

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Release No. 10287 / January 23, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 79858 / January 23, 2017

Admin. Proc. File No. 3-17013

In the Matter of
ALLEN M. PERRES

OPINION OF THE COMMISSION

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Unregistered Offer and Sale of Securities

Failure to Register as a Broker

Respondent consented to an order finding that he offered and sold unregistered securities and that he acted as an unregistered broker; that he cease-and-desist from committing or causing violations of the securities laws; and that he pay disgorgement. Respondent also consented to the institution of a proceeding to determine what, if any, additional non-financial remedial sanctions are in the public interest. *Held*, it is in the public interest to impose an industry and penny stock bar, with a right to reapply after five years.

APPEARANCES:

John J. Gaines III, of *Gaines & Pujlic, Ltd.*, for Allen M. Perres.

Anne C. McKinely and *Emily Rothblatt* for the Division of Enforcement.

Appeal filed: July 13, 2016
Last brief received: November 1, 2016

I. Introduction

Allen M. Perres consented to a Commission order finding that he willfully violated the federal securities laws and imposing a cease-and-desist order and disgorgement.¹ Perres also consented to the institution of a proceeding to determine whether additional, non-financial remedial sanctions were in the public interest. After granting the Division of Enforcement's motion for summary disposition, an administrative law judge determined that it was in the public interest to impose a bar from the securities industry and from participating in penny stock offerings, with a right to reapply in five years.² Perres appeals that determination, but we find that remedial sanction to be in the public interest.

II. Facts

This proceeding stems from Perres's role in soliciting investors for debt and equity offerings by Southern Cross Resources Group, Inc. ("Southern Cross"), a Nevada corporation that purported to be an asset-based trading company with a focus on energy producing assets. From approximately April 2012 through September 2014, Southern Cross raised more than \$5,000,000 from approximately 97 investors located in 12 states. During that time, Perres and his colleague Willard R. St. Germain acted as marketers for Southern Cross and earned commissions on the funds they raised from investors.

Although neither Perres nor St. Germain were registered with the Commission in any capacity or associated with a registered broker-dealer during this period,³ they marketed Southern Cross's securities offering by serving as primary sources of information for investors and frequently providing investors with private placement memoranda, informational brochures, and other offering materials. They also organized meetings at a friend's place of business to pitch Southern Cross to potential investors. Perres took no steps to determine whether the individuals who purchased Southern Cross's common stock through him were sophisticated or accredited investors, and he did not provide investors with access to the information that would have been available had a registration statement been filed for the offerings.

Perres and St. Germain ultimately raised more than \$2 million for Southern Cross between April 2012 and September 2014. Individually, Perres brought in at least 10 investors and received \$125,145 in commissions from sales of Southern Cross's common stock (which

¹ *Allen M. Perres*, Exchange Act Release No. 76723, 2015 WL 9272823, at *2–4 (Dec. 21, 2015).

² *Allen M. Perres*, Initial Decision Release No. 1022, 2016 WL 3162187, at *7 (June 7, 2016).

³ FINRA's BrokerCheck indicates that Perres was registered from 1985 to 1992 and again from 1995 to 2000. See <https://brokercheck.finra.org/individual/summary/1358479>. We take official notice of the information on BrokerCheck. See, e.g., *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 WL 1683914, at *1 n.1 (Apr. 18, 2013) (citing 17 C.F.R. § 201.323).

represented approximately 17% of the funds Perres raised). No registration statement was filed in connection with any of Southern Cross's securities offerings, and no exemption from registration was available for any of the sales made through Perres or St. Germain.

