

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 101807 / December 4, 2024

Admin. Proc. File No. 3-20839

In the Matter of  
JUSTIN WALLACE HERMAN

OPINION OF THE COMMISSION

SECTION 15(b) PROCEEDING

Grounds for Remedial Action

**Conviction**

Respondent was convicted of securities fraud, aiding and abetting securities fraud, and conspiracy to commit securities 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:

*Duane K. Thompson* for the Division of Enforcement.

On May 2, 2022, the Securities and Exchange Commission instituted administrative proceedings against Justin Wallace Herman pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> We now find Herman 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 Herman.

The order instituting proceedings (“OIP”) alleged that on October 8, 2021, Herman was convicted of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371.<sup>2</sup> The United States District Court for the District of Wyoming entered a criminal judgment against Herman sentencing him to 83 months’ imprisonment. According to the OIP, the criminal information alleged that Herman used manipulative purchases and false and misleading information to artificially inflate the value of shares in NuTech Energy Resources Inc. (“NERG”), a penny stock, and sold NERG shares to unwitting investors at the inflated price. On October 18, 2023, the U.S. Court of Appeals for the Tenth Circuit affirmed Herman’s conviction and sentence.<sup>3</sup>

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 Herman to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).<sup>4</sup> The OIP informed Herman that if he failed to answer, he may be deemed in default, the

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<sup>1</sup> *Justin Wallace Herman*, Exchange Act Release No. 94833, 2022 WL 1306666 (May 2, 2022).

<sup>2</sup> Herman was additionally convicted of securities fraud and aiding and abetting, in violation of 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 2, conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, and aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1). Courtroom Minutes (ECF No. 379), *United States v. Mitchell et al.*, No. 2:19-cr-00026-ABJ (D. Wyo. Oct. 8, 2021). We take official notice of documents filed in Herman’s criminal proceeding in federal district court. 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, 2021) (recognizing Commission’s authority to take official notice of federal district court orders).

<sup>3</sup> *United States v. Herman*, No. 22-8057, 2023 WL 6861766 (10th Cir. Oct. 18, 2023).

<sup>4</sup> 17 C.F.R. § 201.220(b).

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.<sup>5</sup>

**B. Herman 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.**

Herman was properly served with the OIP on October 17, 2023, pursuant to Rule of Practice 141(a)(2)(i),<sup>6</sup> but did not respond. On December 7, 2023, more than 20 days after service, the Commission ordered Herman to show cause by January 22, 2024, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.<sup>7</sup> The show cause order warned Herman 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.

After Herman failed to respond to the order to show cause, the Division filed a motion requesting that the Commission find Herman in default and bar him from associating in the securities industry and from participating in an offering of penny stock. In support of its motion, the Division filed copies of documents from Herman's criminal proceeding, including the superseding indictment, jury verdict, and appellate order and judgment affirming Herman's conviction. Herman did not respond to the Division's motion.

## II. Analysis

**A. We deem Herman 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."<sup>8</sup> Because Herman has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to deem him to be 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

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<sup>5</sup> See Rule of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

<sup>6</sup> 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").

<sup>7</sup> *Justin Wallace Herman*, Exchange Act Release No. 99107, 2023 WL 8527148 (Dec. 7, 2023).

<sup>8</sup> 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)).

sanctions. We also give preclusive effect to those facts that the Tenth Circuit recited as necessary to affirm Herman's conviction on appeal.<sup>9</sup>

**B. We find that barring Herman from the securities industry and from participating in penny stock offerings 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 and from participating in an offering of 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 a felony involving the purchase or sale of a security, or a conspiracy to commit such an offense; (2) the person was participating in the offering of any penny stock at the time of the misconduct; and (3) such a sanction is in the public interest.<sup>10</sup>

The record establishes the first two of these elements. Herman was convicted of offenses involving the purchase or sale of a security within ten years of the commencement of this proceeding. And the OIP's allegations, together with the evidence the Division submitted with its motion for sanctions, establish that Herman conspired with others in a pump-and-dump scheme related to NERG shares (which was a penny stock) from 2014 to 2016.<sup>11</sup>

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 her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.<sup>12</sup>

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<sup>9</sup> See *Lopez v. Pompeo*, 923 F.3d 444, 446 (5th Cir. 2019) ("If an appeal is taken, preclusion should attach to every ground that is in fact reviewed and affirmed by an appellate court. . . ." (quoting 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure (Jurisdiction)*)).

