SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 96397 / November 29, 2022

Admin. Proc. File No. 3-18791

In the Matter of

TRAVIS A. BRANCH

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the antifraud provisions of the federal securities laws. *Held*, it is in the public interest to bar respondent from association with any broker or dealer and from participating in an offering of penny stock.

APPEARANCES:

Travis Branch, pro se.

Douglas M. Miller, Esq. for the Division of Enforcement.

On September 19, 2018, we instituted an administrative proceeding against Travis A. Branch pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] We now find Branch to be in default, deem the allegations against him to be true, and bar him from association with a broker or dealer and from participating in an offering of penny stock.

I. Background

A. The Commission issued an OIP against Branch.

The order instituting proceedings ("OIP") alleged that Branch had been associated with Brookstreet Securities Corp. from February 1995 to June 2007.[2] The OIP also alleged that, in 2009, the Commission brought a civil action against Branch alleging that, between 2004 and 2007, Branch and others at Brookstreet "made false and misleading statements to their customers" regarding certain collateralized mortgage obligations ("CMOs"), resulting in significant losses and margin calls with the collapse of the CMO market in early 2007.[3] The OIP alleged further that, in the civil action, a federal district court permanently enjoined Branch on August 7, 2018, from violating Exchange Act Section 10(b) and Exchange Act Rule 10b-5.[4]

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 Branch to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[5] The OIP informed Branch 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.[6]

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1 *Travis A. Branch*, Exchange Act Release No. 84199, 2018 WL 4488873 (Sept. 19, 2018). The OIP also instituted proceedings under Section 203(f) of the Investment Advisers Act of 1940. *Id.* But the Division of Enforcement has not pursued relief under that section in its motion for a default and sanctions and instead has focused on Exchange Act Section 15(b).

2 We take official notice of Brookstreet's BrokerCheck report, which shows that it was a broker-dealer. https://files.brokercheck.finra.org/firm/firm_14667.pdf; *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at *1 n.1 (Mar. 17, 2016) (taking official notice of BrokerCheck records pursuant to Rule of Practice 323, 17 C.F.R. § 201.323).

3 *Branch*, 2018 WL 4488873, at *1.

4 *See* 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5.

5 17 C.F.R. § 201.220(b).

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

B. Branch failed to answer the OIP, respond to an order to show cause why he should not be held in default, or respond to a motion for a default and sanctions.

Branch was properly served with the OIP on September 27, 2018, pursuant to Rule of Practice 141(a)(2)(i),[7] but did not respond. On May 30, 2019, more than 20 days after service, the Commission ordered Branch to show cause by June 13, 2019, why it should not find him in default due to his failure to file an answer or otherwise to defend this proceeding.[8] On June 13, 2019, Branch sent an email to the Commission that said only the following: "Please explain in writing what I am being accused of. Please be specific as of dates and actions."

On July 2, 2019, the Commission again ordered Branch to show cause why he should not be deemed to be in default.[9] The Commission stated that, although Branch's email was not an adequate response to the first show cause order, Branch's email "suggest[ed] that Branch may wish to participate in this proceeding."[10] As a result, the Commission directed Branch to address the reasons for his failure to timely file an answer. The order also pointed Branch to the allegations in the OIP and to a link to where he could find the OIP on the Commission's website. The Commission warned Branch that if he was 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. 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 July 11, 2019, in the event that Branch failed to respond to this second show cause order.

After Branch failed to answer the OIP or respond to the second show cause order, the Division filed a motion requesting that the Commission find Branch in default and bar him from associating in the securities industry and from participating in an offering of penny stock. The Division supported the motion with copies of the complaint in the civil action, the district court's findings of fact and conclusions of law in the civil action, and the amended final judgment entered in the civil action.[11] Branch did not respond to the Division's motion.

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7 17 C.F.R. § 201.141(a)(2)(i).

8 *Travis A. Branch*, Exchange Act Release No. 85970, 2019 WL 2297286, at *1 (May 30, 2019).

9 *Travis. A. Branch*, Exchange Act Release No. 86285, 2019 WL 2775917, at *2 (July 2, 2019).

10 *Id.* at *1.

11 *See SEC v. Betta*, No. 09-80803-CIV-MARRA (S.D. Fla. Aug. 7, 2018), ECF No. 381 ("*Betta* Findings of Fact and Conclusions of Law"); *SEC v. Betta*, No. 09-80803-CIV-MARRA (S.D. Fla. Aug. 7, 2018), ECF No. 398 ("*Betta* Amended Final Judgement").

II. Analysis

A. We hold Branch 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."[12] Because Branch has failed to answer or respond to the second show cause order or 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 upon the record, including the OIP and the evidentiary materials that the Division submitted with its motion for default and sanctions.

B. We find a bar from associating with a broker or dealer and a bar from participating in an offering of penny stock to be in the public interest.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating with a broker or dealer and from participating in an offering of penny stock if it finds, on the record after notice and opportunity for a hearing, that (1) the person has been enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C); (2) the person was associated with a broker or dealer at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[13] The record establishes the first two of these elements. Section 15(b)(4)(C) includes permanent and temporary injunctions against "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security."[14] Branch was enjoined from future violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5 "in connection with the purchase or sale of any security."[15] And because at the time

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[12] 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)).