III. Procedural Background

On December 21, 2015, the Commission accepted Perres's and St. Germain's offers of settlement and issued an order instituting proceedings, making findings, and imposing remedial sanctions against them (the "Order"). In doing so, the Commission found that Perres and St. Germain willfully violated Section 5(a) and (c) of the Securities Act of 1933 by offering shares of Southern Cross when the shares were not registered and did not satisfy an exemption from registration.⁴ The Commission also found that Perres and St. Germain acted as unregistered brokers in violation of Section 15(a) of the Securities Exchange Act of 1934 by soliciting investments in Southern Cross, providing investors with offering materials and information on the company, and earning commissions for bringing in investors.⁵

For those violations, St. Germain and Perres agreed to cease-and-desist orders and to pay disgorgement. The Commission ordered Perres to pay disgorgement of \$125,145 plus prejudgment interest, but waived payment of all but \$31,284 of that amount and did not order civil penalties because of Perres's sworn representations of an inability to pay. St. Germain also consented to an industry and penny stock bar. Perres consented to proceedings being held to determine whether additional non-financial remedial sanctions were in the public interest in his case. Perres agreed that, in the proceeding, he would be precluded from arguing that he did not violate the federal securities laws as described in the Order and that the Order's findings would be "accepted as and deemed true by the hearing officer."⁶

On June 7, 2016, the law judge granted the Division's motion for summary disposition and imposed an industry and penny stock bar with a right to reapply in five years on Perres. The law judge found that Perres's conduct was egregious and that his "willingness to continue soliciting investors for Southern Cross despite witnessing the company's repeated improprieties suggests a lack of concern for investors, and his continued occupation in the financial industry therefore puts future investors at risk."⁷ Perres appeals and requests that, instead of being barred with a right to reapply in five years, he be suspended for only twelve months.

⁴ 15 U.S.C. § 77e(a), (c).

⁵ *Id.* § 78o(a).

⁶ *Perres*, 2015 WL 9272823, at *7.

⁷ *Perres*, 2016 WL 3162187, at *7.

IV. Analysis

Exchange Act Section 15(b)(6) authorizes us to impose non-financial remedial sanctions in the public interest on persons who violated the federal securities laws and who were associated with a broker at the time of the misconduct.⁸ The Order found that Perres violated the securities laws. Perres agreed that the Order’s findings would be accepted as true.

The Order’s finding that Perres acted as an unregistered broker also establishes that he was associated with a broker for purposes of Exchange Act Section 15(b)(6). A “person associated with a broker” includes “any partner, officer, director, or branch manager of such broker . . . (or any person occupying a similar status or performing similar functions) [or] any person directly or indirectly controlling, controlled by, or under common control with such broker.”⁹ Perres was, in effect, the owner and manager of a sole proprietorship. He thus “occup[ie]d a similar status [and] perform[ed] similar functions” as a general partner within a partnership or an officer or director within a corporation.¹⁰ He also necessarily controlled the activities of his brokerage business. Indeed, had Perres registered his sole proprietorship as a broker, as the Exchange Act required, he necessarily would have been associated with that registered broker.¹¹ Perres meets the definition of a person associated with a broker notwithstanding his failure to register.¹²

⁸ 15 U.S.C. § 78o(b)(6).

⁹ *Id.* § 78c(a)(18).

¹⁰ We note that this finding is consistent with FINRA’s treatment, for registration purposes, of “[s]ole [p]roprietors” of member firms as both “principals” of the firm, by virtue of the management role, and “[p]ersons associated with a member.” FINRA Rule 1021(b) (stating that “[p]ersons associated with a member” who fall into one of five categories—“[s]ole [p]roprietors,” “[o]fficers,” “[p]artners,” “[m]anagers of [o]ffices of [s]upervisory [j]urisdiction,” or “[d]irectors of [c]orporations”—“who are actively engaged in the management of the member’s investment banking or securities business . . . are designated as principals”).

¹¹ *See* Exchange Act Section 15(a)(1), 15 U.S.C. § 78o(a)(1) (making it “unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person” to act as a broker unless registered with the Commission); *see also* *Chester Richard Koza dba Chester R. Koza & Co.*, Exchange Act Release No. 6298, 1960 WL 56272, at *2–3 (June 28, 1960) (finding that applicant, who was a natural person “engaged in the securities business as a sole proprietor,” violated Exchange Act Section 15(a) because he bought and sold securities as a dealer without having registered as such with the Commission, and rejecting argument that the securities transactions at issue were “personal ones made by [applicant] as an individual investor” because, as a sole proprietor, applicant “was the company” (internal quotations and citation omitted)).

¹² *Cf. Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (holding 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’”).

