SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 99018 / November 24, 2023

Admin. Proc. File No. 3-19608

In the Matter of
MICHAEL K. MARTIN

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the antifraud and registration 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:

Melissa Armstrong for the Division of Enforcement.

On November 25, 2019, the Securities and Exchange Commission issued an order instituting administrative proceedings ("OIP") against Michael K. Martin pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] We now find Martin 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 the offering of penny stock.

I. Background

A. The Commission instituted this proceeding against Martin.

The OIP alleged that, in 2015, the Commission brought a civil action in federal district court against Martin, alleging that, from January 2013 until May 2015, Martin acted as an unregistered broker or dealer through three entities he controlled and offered "prime bank" instruments to investors,[2] made false representations about the existence and legitimacy of the instruments and related transactions, and lulled investors into holding, rather than selling, their investments. The OIP also alleged that, on August 15, 2019, the district court granted summary judgment in favor of the Commission and found that Martin violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933[3] and Exchange Act Sections 10(b) and 15(a),[4] as well as Exchange Act Rule 10b-5.[5] The OIP also alleged that, on October 17, 2019, the court permanently enjoined Martin from violating the above-referenced provisions and imposed disgorgement of $2,689,660.28, with prejudgment interest of $341,130.54, and a civil penalty of $3,030,790.82. The OIP further alleged that, in its decision on liability, the court found that Martin made false statements regarding his ability to obtain and monetize bank instruments that would generate substantial profits, knowingly and willfully participated in fraudulent misconduct, offered and sold securities without filing a registration statement, and acted as an unregistered broker or dealer by regularly participating in securities transactions, giving advice to investors, and actively recruiting investors. And, as further alleged in the OIP, Martin also pleaded guilty to conspiracy to commit wire fraud in a parallel criminal proceeding related to the same misconduct and given a 36-month prison sentence.

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 Martin to file an answer to the allegations within 20 days after service, as provided by Commission Rule of Practice 220(b).[6] The OIP informed Martin that if he failed to answer, he may be deemed in

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1 *Michael K. Martin*, Exchange Act Release No. 87616, 2019 WL 6324289 (Nov. 25, 2019).

2 *See generally* "Investor Alert: 'Prime Bank' Investments are Scams," https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/investor-57 (describing "prime bank" investment schemes).

3 15 U.S.C. §§ 77e(a), (c), 77q(a).

4 15 U.S.C. §§ 78j(b), 78o(a).

5 17 C.F.R. § 240.10b-5.

6 17 C.F.R. § 201.220(b).

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.[7]

B. Martin failed to answer the OIP, respond to an order to show cause why he should not be found in default, or respond to a motion for summary disposition.

Martin was properly served with the OIP on December 3, 2019, pursuant to Rule of Practice 141(a)(2)(i),[8] but did not answer it. On April 22, 2021, the Division filed a motion for summary disposition. The Division supported its motion with copies of the transcript of Martin's plea hearing and the plea agreement from Martin's criminal proceeding, the complaint, the district court memorandum opinion, and the amended final judgment from the civil action. Martin did not respond to the Division's motion.

On November 29, 2022, the Commission ordered Martin to show cause by December 13, 2022, why it should not find him in default due to his failure to file an answer, to respond to the Division's motion, or to otherwise defend this proceeding.[9] The show cause order warned Martin that, if he did not respond, the Commission would construe the Division's motion for summary disposition as a motion for the entry of an order of default and the imposition of remedial sanctions, and that, if the Commission found Martin 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. Martin did not respond to the show cause order.

II. Analysis

A. We hold Martin 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."[10] Because Martin 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

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

8 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").

9 *Michael K. Martin*, Exchange Act Release No. 96402, 2022 WL 17345988 (Nov. 29, 2022).

10 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)).

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 summary disposition.

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 enjoined from engaging in 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 misconduct; and (3) such a sanction is in the public interest.[11]

The record establishes the first two of these elements. Martin was enjoined from engaging in conduct in connection with the purchase or sale of a security.[12] In granting summary judgment, the district court found that Martin acted as an unregistered broker from at least January 2013 until May 2015, the period of the misconduct at issue, as he regularly participated in securities transactions, gave advice to investors, and actively recruited investors.[13] Because Martin acted as a broker at the time of the misconduct, he was a person "controlling . . . such broker" and therefore was a person associated with a broker.[14]

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

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[11] 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78o(b)(4)).

[12] *See* Securities Act Section 17(a), 15 U.S.C. § 77q(a) (prohibiting fraud "in the offer or sale of any securities"); 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).

[13] *See, e.g.*, *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) (finding that evidence that defendant "was regularly involved in communications with and recruitment of investors for the purchase of securities" was sufficient to support a finding that defendant had acted as a broker or dealer) (citing *SEC v. Kenton Capital, Ltd.*, 69 F.Supp.2d 1, 13 (D.D.C. 1998)).

[14] 15 U.S.C. § 78c(a)(18) (defining a "person associated with a broker or dealer" or "associated person of a broker or dealer" to include "any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer"); *see, e.g.*, *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)), *petition denied*, 695 F. App'x 980 (7th Cir. 2017).

likelihood that the respondent's occupation will present opportunities for future violations.[15] Our public interest inquiry is flexible, and no one factor is dispositive.[16] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[17]

We have weighed all these factors and find associational and penny stock bars are warranted to protect the investing public. Martin's misconduct was egregious, recurrent, and involved a high degree of scienter.[18] The evidence submitted by the Division establishes that, during a more than two year period, Martin participated in three separate prime bank schemes, violating antifraud and broker registration provisions of the federal securities laws.[19] As Martin admitted in his plea colloquy in the parallel criminal proceeding, and as the district court held in its summary judgment opinion in the civil proceeding, Martin's fraudulent schemes involved, among other things, the use of "bogus or fraudulent" letters on bank letterhead purporting to provide investors with access to blocked bank accounts or fictitious bank instruments, which he claimed could be monetized to produce returns of 1000% on the investments made by his victims. These schemes defrauded investors, including a charter school, out of millions of dollars, and Martin admitted that he used his investors' funds for personal living expenses. Martin's conviction for conspiracy to commit wire fraud also required a specific intent to defraud.[20] And the district court found that Martin "admitted that he knowingly and willfully participated in these schemes, satisfying the scienter requirement."[21]

Because Martin 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

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

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

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

18 *See, e.g.*, *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); *Paul Jurberg*, Exchange Act Release No. 93846, 2021 WL 6062986, at *4 (Dec. 21, 2021) (finding that respondent's conduct, involving a fraudulent scheme that lasted over two years, in which respondent acted as an unregistered broker and diverted investor funds, was egregious and recurrent).

19 Although the OIP refers to Martin's conduct as a "scheme," documents submitted by the Division in support of its motion make clear that, in the underlying criminal and civil proceedings, he was found to have engaged in three separate schemes.

20 *See, e.g.*, *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); *Saul Daniel Suster*, Exchange Act Release No. 90401, 2020 WL 6680445, at *4 n.26 (Nov. 12, 2020) (collecting cases stating that conspiracy to commit mail and wire fraud requires specific intent to defraud).

21 *See SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (scienter is an "intent to deceive, manipulate, or defraud").

violations.[22] And although his guilty plea in the parallel criminal proceeding indicates that Martin 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.[23] Martin also has made no assurances that he will not reenter the securities industry upon his release from custody.[24] Accordingly, should Martin reenter the industry, his occupation will present opportunities for future violations.[25]

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 Martin is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[26] Martin was involved in fraudulent schemes that offered prime bank instruments to investors by making false statements about the existence and legitimacy of the instruments, which resulted in investor losses of at least $5 million. And given that Martin 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 thus conclude that it is in the public interest to bar Martin from association with any broker, dealer,

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22 *See Aaron*, 446 U.S. at 701 (the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

23 *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."); *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").

24 *See, e.g., Anthony Vassallo*, Advisers Act Release No. 6042, 2022 WL 2063310, at *4 (June 6, 2022) (finding respondent likely to commit future violations because he acted as an investment adviser during the period of his misconduct and offered no assurances concerning his plans following incarceration); *see also James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *8 (Oct. 12, 2007) (finding a penny stock bar "necessary to protect the public interest because, absent a bar, there would be no obstacle to [respondent's] participation in a penny stock offering in the future").

25 *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 SEC v. Koracorp Indus.,* 575 F.2d 692 (9th Cir.) (concluding that changing occupations so that opportunity for securities laws violations is not readily available does not necessarily defeat injunctive relief), *cert. denied,* 439 U.S. 953 (1978).

26 *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).

investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of penny stock.[27]

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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[27] *Id.* (imposing associational and penny stock bars as necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99018 / November 24, 2023

Admin. Proc. File No. 3-19608

In the Matter of

MICHAEL K. MARTIN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Michael K. Martin 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 Michael K. Martin 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