SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934

Release No. 99085 / December 5, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6496 / December 5, 2023

Admin. Proc. File No. 3-20159

In the Matter of

PARFAIT MUTIMURA

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of wire fraud and investment adviser fraud. *Held*, it is in the public interest to bar respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

APPEARANCES:

Richard Primoff and *Sheldon Mui* for the Division of Enforcement.

On December 4, 2020, the Securities and Exchange Commission instituted an administrative proceeding against Parfait Mutimura 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 Mutimura 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

A. The Commission instituted this proceeding against Mutimura.

The order instituting proceedings ("OIP") alleges that in 2020, Mutimura pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 and one count of investment adviser fraud in violation of 15 U.S.C. §§ 80b-6 and 80b-17 for conduct that occurred between April 2016 and March 2019. The OIP further alleges that, after accepting Mutimura's guilty plea, the United States District Court for the Southern District of New York sentenced him to 63 months of incarceration followed by three years of supervised release and ordered him to pay restitution of $578,389.85.[2] According to the OIP, at various times during his misconduct, Mutimura was a registered representative associated with Newbridge Securities Corporation and NYLife Securities LLC, broker-dealers registered with the Commission. The OIP also alleges that Mutimura was associated with an investment adviser at the time of his misconduct by advising clients on their securities investments through Elevenheimer Group LLC, a company which he controlled, in exchange for compensation.

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

---

1 *Parfait Mutimura*, Exchange Act Release No. 90566, 2020 WL 7122717 (Dec. 4, 2020).

2 *See United States v. Mutimura*, No. 1:19-cr-592, Dkt. No. 49 (S.D.N.Y. Aug. 25, 2020).

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).

B. Mutimura 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 a default and sanctions.

On December 10, 2020, the Division of Enforcement sent Mutimura a copy of its investigative file pursuant to Rule of Practice 230.[5] By letter to the Division dated December 17, 2020, Mutimura confirmed receipt of the file and asked the Division to supply a copy of the sentencing transcript, which was not included therein. On December 23, 2020, Mutimura was properly served with the OIP pursuant to Rule of Practice 141(a)(2)(i).[6] Mutimura subsequently sent the Division another letter dated January 1, 2021, reiterating his request for a copy of the sentencing transcript "to help me prepare my response." In its motion for default, the Division states that, "as a result of the current remote working environment," it "inadvertently overlooked" those letters until June 7, 2021.

Meanwhile, on April 16, 2021, more than 20 days after service of the OIP, the Commission ordered Mutimura to show cause by June 1, 2021, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[7] The show cause order warned Mutimura that, if the Commission found him 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.

On June 24, 2021, after Mutimura failed to answer the OIP or respond to the show cause order, the Division filed a motion for default and sanctions. The Division's motion represents that, after becoming aware of Mutimura's letters on June 7, 2021, the Division responded the next day, advising him that the sentencing transcript was not in the Division's possession and was not part of the investigative file that Rule of Practice 230 required the Division to produce. The Division's letter also noted that Mutimura had not filed an answer to the OIP or a response to the Commission's order to show cause. One day later, the Division sent Mutimura another letter enclosing the sentencing transcript and explaining that the Division "voluntarily undertook to obtain a copy" of the transcript, "which was not previously in its possession." The Division represents that it has received no further communication from Mutimura since his January 1, 2021 letter.

The Division supported its June 24, 2021, motion for default and sanctions with copies of the superseding information, judgment, and consent order of restitution filed in Mutimura's criminal proceeding. It also filed copies of its correspondence with Mutimura between

---

[5] 17 C.F.R. § 201.230. Rule 230(d) requires the Division to "commence making documents available . . . no later than 7 days after service" of the OIP. 17 C.F.R. § 201.230(d).

[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] *Parfait Mutimura*, Exchange Act Release No. 91597, 2021 WL 1513055 (Apr. 16, 2021).

December 2020 and June 2021, which included the transcript from Mutimura's sentencing proceeding. Mutimura did not respond to the Division's motion.

II. Analysis

A. We deem Mutimura to be 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 Mutimura has failed to answer or respond to the show cause order or to 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 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 a penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) within ten years of the commencement of the proceeding, the person was convicted of violating the federal wire fraud statute or of a felony or misdemeanor involving the misappropriation of funds; (2) the person was associated with a broker or dealer or was participating in an offering of penny stock at the time of the misconduct; and (3) such a sanction is in the public interest.[9] 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 (1) within ten years of the commencement of the proceeding, the person was convicted of violating the federal wire fraud statute or of a felony or misdemeanor involving the

---

[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" Rule of Practice 155(a)).

[9] 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)(iii) (discussing convictions for a felony or misdemeanor involving misappropriation of funds), (b)(4)(B)(iv) (discussing convictions for violating 18 U.S.C. § 1343), (b)(4)(D) (discussing willful violations of the Advisers Act).

misappropriation of funds; (2) the person was associated with an investment adviser at the time of the misconduct; and (3) such a sanction is in the public interest.[10]

The record establishes the first two of these elements under each statute. Mutimura was convicted of violating the federal wire fraud statute within the applicable period.[11] Mutimura's wire fraud and investment adviser fraud convictions (which fell within the applicable period) also both involved the misappropriation of funds, as both counts of the superseding information to which Mutimura pleaded guilty stated that he "misappropriated . . . client funds, including through unauthorized withdrawals and adviser fees, for his own purposes."

Mutimura was also associated with a broker-dealer and an investment adviser at the time of his misconduct between April 2016 and March 2019. Specifically, the allegations of the OIP deemed true establish that, between October 2015 and January 2020, Mutimura acted as an unregistered investment adviser by purporting to advise clients on their investments in securities through Elevenheimer Group LLC, a company he controlled, in exchange for compensation.[12] And because Mutimura was acting as an unregistered investment adviser, he was also

---

[10] 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)(C) (involving the misappropriation of funds), (e)(2)(D) (discussing convictions for violating 18 U.S.C. § 1343), (e)(5) (discussing willful violations of the Advisers Act).

[11] *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) ((holding 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)), *pet. 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) (holding that "when there has been a verdict or plea of guilt or a plea of *nolo contendere* accepted by the court, 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").

[12] *See* 15 U.S.C. § 80b-2(a)(11)(defining "investment adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities"); *see also Koch v. SEC*, 793 F.3d 147, 157 (D.C. Cir. 2015) ("The definition of investment adviser does not include whether one is registered or not with the SEC. Hence, Koch could be primarily liable for violating the Advisers Act irrespective of registration with the Commission.") (citations omitted).

"associated with an investment adviser" for purposes of Advisers Act Section 203(f).[13] The OIP's allegations further establish that at various points during his misconduct, Mutimura was associated with Newbridge Securities Corporation and NYLife Securities LLC, registered broker-dealers.[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 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 of these factors and find that industry and penny stock bars are warranted to protect the investing public. Mutimura's conduct was egregious and recurrent. Over nearly three years, he misappropriated more than $500,000 from his clients. At his plea hearing, Mutimura acknowledged that in consent orders of forfeiture and restitution, he agreed to forfeit $578,389.85 to the United States as proceeds traceable to the commission of his offenses and to pay his victims restitution in the same amount.[18] One victim, a Rwandan genocide

---

[13] *See Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *3 (Mar. 1, 2017); *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who "act[s] 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'").

[14] We take official notice of Mutimura's BrokerCheck report, which reflects that he was associated with NYLife Securities LLC between June 2016 and January 2017 and with Newbridge Securities Corporation between September 2013 and November 2015. *See* https://brokercheck.finra.org/individual/summary/6215995; *see also Roman Sledziejowski*, Exchange Act Release No. 97485, 2023 WL 3433408, at *4 n.29 (May 11, 2023) (taking official notice of BrokerCheck records pursuant to Rule of Practice 323, 17 C.F.R. § 201.323).

[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] We take official notice of the plea hearing transcript and restitution order 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).

survivor, testified at Mutimura's sentencing hearing that Mutimura stole her retirement savings and gave her forged account statements to hide his misconduct.

Mutimura's misconduct also involved a high degree of scienter.[19] Wire fraud requires a specific intent to defraud.[20] In addition, the superseding information to which Mutimura pleaded guilty charged that he acted "willfully and knowingly" in committing both wire and investment adviser fraud.[21] And Mutimura acknowledged when pleading guilty that he knew his conduct was unlawful at the time.

Because Mutimura 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 violations. While Mutimura's statements at his plea and sentencing hearings reflect that he understands the wrongfulness of his conduct, they do not outweigh the evidence that he poses a risk to the investing public.[22] Mutimura also has made no assurances that he will not reenter the

---

19 *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).

20 *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).

21 *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) ("[I]n the criminal context, a 'willful' violation is 'one undertaken with a 'bad purpose.'") (quoting *Bryan v. United States*, 524 U.S. 184, 191 (1998)).

22 *See Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019) (holding that "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"); *Tagliaferri*, 2017 WL 632134, at *6 (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").

securities industry after he is released from custody.[23] Accordingly, should Mutimura reenter the industry upon his release, his occupation will present opportunities for future violations.[24]

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 Mutimura is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[25] Given that Mutimura 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, Mutimura misappropriated more than $500,000 from multiple clients over nearly three years. We conclude that it is in the public interest to bar Mutimura from association with any investment adviser,

---

[23] *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").

[24] *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. 1978) (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).

[25] *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).

broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[26]

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

---

[26] *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

Release No. 99085 / December 5, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6496 / December 5, 2023

Admin. Proc. File No. 3-20159

In the Matter of

PARFAIT MUTIMURA

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Parfait Mutimura is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Parfait Mutimura 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