In analyzing whether sanctions are in the public interest, we consider, among other things, (i) the egregiousness of the respondent's actions; (ii) the degree of scienter involved; (iii) the isolated or recurrent nature of the infraction; (iv) the respondent's recognition of the wrongful nature of his or her conduct; (v) the sincerity of any assurances against future violations; and (vi) the likelihood that the respondent's occupation will present opportunities for future violations.¹³ These factors weigh in favor of imposing an industry and penny stock bar on Perres, with a right for him to reapply after five years.

A. Perres's violations were egregious, recurrent, and committed with a high degree of scienter.

We find that Perres's violations were egregious and recurrent. Section 5's registration requirements "are a keystone of the entire system of securities regulation, and set forth basic requirements for the protection of investors."¹⁴ Perres took no steps to determine whether any of the individuals who purchased Southern Cross's securities through him were sophisticated or accredited investors, and he did not provide investors with the information that would have been available had a registration statement been filed. Perres therefore deprived investors of information necessary to make fully informed investment decisions.¹⁵ Similarly, Section 15(a)'s registration requirement is "of the utmost importance in effecting the purposes of the [Exchange] Act because it enables the SEC to exercise discipline over those who may engage in the securities business and it establishes necessary standards with respect to training, experience, and records."¹⁶ Perres evaded these standards for those entrusted with selling securities. Without registering with the Commission, Perres served as the primary source of information for investors; organized meetings at a friend's business to sell securities; and provided investors with private placement memoranda, informational brochures, and other offering materials.

Although Perres claims that he spent "somewhat less than 25%" of his time soliciting investors, violating the securities laws for a quarter of the time over a two-year period is recurrent—not isolated—misconduct. The result of his prolonged misconduct was that Perres brought in at least ten investors and earned \$125,145 in commissions. In light of the nature of

¹³ See, e.g., *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016) (reciting standard for determining whether an industry and penny stock bar was in the public interest); *accord Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979).

¹⁴ *Sirianni v. SEC*, 677 F.2d 1284, 1289 (9th Cir. 1982); see also *SEC v. Cont'l Tobacco Co. of S.C.*, 463 F.2d 137, 154–55 (5th Cir. 1972) (stating that the registration requirements in the Securities Act and the Exchange Act "constitute a comprehensive plan to protect investors").

¹⁵ *Gordon Brent Pierce*, Exchange Act Release No. 71664, 2014 WL 896757, at *23 (Mar. 7, 2014) (finding that the selling shares of stock without registration "caus[ed] harm to investors and the marketplace by depriving investors of the full disclosure that would have allowed them to make informed investment decisions"), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015).

¹⁶ *SEC v. Benger*, 697 F. Supp. 2d 932, 944 (N.D. Ill. 2010) (internal quotations omitted).

his violations, their duration, and his unjust enrichment, we find Perres's misconduct to be egregious.

We also find that Perres acted knowingly and therefore with a high degree of scienter. Perres admitted in his brief before the law judge that he knew he could not earn commissions from soliciting investors without being registered. Indeed, he claimed that he "expressly warned the company that neither [he] [n]or any other person could be compensated for raising money" from investors. He also states in his brief to the Commission that he witnessed "inappropriate" behavior at Southern Cross, that he admonished the company to "comply with securities law requirements," and that he should have resigned. Perres's statements indicate that he knew that the Southern Cross securities offerings, and his involvement with them, violated the law.

B. Perres does not recognize the wrongful nature of his misconduct, offers no assurances against future violations, and has the opportunity to commit future misconduct.

We find that Perres fails to recognize the wrongful nature of his misconduct. Although Perres settled a portion of these proceedings with the Commission, he did so without admitting liability. And in this proceeding Perres, rather than offering "a complete and contrite confession of his wrongdoing" as he claims, has consistently attempted to minimize his own misconduct while shifting blame to Southern Cross. In his opposition to the Division's motion for summary disposition, for example, Perres described his reason for settling these proceedings as needing "to take responsibility for the *careless actions of the company* for which I worked, [Southern Cross], and for my lack of assertive action as I witnessed behavior which I believed was inappropriate but which I felt I could improve" (emphasis added). He similarly asserted that "Southern Cross broke its commitments to me regarding stipend and/or salary, proper professional support and other failures of professionalism." And in his brief to the Commission, Perres states that he acted inappropriately not by committing the violations at issue, but by "fail[ing] to resign" or "take assertive action against [Southern Cross.]" "As we have stated, 'attempts to shift blame are additional indicia of a respondent's failure to take responsibility for his actions.'"¹⁷ Without accepting responsibility for his violations, Perres cannot argue that he recognizes the wrongful nature of his misconduct and thus need not be sanctioned with additional non-financial remedies.

