

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934

Release No. 95997 / October 6, 2022

INVESTMENT ADVISERS ACT OF 1940

Release No. 6161 / October 6, 2022

Admin. Proc. File No. 3-19151

In the Matter of

CHARLES MYRICK WINSTEAD

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of embezzlement. *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 and from participating in an offering of penny stock.

APPEARANCES:

Andrew O. Schiff for the Division of Enforcement.

On April 22, 2019, we instituted an administrative proceeding against Charles Myrick Winstead pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ We now find Winstead to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity and from participating in an offering of penny stock.

I. Background

The order instituting proceedings (“OIP”) alleged that Winstead pleaded guilty in 2018 to one count of embezzlement in violation of Mississippi state law by receiving a \$117,863.74 check payable to Nationwide Insurance Company from an individual who had provided the check to Winstead in his capacity as an insurance agent for the purpose of purchasing an insurance policy and other Nationwide products. Instead of tendering the funds to Nationwide, Winstead converted them to his own use. After accepting Winstead’s guilty plea, a court sentenced him to 20 years of incarceration, with the final ten years suspended; sentenced him to five years of supervised probation; and ordered him to pay restitution of \$121,811.56 and court costs of \$998.50. The OIP also alleged that Winstead was associated with Nationwide Securities LLC, a dually registered broker-dealer and investment adviser, at the time of the misconduct.

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Winstead to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).² The OIP informed Winstead 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 proceeding could be determined against him upon consideration of the OIP.³

Winstead was properly served with the OIP on May 8, 2019, pursuant to Rule of Practice 141(a)(2)(i),⁴ but did not respond. On August 29, 2019, more than 20 days after service, the Commission ordered Winstead to show cause by October 14, 2019, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.⁵ The show cause order warned Winstead that, if the Commission found him to be default, the allegations in the

¹ *Charles Myrick Winstead*, Exchange Act Release No. 85704, 2019 WL 1772660 (Apr. 22, 2019).

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 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by “sending a copy . . . addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt”).

⁵ *Charles Myrick Winstead*, Exchange Act Release No. 86823, 2019 WL 4073789 (Aug. 29, 2019).

OIP would be deemed to be true and the Commission could determine the proceeding against him upon consideration of the record. The order directed the Division of Enforcement to file a motion for entry of an order of default and the imposition of remedial sanctions by October 28, 2019, in the event that Winstead failed to respond to the show cause order.

After Winstead failed to answer the OIP or respond to the order to show cause, the Division filed a motion requesting that the Commission find Winstead in default and bar him from associating in the securities industry and from participating in an offering of penny stock. In support of its motion, the Division filed copies of the Indictment, Petition to Enter Guilty Plea, Judgment of Conviction, and Order of Sentence filed in Winstead's criminal proceeding. Winstead did not respond to the Division's motion.

II. Analysis

A. We hold Winstead 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 Winstead has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to hold 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 that the Division submitted with its motion for default and sanctions.

B. We find associational and penny stock bars to be in the public interest.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in any offering of a penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) the person was convicted of embezzlement (or any other offense specified in Exchange Act Section 15(b)(4)(B)) within ten years of the commencement of the proceeding; (2) the person was associated with a broker or dealer or was participating in an offering of penny stock at the time of the misconduct; and (3) such a sanction is in the public interest.⁷ Similarly, Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from associating in the securities industry

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” Rule of Practice 155(a)).

⁷ 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78o(b)(4)); *see also id.* § 78o(b)(4)(B)(4) (discussing convictions involving embezzlement).

if it finds, on the record after notice and opportunity for hearing, that (1) the person was convicted of embezzlement (or any other offense specified in Advisers Act Section 203(e)(2)(C)) within ten years of the commencement of the proceeding; (2) the person was associated with an investment adviser at the time of the misconduct; and (3) such a sanction is in the public interest.⁸

The record establishes the first two of these elements. Winstead was convicted of embezzlement within ten years of the commencement of this proceeding.⁹ Winstead was also associated with a broker-dealer and an investment adviser at the time of his misconduct in April 2014. The allegations of the OIP deemed true establish that, at that time, Winstead was associated with Nationwide Securities LLC, a registered broker-dealer and investment adviser.

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.¹⁰ Our public interest inquiry is flexible, and no one factor is dispositive.¹¹ The remedy is intended to protect the trading public from further harm, not to punish the respondent.¹²

We have weighed all of these factors, and find associational and penny stock bars are warranted to protect the investing public. As a Senate Report on amendments to the securities

⁸ 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)); *see also id.* § 80b-3(e)(2)(C) (discussing convictions involving embezzlement).

⁹ *See* 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), *pet. 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) (“[I]t is clear that when there has been a verdict or plea of guilt or a plea of *nolo contendere* accepted by the court, there is the ‘conviction’ contemplated by [Exchange Act Section 15(b)] as the starting point for an inquiry into the fitness of the person involved to engage in the securities business.”).

¹⁰ *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

¹¹ *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

¹² *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

laws explained, embezzlement, like other financial offenses, “reflect[s] upon a person’s suitability to handle other people’s funds and investments.”¹³ A conviction for embezzlement thus may indicate that the wrongdoer poses “potential danger to the investing public.”¹⁴

Embezzlement under Mississippi state law also requires wrongful or fraudulent intent.¹⁵ In the criminal proceeding, Winstead admitted that on April 1, 2014, by virtue of his position and place of employment, he embezzled a check for \$117,863.74 intended for Nationwide Insurance Company for his personal use. Based on the record, we conclude that Winstead’s misconduct was egregious and involved a high degree of scienter, even if it was not recurrent.¹⁶

Because Winstead failed to answer the OIP or respond to the show cause order or to the Division’s motion, he has made no assurances in this proceeding that he will not commit future violations. And although his guilty plea indicates that Winstead might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that Winstead poses a risk to the investing public.¹⁷ Winstead also has worked for approximately 14 years in the securities industry and has made no assurances that he will not reenter the industry after he is released from custody. Winstead’s occupation therefore presents opportunities for future violations.

¹³ S. Rep. No. 379, 88th Cong., 1st Sess. 45 (1963).

¹⁴ *Bruce Paul*, Exchange Act Release No. 21789, 1985 WL 548579, at *2 (Feb. 26, 1985) (quoting H. Doc. No. 95, pt. 1, 88th Cong., 1st Sess. 70).

¹⁵ *U.S. Fid. & Guar. Co. v. Constantin*, 157 So. 2d 642, 645 (Miss. 1963)

¹⁶ *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (the “degree of intentional wrongdoing evident in a defendant’s past conduct” is an “important factor” indicating a risk of future harm); *cf. Denise M. Olson*, Exchange Act Release No. 75838, 2015 WL 5172954, at * 5 (Sept. 3, 2015) (agreeing that, in the context of FINRA’s application of its Sanction Guidelines for conversion, “a single instance of theft provides ample justification to bar an individual” (quoting *Denise M. Olson*, Complaint No. 2010023349601, 2014 WL 1878984, at *7 n.19 (FINRA May 9, 2014))).

¹⁷ *See 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.”); *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding the “egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility”); *Korem*, 2013 WL 3864511, at *6 (finding that although respondent acknowledged his wrongdoing by pleading guilty in the underlying criminal case, “the degree of scienter involved in the misconduct at issue . . . cause[s] us concern”).

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. Here, the record establishes that Winstead is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.¹⁸ Given that Winstead has defaulted in this proceeding, he has not opposed the imposition of any particular associational bar or a bar from participating in an offering of penny stock. We conclude that it is in the public interest to bar Winstead from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.¹⁹

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners CRENSHAW, UYEDA, and LIZÁRRAGA; Commissioner PEIRCE concurring in part and dissenting with respect to the imposition of a bar from participating in an offering of penny stock).

Vanessa A. Countryman
Secretary

¹⁸ *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 that his participation in it in any capacity would pose a risk to investors).

¹⁹ *Id.* (imposing associational and penny stock bars where necessary to protect the public).

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In the Matter of
CHARLES MYRICK WINSTEAD

ORDER IMPOSING REMEDIAL SANCTIONS

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

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

ORDERED that Charles Myrick Winstead is barred from 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.

By the Commission.

Vanessa A. Countryman
Secretary