SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 97778 / June 21, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6334 / June 21, 2023

Admin. Proc. File No. 3-19281

In the Matter of

WILLIAM HARPER MINOR, JR.

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of mail fraud. *Held*, it is in the public interest to bar respondent from association with any broker, dealer, or investment adviser and from participating in an offering of penny stock.

APPEARANCES:

Stephanie N. Moot and *Andrew O. Schiff* for the Division of Enforcement.

On July 26, 2019, the Commission instituted an administrative proceeding against William Harper Minor, Jr., 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 Minor to be in default, deem the allegations against him to be true, and bar him from associating with a broker, dealer, or investment adviser and from participating in an offering of penny stock.

I. Background

A. The Commission instituted the proceeding against Minor.

The order instituting proceedings ("OIP") alleged that Minor pleaded guilty in 2018 to one count of violating the federal mail fraud statute, 18 U.S.C. § 1341, by fraudulently converting approximately $2 million over 25 years from an employee pension plan that he managed. The OIP also alleged that Minor was associated with broker-dealers and investment advisers over the course of his misconduct. The OIP instituted proceedings to determine whether the allegations contained therein were true and, if so, if any remedial action was appropriate in the public interest.

The OIP directed Minor to file an answer to the allegations contained therein within 20 days after service, as provided by Rule 220(b) of the Commission's Rules of Practice.[2] The OIP informed Minor 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.[3]

B. Minor 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.

Minor was properly served with the OIP on September 14, 2019, pursuant to Rule of Practice 141(a)(2)(i),[4] but did not respond. On November 13, 2019, more than 20 days after service, the Commission ordered Minor to show cause by December 30, 2019, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[5] The

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[1] *William Harper Minor, Jr.*, Exchange Act Release No. 86483, 2019 WL 3387083 (July 26, 2019).

[2] 17 C.F.R. § 201.220(b).

[3] *See* Rule of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

[4] 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").

[5] *William Harper Minor, Jr.*, Exchange Act Release No. 87531, 2019 WL 6038085 (Nov. 13, 2019).

show cause order cautioned Minor 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. The order directed the Division of Enforcement to file a motion for entry of an order of default and the imposition of remedial sanctions in the event that Minor failed to respond to the show cause order.

After Minor failed to answer the OIP or respond to the show cause order, the Division filed a motion on January 10, 2020, requesting that the Commission find Minor in default and bar him from the securities industry.[6] The Division supported the motion with copies of the Information, Minute Entry of Guilty Plea, Plea Agreement, Factual Basis in Support of Guilty Plea, Judgment of Conviction, and Restitution Order filed in Minor's criminal proceeding. Minor did not respond.

As part of his plea agreement, Minor admitted that he was a volunteer member of the board of governors for the Rehabilitation Center for Children and Adults, Inc. ("RCCA"), which was a not-for-profit corporation that provided outpatient therapy services to children and adults. In or about 1976, Minor helped RCCA establish and manage its employee pension plan (the "Pension Plan"). In October 1991, Minor moved the Pension Plan account to Transamerica Life Insurance and Annuity Company ("Transamerica Life"), where he was a registered insurance agent. In doing so, Minor falsely represented to RCCA and the Pension Plan trustees that Transamerica Life would be working in partnership with another company (which Minor operated) to administer the Pension Plan. Transamerica Life, however, did not provide any administrative or record keeping services for RCCA's Pension Plan. Instead, Minor exercised complete control over the Pension Plan and was responsible for the plan's administration and management and the disposition of its assets.

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[6] The Division's motion states repeatedly that the Commission should bar Minor from the securities industry, and Exchange Act Section 15(b) authorizes a bar from several associational capacities as well as from participating in an offering of penny stock. But the Division also acknowledges that a collateral bar—a bar from associating in capacities with which Minor had no association at the time of the misconduct—is not appropriate "in light of the fact that Minor's association with a broker-dealer and investment adviser ended before the enactment of the Dodd-Frank Act." *See Bartko v. SEC*, 845 F.3d 1217, 1222–24 (D.C. Cir. 2017) (holding that the imposition of a collateral bar is impermissibly retroactive if based on conduct before Dodd-Frank's 2010 enactment); *see also infra* text accompanying note 11 (finding that Minor was associated with a broker-dealer and investment adviser through July 2009). As a result, at one point in its motion the Division says that the Commission "should impose only the broker-dealer and investment adviser bars." In light of the Division's repeated requests for an industry bar, and its reference to *Barkto v. SEC*, we construe its motion as requesting the relief that *Barkto* does not preclude—namely a bar from association with a broker, dealer, or investment adviser and from participating in an offering of penny stock.

Minor further admitted that, between 1991 and 2016, he routinely submitted fraudulent fund distribution requests to Transamerica Life for former RCCA employees who were supposedly eligible for lump sum benefit payments. Instead of issuing the checks to the specified employees, however, Minor spent the Pension Plan's funds on himself and his family. Minor concealed his misconduct by, among other things, (a) overstating the Pension Plan's account balance to RCCA's auditors; (b) providing auditors with false account statements that Minor created to give the appearance that they had been prepared by Transamerica Life; (c) inflating the Pension Plan's assets on its tax returns; and (d) providing account statements to Pension Plan participants that did not reflect Minor's unauthorized withdrawals. Minor ultimately converted approximately $2 million of Pension Plan assets to his own use.

During much of this period, Minor was associated with various broker-dealers registered with the Commission. Specifically, as alleged in the OIP, Minor was registered with Aetna Life Insurance and Annuity Co. (from October 1972 to October 1993), Jefferson-Pilot Investor Services, Inc. (from August 1990 to November 1991), Aetna Investment Services, Inc. (from October 1993 to April 1994), Transamerica Financial Resources, Inc. (from March 1996 to December 1997), and Financial Network Investment Corp. (from December 1997 to July 2009). Except for Jefferson-Pilot Investor Services, Inc., all these broker-dealers were also registered with the Commission as investment advisers.

After accepting Minor's guilty plea, a court sentenced him to 41 months of incarceration, followed by 3 years of supervised release, and ordered him to pay restitution of $1,636,604.34.

II. Analysis

A. We hold Minor 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."[7] Because Minor has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to hold 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.

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[7] 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)).

B. We find a bar from associating with a broker, dealer, or investment adviser and a bar from participating in an offering of penny stock 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 penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) the person was convicted of violating the federal mail fraud statute within ten years of the commencement of the proceeding; (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.[8] 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) the person was convicted of violated the federal mail fraud statute within ten years of the commencement of the proceeding; (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.[9]

The record establishes the first two of these elements under each statute. Minor was convicted of violating the federal mail fraud statute within the applicable period.[10] Minor was also a person associated with a broker or dealer and an investment adviser at the time of his misconduct. The allegations of the OIP deemed true establish that, for most of the period between October 1972 and July 2009, Minor was associated with broker-dealers and investment advisers registered with the Commission.[11]

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

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[8] 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)(iv) (discussing convictions for violating 18 U.S.C. § 1341).

[9] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)); *id.* § 80b-3(e)(2)(D) (discussing convictions for violating 18 U.S.C. § 1341).

[10] *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) (concluding 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), *petition 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) (stating that when a court has accepted a guilty plea, "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").

[11] Minor was not associated with a broker-dealer or investment adviser from May 1994 through February 1996. *See supra* Section I.B.

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.[12] Our public interest inquiry is flexible, and no one factor is dispositive.[13] The remedy is intended to "protect[] the trading public from further harm," not to punish the respondent.[14]

We have weighed all of these factors, and find a bar from associating with a broker, dealer, or investment adviser and from participating in an offering of penny stock is warranted to protect the investing public. Minor admitted that, from 1991 through 2016, he stole approximately $2 million of the Pension Plan's assets for his own use by routinely making fraudulent requests to Transamerica Life for distributions. Minor further admitted to taking extensive steps to conceal his misconduct, including filing fraudulent tax forms with the IRS and submitting false account statements to Pension Plan participants.[15]

Mail fraud also requires a specific intent to defraud.[16] We conclude that Minor's misconduct was egregious, recurrent, and involved a high degree of scienter.[17]

Because Minor 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. Although his guilty plea indicates that Minor might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses a risk to the

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

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

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

[15] *See, e.g.*, *Bennett Group Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *4 (Mar. 30, 2017) (finding that respondents' "calculated attempts to conceal their misconduct are compelling additional evidence of Bennett's consciousness of wrongdoing and confirm our assessment that she is unfit to serve the investing public and should be barred").

[16] *United States v. Traxler*, 764 F.3d 486, 488 (5th Cir. 2014).

[17] *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).

investing public.[18] Minor also worked for approximately 36 years in the securities industry, and his occupation therefore presents opportunities for future violations.

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 Minor is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[19] Given that Minor has defaulted in this proceeding, he has not opposed the imposition of a bar from associating with a broker, dealer, or investment adviser or a bar from participating in an offering of penny stock. We conclude that it is in the public interest to bar Minor from association with any broker, dealer, or investment adviser and from participating in an offering of penny stock.[20]

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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[18] *See Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019) ("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."); *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").

[19] *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).

[20] *Id.* (imposing associational and penny stock bars where necessary to protect the public).

UNITED STATES OF AMERICA
before the
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SECURITIES EXCHANGE ACT OF 1934
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INVESTMENT ADVISERS ACT OF 1940
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Admin. Proc. File No. 3-19281

In the Matter of

WILLIAM HARPER MINOR, JR.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that William Harper Minor, Jr., is barred from association with any broker, dealer, or investment adviser; and it is further

ORDERED that William Harper Minor, Jr., is barred from participating in an offering of 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