We find further that Perres has not provided meaningful assurances against future violations. Perres argues that he is unlikely to commit future violations given that he is a "69-year-old man with uncertain job opportunities and skills outside the financial industry" and has a "40-plus year unblemished record of compliance and good behavior in the financial and

¹⁷ *vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 WL 2674858, at *15 (July 2, 2010) (alterations omitted) (quoting *Clyde J. Bruff*, Exchange Act Release No. 40583, 1998 WL 730586, at *5 (Oct. 21, 1998)).

securities industries.”¹⁸ But we find neither that these assertions constitute assurances against future violations nor that these factors mitigate Perres’s misconduct.¹⁹ Specifically, we are concerned that Perres’s current occupation will present opportunities for future violations. Perres avers that he has not been involved in the securities business for more than 12 years and that, “[a]lthough his present occupation generally focuses on financial matters, he limits his activities to consulting for entities seeking institutional relationships with specific focus on sales and marketing consulting.” Yet this describes almost identically the circumstances of his employment when Perres violated the securities laws by selling unregistered securities for Southern Cross.

C. The public interest necessitates a bar despite Perres’s claims of mitigating circumstances.

Perres claims that the “unwavering cooperation with which [he] assisted the Division staff in providing all information requested in a timely and entirely truthful manner” is “a mitigating factor.” According to him, his “honest and truthful conduct” should be contrasted with cases in which respondents were permanently barred after having made false statements or destroyed and withheld documents in connection with a Commission inspection.²⁰ But Perres’s misconduct is not mitigated or any less egregious because he did not compound his violations by

¹⁸ Perres was enjoined from violating the antifraud provisions of the securities acts in 1975. Because the record of this injunction consists of only a one-sentence summary of the case, the law judge found that, “[w]ithout more information about the violation, and particularly in view of its age, its existence is not helpful to the public interest determination.” The Division does not cite the 1975 injunction in its brief before the Commission, and we do not consider it.

¹⁹ See, e.g., *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *9 (Feb. 13, 2009) (rejecting as mitigating respondent’s “age, that he [wa]s winding down his career, [and] that he ha[d] no prior criminal or disciplinary history” (internal citation omitted)), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 WL 3306103, at *9 n.37 (Nov. 8, 2007) (rejecting “any suggestion that Erenstein’s age should mitigate the sanctions” and observing that “the risk to the investing public posed by an individual who thwarts the regulatory process may be the same regardless of that individual’s age”), *petition denied*, 316 F. App’x 865 (11th Cir. 2008); *cf. Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) (finding that “[l]ack of a disciplinary history is not a mitigating factor; [applicant] was required to comply with the NASD’s high standards of conduct at all times”); *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 WL 3313843, at *6 (Nov. 8, 2006) (finding that “lack of disciplinary history is not mitigating for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional”).

²⁰ See *Kornman*, 2009 WL 367635, at *7 (imposing permanent bar where respondent made a false statement during a Commission investigation); *Schild Mgmt. Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at *9 (Jan. 31, 2006) (imposing permanent bar where respondents directed employees to destroy and alter documents during a Commission investigation).

lying to the Commission or destroying documents. And whatever mitigating impact his cooperation with the Division may have is outweighed by the egregiousness of his conduct, his high degree of scienter, and his failure to recognize the seriousness of his violations.²¹ We find that these same considerations also outweigh Perres's vague claim that he "spearheaded" an effort by Southern Cross to make a rescission offer to its investors.

