SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 101301 / October 10, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6746 / October 10, 2024

Admin. Proc. File No. 3-20796

In the Matter of

SCOTT ALLEN FRIES

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER 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 investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

Robert M. Moye and *Jedediah B. Forkner* for the Division of Enforcement.

On March 14, 2022, the Securities and Exchange Commission instituted proceedings against Scott Allen Fries 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 Fries to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity.

I. Background

A. The Commission instituted these proceedings against Fries.

The order instituting proceedings ("OIP") alleged that Fries was a registered representative associated with broker-dealers registered with the Commission from 1992 until July 2019. It also alleged that, from October 2014 to July 2019, Fries was employed by a broker-dealer and investment adviser registered with the Commission as both a registered representative and investment adviser representative, and also acted as an investment adviser.[2]

The OIP further alleged that on February 28, 2022, a federal district court entered a final judgment against Fries 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 Sections 206(1) and 206(2) of the Investment Advisers Act of 1940.[3]

According to the OIP, the Commission's amended complaint in the civil action alleged that, between March 2014 and March 2019, Fries raised at least $458,000 from at least ten investors, and spent that money on personal expenses. The Commission's amended complaint also alleged that Fries hid his fraudulent activities by, among other things, creating false account statements purporting to show profitable investments.

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 Fries to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[4] The OIP informed Fries that if he failed to answer, he could be deemed to be in default, the allegations in the OIP could be deemed to be true as provided in the Rules of Practice, and the proceedings could be determined against him upon consideration of the OIP.[5]

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1 *Scott Allen Fries*, Exchange Act Release No. 94412, 2022 WL 770108 (Mar. 14, 2022).

2 *Id.* at *1.

3 *SEC v. Fries*, 1:20-cv-739 (S.D. Ohio, Feb. 28, 2022) (granting motion for default judgment and imposing injunction), ECF No. 12.

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).

B. Fries 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.

Fries was properly served with the OIP on March 18, 2022, pursuant to Rule of Practice 141(a)(2)(i),[6] but did not respond. On April 20, 2023, more than 20 days after service, the Commission ordered Fries to show cause by May 4, 2023, 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 Fries 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 these proceedings against him upon consideration of the record. Fries did not respond to the show cause order.

On June 1, 2023, the Division of Enforcement filed a motion requesting that the Commission find Fries in default and bar him from associating in the securities industry. The Division supported the motion with several exhibits, including a declaration by a Division of Enforcement staff accountant summarizing his review of account statements prepared by Fries, sworn declarations from Fries's investors, and other financial and brokerage records.[8] Fries did not respond to the motion.

On September 13, 2023, the Commission issued a renewed order to show cause, directing Fries to show cause by September 27, 2023, why he should not be found to be in default due to his failure to file an answer or otherwise defend this proceeding.[9] Fries did not respond to the renewed show cause order.

II. Analysis

A. We deem Fries 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 to be 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 Fries has failed to answer or to respond to either show

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6 17 C.F.R. § 201.141(a)(2)(i).

7 *Scott Allen Fries*, Exchange Act Release No. 97336, 2023 WL 3038813 (Apr. 20, 2023).

8 The Division also included a sentencing judgment entry from an Ohio state criminal case stemming from the same underlying misconduct as the Commission's civil action. We do not rely on the state court's findings because the conviction was obtained on the basis of Fries's no-contest plea, and the Division has not established what issue-preclusive effect (if any) an Ohio state court would afford that plea or conviction. *See Elevators Mut. Ins. Co. v. J. Patrick O'Flaherty's, Inc.*, 928 N.E.2d 685, 688 (Ohio 2010).

9 *Scott Allen Fries*, Exchange Act Release No. 98373, 2023 WL 5956296 (Sep. 13, 2023).

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)).

cause order or the Division's motion, we find it appropriate to deem him to be in default and deem the allegations of the OIP to be true.[11] 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.[12]

B. We find that barring Fries from the securities industry is 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 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 broker or investment adviser activities, or in connection with the purchase or sale of any security; (2) the person was associated with a broker at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[13] Similarly, 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 (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with broker or investment adviser activities, or in connection with the purchase or sale of any security; (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[14]

The record establishes the first two of these elements under each statute. First, because the district court enjoined Fries from committing future violations of the antifraud provisions of the Securities Act, Exchange Act, and Advisers Act,[15] he has been enjoined "from engaging in or

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[11] We do not deem true the allegations related to fraud in the OIP, which merely state what was alleged in the Commission's civil action, rather than independently alleging that Fries engaged in particular conduct. *Fries*, 2022 WL 770108, at *1.

