

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 96406 / November 30, 2022

Admin. Proc. File No. 3-19006

In the Matter of
ERNEST J. ROMER, III

OPINION OF THE COMMISSION

BROKER-DEALER 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 broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

APPEARANCES:

Steven Klawans, Esq. for the Division of Enforcement.

On February 22, 2019, we instituted an administrative proceeding against Ernest J. Romer, III, pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ We now find Romer 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 Romer pleaded no contest in 2018 to 13 felony counts of violating a Michigan state embezzlement statute by

as an agent, servant, or employee of certain named persons and/or being a trustee, bailee, or custodian of the property of such named persons, [] convert[ing] to his own use or tak[ing] or secret[ing] with intent to convert to his own use, without consent of his principal, money or personal property of his principal having a value ranging from between \$20,000 to \$50,000 and/or \$100,000 or more, that came into his possession or under his charge or control by virtue of his relationship with the principal.²

After Romer’s no contest pleas, a county circuit court in Michigan convicted him of 13 counts of embezzlement, sentenced him to 85 to 240 months of incarceration, and ordered him to make restitution of \$2,650,000. The OIP also alleged that Romer was a registered representative with Leonard & Company from 2005 to July 2012, with L.M. Kohn & Company from July 2012 to September 2012, and with CoreCap Investments, Inc. from October 2012 to January 2017.

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 Romer to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).³ The OIP informed Romer 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.⁴

¹ *Ernest J. Romer, III*, Exchange Act Release No. 85177, 2019 WL 857541 (Feb. 22, 2019).

² *See* Michigan Compiled Laws § 750.174.

³ 17 C.F.R. § 201.220(b).

⁴ *See* Rule of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

Romer was properly served with the OIP on March 9, 2019, pursuant to Rule of Practice 141(a)(2)(i),⁵ but did not respond. On August 29, 2019, more than 20 days after service, the Commission ordered Romer 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.⁶ The show cause order cautioned Romer that, if the Commission found him to be 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 October 28, 2019, in the event that Romer failed to respond to the show cause order.

After Romer failed to answer the OIP or respond to the show cause order, the Division filed a motion requesting that the Commission find Romer 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 pleas of no contest and the docket reports in the criminal proceedings against Romer. Romer did not respond to the Division's motion.

II. Analysis

A. We hold Romer 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.”⁷ Because Romer 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.

⁵ 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”).

⁶ *Ernest J. Romer, III*, Exchange Act Release No. 86820, 2019 WL 4073786 (Aug. 29, 2019).

⁷ 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)).

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 an offering of penny stock if it finds, on the record after notice and opportunity for hearing that (1) the person was convicted within ten years of the commencement of the proceeding of a felony that “involves the . . . embezzlement . . . or misappropriation of funds” (or any other offense specified in Exchange Act Section 15(b)(4)(B)); (2) the person was associated with a broker or dealer or was participating in an offering of penny stock at the time of the alleged misconduct; and (3) such a sanction is in the public interest.⁸ The record establishes the first two of these elements. Romer was convicted of the felony of embezzlement within ten years of the commencement of this proceeding.⁹ Romer was also associated with a broker-dealer at the time of his misconduct, which occurred between 2012 and 2018. The allegations of the OIP deemed true establish that, from 2005 to January 2017, he was a registered representative of registered broker-dealers.

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 laws explained, embezzlement, like other financial offenses, “‘reflect[s] upon a person’s

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

⁹ *See Alexander Smith*, Exchange Act Release No. 37885, 1946 WL 24891, at *18 (Feb. 5, 1946) (stating that when a court has accepted a guilty plea or a plea of no contest “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).

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 Here, Romer's conviction on numerous counts of embezzlement established a knowing conversion of over \$2 million.¹⁵ The embezzlement occurred over a number of years and involved stealing money from a number of different individuals. We conclude that Romer's misconduct was egregious, recurrent, and involved a high degree of scienter.¹⁶

Because Romer 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. Furthermore, his pleas to the Michigan court of no contest provide no indication whether Romer appreciates the wrongfulness of his conduct. Romer also worked for more than a decade in the securities industry through association with broker-dealers and has made no assurances that he will not reenter the industry after his release from custody. Romer'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 Romer is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.¹⁷ Given that Romer 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 him from association with any broker, dealer, investment adviser, municipal securities dealer,

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 See Michigan Compiled Laws § 750.174 (requiring either the “fraudulent dispos[al] . . . or conver[sion]” or the taking or secreting “with the intent to convert”).

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).

¹⁷ *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (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).

municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in any offering of a penny stock.¹⁸

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96406 / November 30, 2022

Admin. Proc. File No. 3-19006

In the Matter of
ERNEST J. ROMER, III

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Ernest J. Romer, III, 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 Ernest J. Romer, III, be 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