SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 96440 / December 2, 2022

Admin. Proc. File No. 3-19195

In the Matter of

JOSE G. RAMIREZ, JR.

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of bank 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:

Andrew O. Schiff for the Division of Enforcement.

On June 6, 2019, we instituted an administrative proceeding against Jose G. Ramirez, Jr., pursuant to Section 15(b) of the Securities Exchange of 1934.[1] We now find Ramirez 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 Ramirez pleaded guilty in 2018 to one count of violating the federal bank fraud statute, 18 U.S.C. § 1344. The OIP alleged further that the criminal information charged that, from January 2011 to September 2013, Ramirez "did knowingly execute, and attempt to execute, a scheme and artifice to defraud a financial institution."[2] After accepting Ramirez's guilty plea, the court sentenced him to twelve months and one day of incarceration followed by two years of supervised release. The OIP also alleged that, between February 1997 and January 2014, Ramirez was a registered representative of UBS Financial Services Incorporated of Puerto Rico ("UBS-PR"), a registered broker-dealer.

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

Ramirez was properly served with the OIP on June 11, 2019, pursuant to Rule of Practice 141(a)(2)(i),[5] but did not respond. On August 13, 2019, more than 20 days after service, the Division of Enforcement filed a motion requesting that the Commission find Ramirez 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 Indictment, Statement of Offense, Plea Offer and Agreement, and Judgment filed in Ramirez's criminal proceeding. Ramirez did not respond.

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1 *Jose G. Ramirez, Jr.*, Exchange Act Release No. 86055, 2019 WL 2387039 (June 6, 2019).

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 August 30, 2019, the Commission ordered Ramirez to show cause by September 13, 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 Ramirez 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. Ramirez did not respond to the show cause order.

II. Analysis

A. We hold Ramirez 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 Ramirez 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) authorizes the Commission to suspend or bar a person from associating in the 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 any felony or misdemeanor which "involves the purchase or sale of any security" or "arises out of the conduct of the business of a" broker-dealer; (2) the person was associated with a broker-dealer 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. Within ten years of the commencement of this proceeding, Ramirez was convicted of a felony—violating the federal bank fraud statute—which involved the purchase

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[6] *Jose G. Ramirez, Jr.*, Exchange Act Release No. 86845, 2019 WL 4135428 (Aug. 30, 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. § 78*o*(b)(6) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78*o*(b)(4)); *see also id.* § 78*o*(b)(4)(B) (discussing convictions involving "the purchase or sale of any security" or arising "out of the conduct of the business of a" broker-dealer).

and sale of a security and which arose out of the conduct of the business of a broker-dealer.[9] Ramirez's conviction stemmed from a scheme to circumvent the prohibition of UBS-PR's affiliate UBS Bank USA ("UBS-UT") against customers using non-purpose lines of credit ("LOCs") to purchase non-exchange traded closed-end mutual funds ("CEFs"). Ramirez was also a person associated with a broker-dealer at the time of his misconduct from January 2011 to September 2013. The allegations of the OIP deemed true establish that, at that time, Ramirez was a registered representative of UBS-PR, a registered broker-dealer.

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. In the Statement of Offense that Ramirez signed to provide a factual basis for his guilty plea,[13] Ramirez admitted that he obtained $1,225,500 in commissions by defrauding UBS-UT during a more than two-year period. To circumvent a prohibition against customers using LOCs to purchase CEFs, Ramirez advised customers to misrepresent in credit-line applications the reason for needing the LOC and, after the LOC was

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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) (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").

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).

13 *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *7 (Jan. 14, 2011) (holding that respondent who pleaded guilty could not "dispute the accuracy of the findings set out in the Factual Basis for Plea Agreement").

issued, to transfer funds to a third-party bank before transferring the same funds to UBS-PR for investment in CEFs. Ramirez generated commissions from this scheme when his customers drew funds from LOCs and again when those funds were invested in CEFs. The bank fraud charge to which Ramirez pleaded guilty requires a specific intent to defraud.[14] We conclude that Ramirez's misconduct was egregious, recurrent, and involved a high degree of scienter.[15]

Because Ramirez 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 Ramirez might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that Ramirez poses a risk to the investing public.[16] Ramirez also has worked in the securities industry for more than fifteen years. Ramirez'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 Ramirez 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 Ramirez 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,

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[14] *United States v. Donnat*, 311 F.3d 99, 103 (1st Cir. 2002); *see also SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (scienter is "an intent to deceive, manipulate, or defraud").

[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 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 ").

[17] *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).

municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participation in an offering of 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

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[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
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In the Matter of

JOSE G. RAMIREZ, JR.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Jose G. Ramirez, Jr., 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 Jose G. Ramirez, Jr., 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