<sup>10</sup> 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)(i) (discussing offenses involving the purchase or sale of a security).

<sup>11</sup> See 15 U.S.C. § 78o(b)(6)(C) (defining a "person participating in an offering of penny stock" as "any person . . . inducing or attempting to induce the purchase or sale of penny stock").

<sup>12</sup> *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

Our public interest inquiry is flexible, and no one factor is dispositive.<sup>13</sup> The remedy is intended to protect the trading public from further harm, not to punish the respondent.<sup>14</sup>

We have weighed these factors and conclude that an industry bar and a bar from participating in an offering of penny stock are warranted to protect the investing public. Herman's misconduct was egregious and recurrent. After acquiring NERG shares, Herman prepared misleading press releases and, with others, coordinated NERG trades to profit from artificially inflated stock prices. In perpetrating this scheme, Herman used a nominee to disguise his ownership of the shares from the market. Herman also evaded a holding period on the shares by sending the transfer agent altered bank records, fake attorney opinion letters, and false statements of nonaffiliation. Ultimately, this misconduct spanned two years,<sup>15</sup> and Herman and others sold approximately 60 million shares of NERG to about 2,300 investors.

Herman also acted with a high degree of scienter.<sup>16</sup> The crimes Herman was convicted of required a specific intent to defraud.<sup>17</sup> The record also shows that, in the course of the scheme, Herman discussed forging a wire transfer and falsely backdating a debt purchase agreement, and he prepared press releases that he knew were false with the intent of manipulating NERG's share price.

Because Herman 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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<sup>13</sup> *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at \*4 (July 26, 2013).

<sup>14</sup> *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

<sup>15</sup> *See, e.g., John Sherman Jumper*, Exchange Act Release No. 96407, 2022 WL 17346044, at \*3 (Nov. 30, 2022) (finding conduct recurrent where respondent misappropriated funds on three occasions over eleven months); *Brett Hamburger*, Exchange Act Release No. 93844, 2021 WL 6062981, at \*1, 4 (Dec. 21, 2021) (finding conduct recurrent where, over a period of 20 months, responded facilitated sales of unregistered securities via a "phone room").

<sup>16</sup> *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).

<sup>17</sup> *See, e.g., Michelle Morton*, Advisers Act Release No. 6094, 2022 WL 3587990, at \*4 (Aug. 22, 2022) ("Conspiracy to commit securities fraud requires specific intent."); *Daniel B. Vazquez*, Advisers Act Release No. 6633, 2024 WL 3179320, at \*4 (June 26, 2024) (noting that aiding and abetting securities fraud requires a specific intent to defraud).

violations. Although Herman is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.<sup>18</sup>

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 Herman is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.<sup>19</sup> Indeed, Herman was involved in a penny stock pump-and-dump scheme that defrauded thousands of investors. Because Herman has defaulted in this proceeding, he also has not opposed the imposition of any associational bar or a bar from participating in an offering of penny stock. We therefore conclude that it is in the public interest to bar him 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.<sup>20</sup>

An appropriate order will issue.

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

Vanessa A. Countryman  
Secretary

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<sup>18</sup> See, e.g., *Allan Michael Roth*, Exchange Act Release No. 90343, 2020 WL 6488283, at \*5 (Nov. 4, 2020) (finding that, “[a]lthough Roth is currently incarcerated, absent a bar he would have the opportunity to re-enter the securities industry or participate in an offering of penny stocks, and commit further violations, upon his release”).

<sup>19</sup> *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).

<sup>20</sup> *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. 101807 / December 4, 2024

Admin. Proc. File No. 3-20839

In the Matter of  
JUSTIN WALLACE HERMAN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Justin Wallace Herman 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 Justin Wallace Herman 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