Perres also cites as a "mitigating factor" what he characterizes as Southern Cross's "malicious and dishonest conduct which, in effect, forced and compelled" him to violate the securities laws. According to Perres, Southern Cross initially promised him that it would pay him a salary and that he would not need to solicit individual investors. But Perres claims that once he joined the company Southern Cross insisted that he speak to small investors on the company's behalf and that he would, at least initially, be paid only through the sale of securities to investors. Perres argues that, due to "his acute deteriorating financial situation," he "had no real alternative but to remain and do [Southern Cross's] bidding in the hope that the Company's financial status would improve, allowing for him to be a regularly-paid employee who no longer had to sell [Southern Cross] securities to receive compensation." Although the only support for these claims are Perres's assertions in his brief, the Division does not specifically challenge them except to note that they are self-serving and unsupported.

Assuming Perres's assertions are true, we do not find that they lessen his scienter or mitigate his misconduct—or, in his words, that they mean he "had diminished personal responsibility for his actions."²² Perres knew what he was doing was wrong. And he concedes that he could have acted differently by stating: "I should have resigned." Instead, for more than two years he chose to solicit investors for an unregistered offering without himself registering as a broker and without making any effort to ensure that the investors were accredited or had access to the information about Southern Cross that registration would have provided.

Accordingly, we find that the imposition of an industry and penny stock bar with a right to reapply after five years is necessary to protect the public. Absent the imposition of these bars, Perres could assume a role in which he would present a risk of again harming investors and the marketplace. We recognize the significance of an industry and penny stock bar and its impact on Perres's ability to continue working in the industry. Nonetheless, "[t]he securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity

²¹ See, e.g., *Toby G. Scammel*, Advisers Act Release No. 3961, 2014 WL 5493265, at *8 (Oct. 29, 2014) (finding that the mitigating impact, "if any," of respondent's decision to cooperate with the Division was outweighed by the egregiousness of his conduct, his high degree of scienter, and his failure to recognize the seriousness of his violations); *Montford & Co., Inc.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *19–20 (May 2, 2014) (finding that respondent's cooperation and lack of disciplinary history did not outweigh concern that respondent would pose a continued threat to investors if permitted to remain in the industry).

²² Cf. *Matthew D. Sample*, Exchange Act Release No. 75893, 2015 WL 5305992, at *7 n.47 (Sept. 10, 2015) (finding that respondent's claim that he was under extreme emotional and financial distress during the events at issue was not mitigating).

of its participants and on investors' confidence."²³ Perres's serious, repeated, and knowing violations—combined with his failure to take responsibility for his misconduct and his attempts to blame Southern Cross—evidences an unfitness to participate in that industry in any capacity.²⁴

In providing Perres with a right to reapply, we recognize his relatively clean disciplinary history and cooperation with the Commission. We nevertheless believe that requiring that five years pass before Perres has the right to reapply (as opposed to suspending him for twelve months) will impress upon him the severity of his misconduct and the importance of the regulatory requirements that he violated. This, in turn, will help ensure his compliance in the event that he is subsequently permitted to return to the industry.

An appropriate order will issue.²⁵

By the Commission (Chair WHITE and Commissioners STEIN and PIWOWAR).

Brent J. Fields
Secretary

²³ *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *7 (Sept. 26, 2007), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

²⁴ *See, e.g., Bloomfield v. SEC*, 649 F. App'x 546, 550 (9th Cir. 2016) (affirming imposition of permanent broker-dealer and penny stock bar where respondents engaged in multiple unregistered transactions over several years without investigating whether the transactions were lawful); *Charles F. Kirby*, Exchange Act Release No. 47149, 2003 WL 71681, at *11 (Jan. 9, 2003) (imposing broker-dealer and penny stock bar, with right to reapply after five years, where respondents engaged in the unregistered distribution of securities over two years), *petition denied sub nom., Geiger v. SEC*, 363 F.3d 481 (D.C. Cir. 2004).

²⁵ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
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Admin. Proc. File No. 3-17013

In the Matter of
ALLEN M. PERRES

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Allen M. Perres be barred from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization, and from participating in an offering of penny stock, including acting as any 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; provided, however, that Perres may apply to become so associated after five years.

By the Commission.

Brent J. Fields
Secretary