[13] 15 U.S.C. § 78*o*(b)(6)(A)(iii) (cross-referencing Section 15(b)(4)(C)); *id.* § 78*o*(b)(4)(C) (specifying injunctions against various actions, conduct, and practices). Given our disposition, we need not address the Division's argument that Branch may be barred under Section 15(b)(6)(A)(i), 15 U.S.C. § 78*o*(b)(6)(A)(i), because he willfully violated the securities laws.

[14] 15 U.S.C. § 78*o*(b)(4)(C).

[15] *Betta* Amended Final Judgment at 2.

of his misconduct Branch was a registered representative and branch manager of a broker-dealer, he was a "person associated with a broker" for purposes of Exchange Act Section 15(b)(6).[16]

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.[17] Our public interest inquiry is flexible, and no one factor is dispositive.[18] The remedy is intended to "protect[] the trading public from further harm," not to punish the respondent.[19]

We have weighed all these factors and find a bar from associating with a broker or dealer and from participating in an offering of penny stock is warranted to protect the investing public. After a four-week bench trial in the civil action, the district court found that Branch "acted with scienter" in violating "the anti-fraud provisions of the Securities Act and the Exchange Act."[20] Branch acted recklessly when he recommended to two clients—a married couple—that they invest on margin in CMOs when he knew that doing so was inconsistent with their investment objectives. He knew that his firm required that clients' objectives include "speculation" if they were to invest on margin, and that the couple's investment objectives involved not "speculation" but "capital appreciation and trading profits."[21] Yet when the couple asked Branch to invest "proceeds from the sale of the[ir] house for their retirement," he "repeatedly told them that investing with the CMO Program was 'very safe' and that 'the federal government would have to collapse, default . . . on its obligations in order for these to be in any way vulnerable." Branch had the clients complete a margin account application, even though they had no experience doing so, they did not understand what it involved, and "Branch never explained what a margin

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16 *See* 15 U.S.C. § 78c(a)(18) ("The term 'person associated with a broker or dealer' . . . means any . . . branch manager of . . . or any employee of such broker or dealer.").

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

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

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

20 *Betta* Findings of Fact and Conclusions of Law at *128, 134; *see also SEC v. Infinity Grp. Co.*, 212 F.3d 180, 192 (3d Cir. 2000) (stating that scienter "is 'a mental state embracing intent to deceive, manipulate, or defraud'" and that scienter includes recklessness).

21 *Betta* Findings of Fact and Conclusions of Law at *117-21.

account was." As a result, the clients invested a total of $250,000, incurred significant losses and margin calls, and were ultimately left with a negative balance of $385,000.[22]

In recommending investments in CMOs on margin, the court found Branch made "highly unreasonable omissions or misrepresentations that involved an extreme departure from the standards of ordinary care, and [that presented a danger of misleading] investors which was either known to . . . Branch or was so obvious that [he] must have been aware of it."[23] The district court also made findings that showed Branch's conduct was not an isolated incident. We conclude that Branch's misconduct was egregious, recurrent, and involved scienter.[24]

Because Branch failed to answer the OIP or respond to the second 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. Branch was also registered as a broker for over twenty years. Branch's occupation therefore presents opportunities for future violations.

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 Branch is unfit to participate in the securities industry and that he poses a risk to investors.[25] Given that Branch has defaulted in this proceeding, he has not opposed the imposition of a bar from associating with a broker or dealer or from participating in an offering

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[22] *See Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003) (stating that the Commission also considers as a public interest factor "the degree of harm to investors and the marketplace resulting from the violation").

[23] *Betta* Findings of Fact and Conclusions of Law at *128.

[24] The doctrine of collateral estoppel precludes relitigation of the facts found in the bench trial. *See, e.g.*, *Rittner v. Mount St. Mary's College*, 814 F.2d 986, 992 & n.4 (4th Cir. 1987) (finding that if "the parties were not bound by the facts found in the very same case which they were litigating, then the judgment of courts issued during trial would become irrelevancies"); *Michael T. Studer*, Exchange Act Release No. 50411, 2004 WL 2104496, at *2 (Sept. 20, 2004) (applying collateral estoppel to hold that the "[f]indings of fact and conclusions of law made in an injunctive action cannot be attacked in a subsequent administrative proceeding").

[25] *Lawrence Allen Deshetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019) (finding that the misconduct underlying the respondent's injunction demonstrated that the respondent was unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors).

of penny stock. We conclude that it is in the public interest to bar Branch from association with any broker or dealer and from participating in an offering of penny stock.[26]

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

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[26] We do not impose collateral bars from associating with an investment adviser, transfer agent, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization. The D.C. Circuit has held that it is "impermissibly retroactive" to impose a bar, based on a respondent's misconduct before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, from association in capacities in which the respondent "had no cognizable association" at the time of the misconduct. *Bartko v. SEC* 845 F.3d 1217, 1222-24 (D.C. Cir. 2017). Branch's misconduct occurred before Dodd-Frank's effective date.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96397 / November 29, 2022

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In the Matter of

TRAVIS A. BRANCH

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Travis A. Branch is barred from association with any broker or dealer; and it is further

ORDERED that Travis A. Branch is barred from participating in an 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