in connection with the purchase or sale of any security; (ii) the person is, or at the time of the alleged misconduct was, associated with a broker or dealer; and (iii) such a sanction is in the public interest.[8]

The Division's motion for finding of a default and the imposition of sanctions does not address the first two statutory elements and instead argues solely that a bar is in the public interest. Notwithstanding this omission, we find that the record establishes these elements. First, Palermo was subject to civil enforcement proceedings based on allegations that he entered fictitious sales orders that resulted in J.P. Turner making and maintaining inaccurate trading and financial books and records. Palermo did not contest those proceedings and, as a result, the district court enjoined him from aiding and abetting further violations of the Exchange Act's recordkeeping provisions.[9] An injunction against violating the Exchange Act's recordkeeping provisions qualifies as an injunction from engaging in any conduct or practice in connection with the activities of a broker-dealer for purposes of Exchange Act Sections 15(b)(4)(C) and

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the "allegations made in the injunctive suit [were] remade" in the administrative proceeding and "an evidentiary record with respect to those matters was developed").

[8] 15 U.S.C. § 78o(b)(6)(A)(iii) (cross-referencing Exchange Act Section 15(b)(4)(C), 15 U.S.C. § 78o(b)(4)(C)); *see also id.* § 78o(b)(4)(C) (discussing permanent and temporary injunctions from engaging in or conducting enumerated conduct and activities). Exchange Act Section 15(b)(6) also authorizes a bar from participating in an offering of penny stock, but the Division did not request such a bar and we do not impose one here. And we decline the Division's request that we impose a "bar[] from associating with a[n] . . . investment company." Although Section 9(b) of the Investment Company Act of 1940 authorizes us to prohibit such association, the proceeding was not instituted under that statute. *See, e.g.*, *Phlo Corp.*, Exchange Act Release No. 55562, 2007 WL 966943, at *15 (Mar. 30, 2007) (declining to impose sanctions that are not authorized by the provisions that "were charged in the OIP").

[9] *See SEC v. Palermo*, No. 1:18-cv-03747-TCB (N.D. Ga. Oct. 22, 2018), ECF No. 9, at *1-2 (enjoining Palermo "from aiding and abetting violations of, directly or indirectly, Section 17(a) of the Securities Exchange Act of 1934 . . . and Rules 17a- and 17a-5 thereunder").

15(b)(6)(A).[10] Second, the record establishes that Palermo was associated with a broker at the time of his misconduct because Palermo was a registered representative of a broker at that time.[11]

Thus, we need determine only if any remedial action is in the public interest. In doing so, we consider 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.[12]

We have weighed all these factors, and find an industry bar warranted to protect the investing public. To appear to comply with J.P. Turner's policies limiting the size of the position in certain fixed income assets that Palermo could hold in the fixed income desk's account, Palermo entered fictitious sales of the products in the firm's books and records and electronic trading system. J.P. Turner's policies required the accounts to be at zero at the end of the month and less than a set figure between $2 million and $4 million at any point during each month, and Palermo made it appear as if he was complying with these policies by entering fictitious sales that named a large third-party broker dealer as the counterparty. Palermo did so for each month end from August 2014 to March 2015, and on several occasions intra-month within that period. The fictitious transactions allowed Palermo to temporarily remove the products from the fixed income desk's inventory for several days until the counterparty rejected the trade and the products were taken back into inventory. This fraudulent practice allowed Palermo to avoid losses from selling at prevailing market prices while appearing to comply with J.P. Turner's policies. In July 2015, J.P. Turner terminated Palermo's employment because he had "[e]ngaged in structured product transactions for the apparent purpose of concealing inventory positions."

Palermo's conduct was egregious and recurrent. Over several months, he repeatedly entered fictitious sales orders in J.P. Turner's books and records and electronic trading systems despite knowing that the named counterparty had not agreed to buy the products and that the sales orders would be canceled with the products returning to the fixed income desk's inventory. Palermo entered 48 fictitious sales totaling over $24 million. Palermo's purpose in doing so was to temporarily remove these products from inventory to circumvent J.P. Turner's internal

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[10] *See Thomas C. Gonnella,* Securities Act Release No. 10119, 2016 WL 4233837, at *10 (Aug. 10, 2016) (stating that "'a broker-dealer should have current books and records to enable it to fulfill its obligations and responsibilities to other broker-dealers with whom business is transacted'") (citation omitted), *petition denied*, 954 F. 3d 536 (2d Cir. 2020).

[11] *See* Exchange Act Section 3(a)(18), 15 U.S.C. § 78c(a)(18) (defining "person associated with a broker or dealer" to include "any employee of such broker or dealer").

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

inventory policy. Palermo's supervisor testified that the inventory limit served an important risk-management function: ensuring the firm complied with its minimum net capital obligations.[13]

Palermo also acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud."[14] Scienter may be established by recklessness, "an extreme departure from the standards of ordinary care . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it."[15]

The record contains recorded telephone conversations establishing that Palermo acted with scienter. Palermo entered fictitious sale orders despite knowing that the named purchaser had not agreed to buy the instruments and that the sales orders would be canceled and the instruments returned to J.P. Turner's inventory. In one call with a colleague, Palermo said that he was "float[ing]" the products "to get the books to flatten." In another call with a representative of the putative counterparty, Palermo said he "need[ed] to run a trade and then . . . tomorrow's a new month, then I bring them back." Similarly, in another conversation with a counterparty, Palermo said that if the counterparty would not agree to a bona fide sale and buyback of the products, he would have "to do something today . . . you know, sleight of hand . . . . I got to do something with these somewhere and then bring them back, if I had to. You know what I am saying, I just need to flatten out that number today." Under the circumstances, Palermo either knew or must have known that these fictitious transactions presented a risk that the firm's reported financial position would be misleading.

Because Palermo failed to answer the OIP or respond to the show cause order or to the Division's motion, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. And because Palermo has worked for more than 29 years in the securities industry as an associated person of a broker-dealer, his occupation may present opportunities for future violations. These factors thus militate in favor of an industry bar.

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 investor harm. Here, the record establishes that Palermo is "unfit to participate in the securities industry" and that his "participation in it in

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[13] *See, e.g.*, *Gonnella*, 2016 WL 4233837, at *8-10 (describing how a similar scheme to convey a false appearance of compliance with an inventory policy misled the firm about "the degree of risk to the firm" and undermined the firm's efforts "to mitigate potential losses associated with proprietary trading" and to comply with its regulatory obligations); *see also, e.g.*, *David E. Lynch*, Exchange Act Release No. 46439, 2002 WL 1997953, at *2-4 & n.14 (Aug. 30, 2002) (finding that a similar scheme caused firm to violate recordkeeping provisions and thereby deceive regulators with respect to the firm's liabilities and net capital computation).

[14] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976).

[15] *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (citation omitted).

any capacity would pose a risk to investors."[16] Because Palermo's willingness to use fictitious transactions poses a continuing threat to investors, we conclude that 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.[17]

An appropriate order will issue.

By the Commission (Acting Chair LEE and Commissioners PEIRCE, ROISMAN, and CRENSHAW).

Vanessa A. Countryman
Secretary

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16 *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *5 (Jan. 30, 2017) (finding that the misconduct underlying the respondent's injunction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

17 *Id.* (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91301 / March 11, 2021

Admin. Proc. File No. 3-18893

In the Matter of

SALVADORE D. PALERMO

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Salvadore D. Palermo is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary