SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934

Release No. 99153 / December 13, 2023

Admin. Proc. File No. 3-20407

In the Matter of

EXECUTIVE FINANCIAL SERVICES, INC.

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the registration provisions of the federal securities laws. *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:

Lynn M. Dean for the Division of Enforcement.

On July 21, 2021, the Commission instituted an administrative proceeding against Executive Financial Services, Inc. ("EFS") pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] We now find EFS to be in default, deem the allegations against it to be true, and bar it 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 EFS.

The order instituting proceedings ("OIP") alleged that, from 2016 to 2018, EFS acted as an unregistered broker selling unregistered securities of Wellington Sports Club, LLC ("Wellington"). The OIP also alleged that Douglas Martin ("Martin") was EFS's sole owner, president, treasurer, secretary, and director, and he had been a registered representative associated with one or more broker-dealers registered with the Commission from 1992 to 2002.[2] The OIP also alleged that, on November 20, 2020, a federal district court permanently enjoined EFS from violating Sections 5(a) and 5(c) of the Securities Act of 1933,[3] and Section 15(a) of the Exchange Act.[4]

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 EFS to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[5] The OIP informed EFS that if it failed to answer, it 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 it upon consideration of the OIP.[6]

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1 *Exec. Fin. Servs., Inc.*, Exchange Act Release No. 92463, 2021 WL 3110025 (July 21, 2021).

2 On January 10, 2023, Martin consented to industry and penny stock bars. *Douglas Martin*, Exchange Act Release No. 96620, 2023 WL 155164 (Jan. 10, 2023).

3 15 U.S.C. § 77e(a), (c).

4 15 U.S.C. § 78o(a); *see SEC v. Thomas*, No. 19-cv-01515, Dkt. No. 108 at 2-3 (D. Nev. Nov. 20, 2020).

5 17 C.F.R. § 201.220(b).

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

B. EFS failed to answer the OIP, respond to an order to show cause why it should not be found in default, or respond to a motion for a default and sanctions.

EFS was properly served with the OIP on July 29, 2021, pursuant to Rule of Practice 141(a)(2)(ii),[7] but did not respond. On August 1, 2022, more than 20 days after service, the Commission ordered EFS to show cause by August 15, 2022, why the Commission should not find it in default due to its failure to file an answer or otherwise defend this proceeding.[8] The show cause order warned EFS that, if the Commission found it to be default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against it upon consideration of the record. The order directed the Division of Enforcement to file a motion for entry of an order of default and the imposition of remedial sanctions by September 12, 2022, in the event that EFS failed to respond to the show cause order.

After EFS did not answer the OIP or respond to the order to show cause, the Division filed a motion requesting that the Commission find EFS in default and bar it from associating in the securities industry and from participating in an offering of penny stock. The Division supported the motion with the allegations of the OIP and with filings and evidentiary exhibits from the Commission's civil action against EFS. The filings included the court's final civil judgment against EFS.

On September 15, 2023, the Commission issued a renewed order, directing EFS to show cause by September 29, 2023, why it should not be deemed to be in default and why this proceeding should not be determined against it due to its failure to file an answer or otherwise defend this proceeding. The renewed order also directed it to respond to the Division's default motion.[9] EFS failed to respond to the renewed order and the Division's motion.

II. Analysis

A. We hold EFS 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

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7 17 C.F.R. § 201.141(a)(2)(ii).

8 *Exec. Fin. Servs., Inc.*, Exchange Act Release No. 95401, 2022 WL 3043164 (Aug. 1, 2022).

9 *Exec. Fin. Servs., Inc.*, Exchange Act Release No. 98402, 2023 WL 6036843 (Sept. 15, 2023) (noting that "it appears that the [August 1, 2022] order to show cause may not have been properly served on Respondent").

to be true."[10] Because EFS has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to hold it 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 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 associating in the securities industry and from participating in any offering of a penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker or dealer or 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. EFS was enjoined from violating Securities Act Sections 5(a) and 5(c) and Exchange Act Section 15(a) and was therefore enjoined from conduct in connection with activity as a broker and in connection with the purchase or sale of a security. Because the OIP, taken as true, states that EFS was acting as an unregistered broker at the time of its misconduct, it was a person associated with a broker.[12]

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 its conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[13] Our

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[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)).

[11] 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)(C) (specifying injunctions against various actions, conduct, and practices).

[12] *See* 15 U.S.C. § 78c(a)(9) (defining a "person" under the Exchange Act to include companies), (18) (defining a "person associated with a broker" to include "any person directly or indirectly controlling" such broker); *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that a person who acts as an unregistered broker meets the definition of a "person associated with a broker" in Exchange Act Section 3(a)(18) because they "necessarily control[] the activities of [the] brokerage business").

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

public interest inquiry is flexible, and no one factor is dispositive.[14] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[15]

We have weighed all these factors, and find associational and penny stock bars are warranted to protect the investing public. The record shows that EFS and its sole principal, Martin, signed broker agreements with Wellington in 2016. The allegations of the OIP deemed true establish that, from 2016 to 2018, EFS sold unregistered securities of Wellington, but the firm was not registered as a broker. No registration statement was in effect for this offering, nor did any exemption from registration apply. The record also shows that EFS and Martin received $458,000 in commissions from the unregistered sales of those securities. We thus conclude that EFS's misconduct was egregious[16] and recurrent.[17]

The OIP, taken as true, also establishes scienter. As stated in the OIP, EFS's sole principal, Martin, had been a registered representative associated with one or more broker-dealers registered with the Commission from 1992 to 2002. Despite this experience, the record shows that EFS, acting through Martin, participated in the scheme to sell securities without complying with applicable registration requirements.[18]

Because EFS failed to answer the OIP or respond to the show cause order or to the Division's motion, it has made no assurances in this proceeding that it will not commit future violations or that it recognizes the wrongful nature of its conduct. It appears that there are also

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

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

[16] *See, e.g.*, *Michael J. Healey*, Exchange Act Release No. 53698, 2006 WL 1071161 at *1, *3 (Apr. 21, 2006) (finding sale of unregistered securities egregious where respondent sold to 24 investors, recruited agents to make sales, and received $151,000 in commissions).

[17] *See, e.g.*, *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *3 (Feb. 4, 2008) (finding misconduct to be recurrent when it "occurred over three years").

[18] *See SEC v. Wash. Invest. Network*, 475 F.3d 392, 402 (D.C. Cir. 2007) (noting that a corporation "could only act through its officers"); *Vfinance Invs., Inc. & Richard Campanella*, Exchange Act Release No. 62448, 2010 WL 2674858, at *12 (July 2, 2010) ("[i]t is well-established that a firm may be held accountable for the misconduct of its associated persons because it is through such persons that a firm acts" (collecting cases)); *cf. Brown v. Earthboard Sports USA, Inc.*, 481 F.3d 901, 918-19 (6th Cir. 2007) (holding that defendant's experience as "a licensed securities professional" was relevant to a determination of scienter); *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2023) (finding scienter in part because of respondent's "long experience in the [securities] industry").

opportunities for future violations because Martin, EFS's principal, has not indicated that EFS intends to leave the securities industry.[19]

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 EFS is unfit to participate in the securities industry and that its participation in the securities industry in any capacity would pose a risk to investors.[20] Given that EFS has defaulted in this proceeding, it has not opposed the imposition of any particular associational bar or a bar from participating in an offering of penny stock. Moreover, the OIP and the record establish that EFS was involved in a scheme to promote and sell millions of dollars of unregistered securities to investors. We conclude that it is in the public interest to bar EFS 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.[21]

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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19 *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).

20 *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).

21 *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. 99153 / December 13, 2023

Admin. Proc. File No. 3-20407

In the Matter of

EXECUTIVE FINANCIAL SERVICES, INC.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Executive Financial Services, Inc. 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 Executive Financial Services, Inc. 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