

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 96409 / November 30, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6195 / November 30, 2022

Admin. Proc. File No. 3-18845

In the Matter of
ISMAIL ELMAS

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of wire fraud. *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:

Elisabeth M. Grimm, Esq. for the Division of Enforcement.

On September 27, 2018, we instituted an administrative proceeding against Ismail Elmas, 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 Elmas 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 Elmas pleaded guilty in 2014 to one count of violating the federal wire fraud statute, 18 U.S.C. § 1343. The OIP alleged further that the wire fraud count to which Elmas pleaded guilty stated “that, among other things, from at least 2012 through August 2014, Elmas misappropriated client funds for his personal use and misrepresented to clients that the funds were being used for legitimate investment purposes.”² After accepting Elmas’s guilty plea, the court sentenced him to 126 months of incarceration followed by two years of supervised release and ordered him to pay restitution of \$2,976,180.03. The OIP also alleged that Elmas was associated with firms registered with the Commission as both broker-dealers and investment advisers 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 Elmas to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).³ The OIP informed Elmas 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 by the Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP.⁴

Elmas was properly served with the OIP on October 2, 2018, pursuant to Rule of Practice 141(a)(2)(i), but did not respond.⁵ On November 14, 2018, more than 20 days after service, the Division of Enforcement filed a motion requesting that the Commission find Elmas in default and bar him from associating in the securities industry and from participating in any offering of penny stock. The Division supported the motion with copies of the Judgment, Plea Agreement, and stipulated Statement of Facts filed in Elmas’s criminal proceeding. Elmas did not respond.

¹ *Ismail Elmas*, Exchange Act Release No. 84300, 2018 WL 4630654 (Sept. 27, 2018).

² *Id.* at *1.

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).

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”).

On May 3, 2019, the Commission ordered Elmas to show cause by May 17, 2019, why it should not find him in default due to his failure to file an answer, respond to the Division's motion, or otherwise defend this proceeding.⁶ The show cause order cautioned Elmas that, if the Commission found him 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. Elmas did not respond to the show cause order.

II. Analysis

A. We hold Elmas 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 Elmas has failed to answer or respond to the Division's motion or to the show cause order, 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 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 an offering of penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) the person was convicted of violating the federal wire fraud statute within ten years of the commencement of the proceeding; (2) the person was associated with a broker or dealer at the time of the misconduct; and (3) such a sanction is in the public interest.⁸ Similarly, Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from associating in the securities industry if it finds, on the record after notice and opportunity for hearing, that: (i) the person was convicted of violating the federal wire fraud statute within ten years of the commencement of the

⁶ *Ismail Elmas*, Exchange Act Release No. 85777, 2019 WL 1977069 (May 3, 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)).

⁸ 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 for violating 18 U.S.C. § 1343).

proceeding; (ii) the person was associated with an investment adviser at the time of the misconduct; and (iii) such a sanction is in the public interest.⁹

The record establishes the first two of these elements. Elmas was convicted of violating the federal wire fraud statute within the applicable period.¹⁰ Elmas was also a person associated with a broker or dealer and an investment adviser at the time of his misconduct from 2012 through 2014. The allegations of the OIP deemed true establish that, at that time, Elmas was associated with Cuna Brokerage Services, Inc. and Cuso Financial Services, L.P., both of which were dually registered with the Commission as broker-dealers and investment advisers.

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.¹¹ Our public interest inquiry is flexible, and no one factor is dispositive.¹² The remedy is intended to "protect[] the trading public from further harm," not to punish the respondent.¹³

We have weighed all of these factors, and find associational and penny stock bars are warranted to protect the investing public. In the Statement of Facts filed in the criminal proceeding, Elmas admitted that, over a two-year period, he defrauded at least ten clients of an aggregate amount between \$1,000,000 and \$7,000,000 by misappropriating those funds for his personal use. Elmas also admitted that he worked as an investment adviser during the relevant

⁹ 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)(D) (discussing convictions for violating 18 U.S.C. § 1343).

¹⁰ *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) (concluding 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) (stating that when a court has accepted a guilty plea, "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").

¹¹ *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

¹² *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

¹³ *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

time period and that the funds he misappropriated were given to him for investment in his capacity as an investment adviser. Elmas admitted further that he misappropriated the funds while misrepresenting that the funds were being used for legitimate business purposes. As a result, the record establishes that Elmas repeatedly abused the position of trust he occupied as an investment adviser. Elmas's victims included seniors, widows, and otherwise vulnerable people, who gave Elmas funds from retirement accounts or in lieu of paying off their home mortgages.

We conclude that Elmas's misconduct was egregious and recurrent.¹⁴ He also acted with a high degree of scienter.¹⁵ Wire fraud requires a specific intent to defraud.¹⁶ Indeed, Elmas admitted that he acted "willfully, knowingly, and with the specific intent to violate the law."

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

¹⁴ See *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious.").

¹⁵ 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).

¹⁶ See *United States v. Miller*, 953 F.3d 1095, 1098-99, 1101-03 (9th Cir. 2020) (holding that wire fraud requires specific intent to deceive and cheat).

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").

it in any capacity would pose a risk to investors.¹⁸ Given that Elmas 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, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any 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 See *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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before the
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In the Matter of
ISMAIL ELMAS

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Ismail Elmas 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 Ismail Elmas 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