SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6042 / June 6, 2022

Admin. Proc. File No. 3-19497

In the Matter of

ANTHONY VASSALLO

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

**Injunction**

**Conviction**

Respondent was permanently enjoined from violations of the antifraud provisions of the federal securities laws and convicted of wire fraud. *Held*, it is in the public interest to bar respondent from association with any investment adviser.

APPEARANCES:

*David Zhou* for the Division of Enforcement.

On September 24, 2019, we instituted an administrative proceeding against Anthony Vassallo, pursuant to Section 203(f) of the Investment Advisers Act of 1940, to determine whether the statutory predicate for an administrative remedy was satisfied and whether remedial action would serve the public interest.[1] The order instituting proceedings ("OIP") alleged that Vassallo had been permanently enjoined from violating the antifraud provisions of the federal securities laws and convicted of wire fraud for misconduct that occurred while he was acting as an investment adviser. Vassallo failed to file an answer to the OIP, failed to respond to an order to show cause why he should not be found in default, and failed to respond to the Division of Enforcement's motion for entry of default and sanctions. We now find Vassallo to be in default, deem the allegations of the OIP to be true, and bar him from associating with any investment adviser.

## I. Background

### A. The Commission issued the OIP against Vassallo.

The OIP alleged that, from 2004 through 2008, Vassallo was the president and a director of Equity Management and Trading, Inc. ("EIMT"), a California-based fund that operated as a pooled investment vehicle. The OIP further alleged that Vassallo acted as EIMT's investment adviser. The OIP also alleged that, in May 2014, a district court entered a final judgment against Vassallo, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8 thereunder. According to the OIP, the Commission's complaint in the injunctive action alleged that Vassallo operated EIMT as a Ponzi scheme, and through EIMT he obtained more than $40 million from approximately 150 investors, many of whom he knew through his religious community. According to the OIP, Vassallo falsely claimed that EIMT invested the money raised in buying and selling securities but, contrary to his claims, he ceased trading in securities on behalf of EIMT by no later than September 2007. According to the OIP, by that point he (and others with whom he acted) had withdrawn virtually all investor funds from EIMT's brokerage accounts and misappropriated the funds for their own use. According to the OIP, payments continued to be made to certain EIMT investors, but only out of funds obtained from new investments in EIMT.

In addition, and as further alleged in the OIP, Vassallo pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 in a parallel criminal proceeding involving the EIMT fraud. According to a minute entry in the criminal proceeding, Vassallo pleaded guilty in February 2013.[2] According to the OIP, in September 2013, the district court entered an amended

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[1] *Anthony Vassallo*, Advisers Act Release No. 5362, 2019 WL 4640456 (Sept. 24, 2019).

[2] Minute Entry, *United States v. Vassallo*, No. 2:09-CR-179 (E.D. Cal. Feb. 1, 2013), ECF No. 113. We take official notice of the records in the underlying civil and criminal proceedings pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323 (allowing official notice to "be taken of any material fact which might be judicially noticed by a district court").

judgment that sentenced Vassallo to 192 months in prison, followed by three years of supervised release, and ordered that Vassallo pay restitution in the amount of $43,288,725.08.[3]

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 also directed Vassallo to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[4] The OIP informed Vassallo 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.[5]

**B. Vassallo failed to answer the OIP, respond to an order to show cause why he should not be found in default, or respond to the Division's motion for a default and sanctions.**

Vassallo was properly served with the OIP on September 30, 2019, pursuant to Rule of Practice 141(a)(2)(i),[6] but did not answer it. On September 3, 2021, more than 20 days after service, the Commission ordered Vassallo to show cause by October 18, 2021, why it should not find him in default due to his failure to file an answer or otherwise to defend this proceeding.[7] The show cause order warned Vassallo 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. In the event that Vassallo failed to respond to the show cause order, the order directed the Division to file a motion for entry of an order of default and the imposition of remedial sanctions by November 15, 2021.

After Vassallo failed to answer the OIP or respond to the show cause order, the Division filed a motion requesting that the Commission find Vassallo in default and bar him from the securities industry. The Division supported the motion with copies of Vassallo's February 2013 plea agreement, his May 2013 motion for withdrawal of guilty plea, and a transcript of the June 2013 judgment and sentence. Vassallo did not respond to the Division's motion.

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[3] We take official notice that the district court entered a second amended judgment in the criminal case in June 2015 to correct a clerical mistake. Amended Judgment in a Criminal Case, *United States v. Vassallo*, No. 2:09-CR-179 (E.D. Cal. June 3, 2015), ECF No. 155.

[4] 17 C.F.R. § 201.220(b).

[5] *See* Rules of Practice 155(a), 220(f), 17 C.F. R. §§ 201.155(a), .220(f).

[6] 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").

[7] *Anthony Vassallo*, Advisers Act Release No. 5849, 2021 WL 4031206 (Sept. 3, 2021).

## II. Analysis

### A. We hold Vassallo 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."[8] Because Vassallo has failed to answer or to respond to the 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 on 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 association with any investment adviser to be in the public interest.

Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from the securities industry if it finds, on the record after notice and opportunity for hearing, that (i) the person was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or was convicted of wire fraud in violation of 18 U.S.C. § 1343 within ten years of the commencement of the proceeding; (ii) the person was associated with an investment adviser at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[9] Vassallo was enjoined from conduct in connection with the purchase or sale of any security because he was enjoined from violating the antifraud provisions of the federal securities laws, and he was convicted of wire fraud in violation of 18 U.S.C. § 1343 within ten years of the commencement of this proceeding.[10] The allegations of the OIP deemed true establish that Vassallo acted as EIMT's investment adviser at the time of his misconduct.

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[8] 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 § 201.155(a)").

[9] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(2) and (4), 15 U.S.C. § 80b-3(e)(2) and (4)); *see also id.* § 80b-3(e)(2)(D) (discussing convictions for violating 18 U.S.C. § 1343); *id.* § 80b-3(e)(4) (discussing injunctions).

[10] *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "convicted" to include a "plea of guilty" if it "has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed").

Because Vassallo acted as an investment adviser, he necessarily also was a person associated with an investment adviser.[11]

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 the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[12] Our public interest inquiry is flexible, and no one factor is dispositive.[13] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[14]

We have weighed all these factors and find that a bar from association with any investment adviser is warranted to protect the investing public.[15] As part of his plea agreement, Vassallo admitted that he falsely represented to prospective investors that his managed investments earned approximately three percent per month, when in fact the investments did not regularly earn returns. He admitted that EIMT used capital from new investors to pay investors their "earnings on investment" as if the investments had actually made money. Vassallo also admitted that he ceased actively trading with a company known as TradeStation by July 2007, and that TradeStation barred EIMT from further trade activity by September 2007, yet Vassallo continued to advise investors and potential investors that he traded investment funds through TradeStation. Vassallo further admitted that at one point, to quell investor fears, he used a TradeStation trading strategy modeling function to create a simulated account reflecting that

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11 *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *3 (Mar. 1, 2017) ("[T]he finding that Desai acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f)."") (citing *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who acts "as an investment adviser in an individual capacity" is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an investment adviser"')).

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

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

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

15 Although the Division requests that we impose collateral bars on Vassallo, we decline to do so because all of the charged misconduct occurred before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See Bartko v. SEC*, 845 F.3d 1217, 1222-26 (D.C. Cir. 2017) (holding that it is "impermissibly retroactive" to impose a bar, based on a respondent's misconduct before Dodd-Frank's effective date, from association in capacities in which the respondent "had no cognizable association" at the time of the misconduct).

EIMT had $50 million invested at TradeStation, and he showed this simulated account document to investors to bolster his claim that EIMT had $50 million in an account. Vassallo also admitted that over 300 individuals had invested in his scheme, resulting in an actual loss to investors of $44,866,954. Vassallo's misconduct was thus egregious and recurrent.

Vassallo also acted with a high degree of scienter.[16] Wire fraud requires a specific intent to defraud.[17] And Vassallo pleaded guilty to one count of wire fraud in his indictment, which alleged that he acted knowingly and with intent to defraud.

Because Vassallo failed to answer the OIP or to respond to the show cause order or the Division's motion, he has made no assurances that he will not commit future violations. And although Vassallo pleaded guilty and stated at sentencing that he took "responsibility for what has happened," he also filed a motion to withdraw his guilty plea and, at sentencing, stated that he "was defrauded by other scam artists."[18] Even if Vassallo's guilty plea and statements at sentencing indicate that he 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.[19] It also appears that Vassallo's occupation presents opportunities for future violations because he acted as an investment adviser during the period of his misconduct and offers no assurances about his future

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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 *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).

18 *See Desai*, 2017 WL 782152, at *4 (noting district court's finding that respondent failed to recognize the wrongfulness of his conduct because he appealed his guilty plea); *SEC v. Monarch Funding Corp.*, No. 85 Civ. 7072, 1996 WL 348209, at *9 (S.D.N.Y. June 24, 1996) (finding that defendants failed to recognize the wrongfulness of their misconduct in part because they "depict themselves as the unwitting victims of" others).

19 *See 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").

plans.[20] Although Vassallo is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.[21]

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 Vassallo is unfit to associate with an investment adviser and that allowing him to do so would pose a risk to investors.[22] Because Vassallo poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any investment adviser.[23]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, LEE, and CRENSHAW.

Vanessa A. Countryman
Secretary

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20 *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (expressing concern that respondent's occupation would present opportunities for future violations where he did not indicate that he planned to leave the securities industry).

21 *See, e.g.*, *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (finding that "there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again"); *see also, e.g.*, *Monarch Funding*, 1996 WL 348209, at *9 & n.12 (noting that defendant had "not ceased his involvement with the securities industry" "while incarcerated, [and] has managed to remain involved in questionable ventures that have resulted in violation of the securities laws").

22 *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 posed a risk to investors).

23 *Id.* (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6042 / June 6, 2022

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In the Matter of

ANTHONY VASSALLO

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Anthony Vassallo is barred from association with any investment adviser.

By the Commission.

Vanessa A. Countryman
Secretary