[12] Because the judgment in the civil action was by default, the facts alleged in the complaint and the findings made by the district court based on the default have no preclusive effect in these proceedings. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *2 (Apr. 23, 2015) (finding that because "none of the issues is actually litigated" in the case of a judgment entered by default, issue preclusion "does not apply with respect to any issue in a subsequent action" (quoting *Arizona v. California*, 530 U.S. 392, 414 (2000))).

[13] 15 U.S.C. § 78*o*(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78*o*(b)(4)); *see also id.* § 78*o*(b)(4)(C) (specifying injunctions against various actions, conduct, and practices).

[14] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4)); *see also id.* § 80b-3(e)(4) (specifying injunctions against various actions, conduct, and practices).

[15] That is, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(1) and 80b-6(2). *See supra* note 3.

continuing any conduct or practice . . . in connection with the purchase or sale of any security."[16] The Advisers Act's antifraud provisions also necessarily concern conduct in connection with investment adviser activities.[17] Second, the OIP alleged that, during the relevant time period, Fries was employed by a broker-dealer and investment adviser registered with the Commission as both a registered representative and investment adviser representative. That allegation, which we deem true because of Fries's default, establishes that Fries was both associated with a broker and associated with an investment adviser at the time of his misconduct.[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 the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[19] Our public interest inquiry is flexible, and no one factor is dispositive.[20] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[21]

We have weighed these factors and conclude that an industry bar is warranted to protect the investing public. Fries's misconduct was egregious and recurrent. The evidence submitted by the Division establishes that, between 2014 and 2019, Fries repeatedly defrauded investors by misappropriating their funds. Specifically, ten individuals sent Fries a total of at least $559,334 after he promised them that he would invest their funds in stocks, mutual funds, and other securities. But Fries instead spent much of the money on himself.[22] The district court ultimately ordered Fries to disgorge $428,334, together with prejudgment interest in the amount of

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16 15 U.S.C. § 78*o*(b)(4)(C); *see also supra* text accompanying notes 13-14.

17 *See* 15 U.S.C. § 80b-6 (making it unlawful for "any investment adviser" to engage in specified conduct).

18 15 U.S.C. § 78c(a)(18) (defining a "person associated with a broker" to include "any employee" of a broker); *id.* § 80b-2(a)(2) (defining a "person associated with an investment adviser" to include "any employee" of an investment adviser).

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

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

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

22 *See Michael Joseph Clarke*, Exchange Act Release No. 97860, 2023 WL 4422304, at *12 (July 10, 2023) (finding respondent's "affirmative misrepresentations to obtain funds were intentional because he knew his own intended use of the money when he asked for it yet deliberately and repeatedly misstated his intended use so that he could obtain it"); *see also SEC v. Presto Telecoms., Inc.*, 237 F. App'x 198, 200 (9th Cir. 2007) (finding that scienter was established by "the pervasiveness" of misrepresentations, "the obvious falsity of the information . . . provided to investors, and the flagrant personal use of investor funds").

$110,548, confirming that Fries's misconduct caused significant financial losses for his victims.[23]

Fries also acted with a high degree of scienter as evidenced by his efforts to hide his misappropriation. In particular, Fries lied to his victims about the status of their investments, assuring them that their money was invested and increasing in value. And he even used about $131,000 in funds to repay earlier investors in a Ponzi-like arrangement.[24]

Because Fries failed to answer the OIP or respond to the show cause order or 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. Although he is currently incarcerated, Fries offers no evidence about his occupation or assurances of his future plans following his incarceration.[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 Fries is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[26] Given that Fries has defaulted in these proceedings, he has not opposed the imposition of any particular associational bar. Because Fries poses a continuing threat to investors, we conclude that it is in the public interest to bar him

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[23] *See, e.g., Conrad A. Coggeshall*, Exchange Act Release No. 97474, 2023 WL 3433398, at *3 (May 10, 2023) (characterizing as "egregious" misconduct that involved using $700,000 raised from investors to pay for personal expenses); *Eldrick E. Woodley*, Advisers Act Release No. 5981, 2022 WL 836849, at *3 (Mar. 21, 2022) (finding investment adviser's conduct to be egregious where he fraudulently misappropriated over $147,000 in client funds).

[24] *See, e.g.*, *William M. Apostelos*, Exchange Act Release No. 99539, 2024 WL 624007, at *4-5 (Feb. 14, 2024) (finding that steps taken to conceal diversion of investor funds, including providing "false information to investors about the returns on their investments," was indicative of scienter); *Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *5 (Mar. 26, 2010) (explaining that "attempts to conceal misconduct indicate scienter").

[25] *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).

[26] *See 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 posed a risk to investors).

from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[27]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

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

UNITED STATES OF AMERICA
before the
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INVESTMENT ADVISERS ACT OF 1940
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In the Matter of

SCOTT ALLEN FRIES

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Scott Allen Fries is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary