SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 98120 / August 14, 2023

Admin. Proc. File No. 3-19222

In the Matter of

NICHOLI MANDRACKEN

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, 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:

David D. Whipple, *James Thibodeau*, *Casey R. Fronk*, and *Michael Welsh* for the Division of Enforcement.

On June 27, 2019, we instituted an administrative proceeding against Nicholi Mandracken, pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] We now find Mandracken to be in default, deem the allegations of the OIP to be true, bar him from associating in the securities industry in any capacity and from participating in an offering of penny stock.

I. Background

A. The Commission instituted the proceeding against Mandracken.

The order instituting proceedings ("OIP") alleged that, in a civil action the Commission brought against Mandracken, a federal district court had entered a final judgment by consent permanently enjoining him from future violations of Securities Act Sections 5 and 17(a), Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5.[2] According to the OIP, between 2015 and 2018, Mandracken sold investments in Jersey Consulting, LLC ("Jersey") securities without registering with the Commission as a broker. The OIP alleged that Jersey and its principal, with the assistance of Mandracken and others, raised at least $8 million from over 100 investors through the unregistered offer and sale of Jersey securities. According to the OIP, the amended complaint in the underlying civil action (the "Complaint") alleged that Mandracken misrepresented to investors that Jersey had a commercially viable technology, failed to disclose that Jersey was owned and operated by a convicted felon and had no material revenues, and engaged in a variety of conduct which operated as a fraud and deceit on investors. In connection with his settlement, Mandracken signed a consent indicating that, "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, . . . he shall not be permitted to contest the factual allegations of the complaint in this action."[3]

The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed

---

1 *Nicholi Mandracken*, Exchange Act Release No. 86215, 2019 WL 2676859 (June 27, 2019).

2 *See* 15 U.S.C. §§ 77e, 77q(a), 78j(b), 78*o*(a); 17 C.F.R. § 240.10b-5.

3 Consent of Defendant Nicholi Mandracken at 5, *SEC v. Jersey Consulting LLC, et al.*, Civ. A. No. 2:18-cv-00155-BSJ (D. Utah Sept. 11, 2018). We take official notice of the record in the civil action, including the Complaint and Mandracken's consent, pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323 (providing that official notice may be taken "of any material fact which might be judicially noticed by a district court of the United States"); *Am. Inv. Serv., Inc.*, Exchange Act Release No. 43991, 2001 WL 167861, at *1 n.1 (Feb. 21, 2001) (recognizing Commission's authority to take official notice of federal district court orders); *see also Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *10 (Dec. 12, 2013) (holding that the Commission may rely on "the allegations in an injunctive complaint . . . in determining the appropriate sanction in the public interest"), *pet. denied*, *Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) ("The Commission was entitled to rely on the allegations of the complaint in deciding whether or not imposition of a lifetime bar on Siris was in the public interest.").

Mandracken to file an answer within 20 days of service, as provided by Commission Rule of Practice 220(b).[4] The OIP informed Mandracken that if he failed to answer, he may be deemed in default, the allegations in the OIP may 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. Mandracken failed to answer the OIP, respond to a motion for a default and sanctions, or respond to an order to show cause why he should not be found in default.

Mandracken was properly served with the OIP on August 31, 2019, pursuant to Rule of Practice 141(a)(2)(i),[6] but did not respond. On February 3, 2020, the Division filed a motion requesting that the Commission find Mandracken in default and bar him from the securities industry and from participating in any offering of penny stock. In support of its motion, the Division submitted a copy of the district court's final judgment, which was based on Mandracken's consent to the entry of the injunction against him in the civil action.

According to the allegations of the Complaint, which Mandracken agreed not to contest in this proceeding, Mandracken acted as an unregistered broker by actively soliciting investors on behalf of Jersey and by receiving transaction-based compensation through an entity that he is believed to own and control, U Turn Marketing, Inc. The Complaint further alleged that Mandracken defrauded investors by making material misrepresentations and omissions regarding Jersey and its securities. This included lulling investors "into a false sense of security about their Jersey investments" by making false statements about Jersey's operations. The Complaint also alleged that in engaging in the above conduct Mandracken acted "knowingly or recklessly."

Mandracken did not respond to the Division's motion for entry of default and sanctions. On October 8, 2020, the Commission ordered Mandracken to show cause by October 22, 2020, 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.[7] The show cause order warned Mandracken 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. Mandracken did not answer the OIP or respond to the Division's motion or the show cause order.

---

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 "handing a copy of the order to the individual").

7 *Nicholi Mandracken*, Exchange Act Release No. 90109, 2020 WL 5993040 (Oct. 8, 2020).

II. Analysis

A. We hold Mandracken 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 Mandracken has failed to answer or respond to the show cause order or the Division's motion for entry of default and sanctions, 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, the Complaint in the underlying action, and the evidentiary materials that the Division submitted with its motion for default and sanctions.

B. We find industry 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 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 has been enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker or dealer or enjoined from any conduct or practice in connection with the purchase or sale of a security; (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.[9]

The record establishes the first two of these elements. Mandracken was enjoined from conduct or practice in connection with activity as a broker and in connection with the purchase of a security.[10] The allegations of the OIP deemed true establish that Mandracken, by acting as an unregistered broker at the time of his misconduct, was also associated with a broker or dealer at the time of his misconduct.[11]

---

[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 [rule] within the time provided, such respondent may be deemed in default pursuant to [Rule 155(a)]").

[9] 15 U.S.C. § 78*o*(b)(6)(A)(iii) (cross-referencing Exchange Act Section 15(b)(4)(C)); *id*. § 78*o*(b)(4)(C) (specifying injunctions against various actions, conduct, and practices).

[10] *See* Exchange Act Section 15(a) (making it unlawful to act as a broker or dealer without registration), 15 U.S.C. § 78*o*(a); Exchange Act Section 10(b), 15 U.S.C. § 78j(b) (applying to conduct "in connection with the purchase or sale of any security"); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 (same); *see also* Final Judgment at 2, 4-5, *SEC v. Jersey Consulting LLC, et al.*, Civ. A. No. 2:18-cv-00155-BSJ (D. Utah Mar. 12, 2019).

[11] *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a "person associated with a broker" in Exchange Act Section 3(a)(18)).

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.[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 an industry bar is warranted to protect the investing public. Mandracken's misconduct was egregious and recurrent. As alleged in the Complaint, Mandracken induced the purchase of securities through fraudulent misrepresentations and omissions. Mandracken was involved in this fraudulent scheme from at least 2015 to 2018 and helped to raise at least $8 million from more than 100 investors through the unregistered offer and sale of Jersey securities. Mandracken profited from the scheme, receiving through his entity, U Turn Marketing, over $130,000 in commission payments for his sale of Jersey securities.

Mandracken also acted with scienter. Scienter is "a mental state embracing intent to deceive, manipulate, or defraud."[15] It may be established by recklessness—conduct representing an "extreme departure from the standards of ordinary care . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it."[16] The Complaint specifically alleged that Mandracken acted "knowingly or recklessly" through his violative conduct. And scienter is required for a violation of Exchange Act Section 10(b) and Rule 10b-5, which the Complaint alleged Mandracken violated through material misrepresentations and omissions to investors.[17]

Because Mandracken failed to answer the OIP or respond to the 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. It also appears that Mandracken's

---

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 *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976).

16 *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008); *accord Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978).

17 *See, e.g.*, *Siris*, 2013 WL 6528874, at *8 ("[W]e have held, in the context of a consent injunction, that when the injunctive complaint contains allegations that a respondent 'engaged in scienter-based offenses' the respondent is precluded from arguing in a follow-on proceeding 'that he had no scienter.'" (quoting *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *5 (July 23, 2010))).

occupation presents opportunities for future violations because he acted as a broker during the period of his misconduct and offers no assurances about his future plans.[18]

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 Mandracken is unfit to be in the securities industry and that his participation in it in any capacity would pose a risk to investors.[19] Given that Mandracken 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. Moreover, Mandracken was involved in a fraudulent scheme to promote and sell millions of dollars of unregistered securities to investors. We conclude that it is in the public interest to bar Mandracken 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.[20]

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 George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 20, 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).

19 *See id.* at *5 (barring respondent on the ground that the misconduct underlying the respondent's injunction demonstrated that the respondent was unfit to participate in the securities industry and posed a risk to investors).

20 *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (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. 98120 / August 14, 2023

Admin. Proc. File No. 3-19222

In the Matter of

NICHOLI MANDRACKEN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Nicholi Mandracken 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 Nicholi Mandracken 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