SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 100221 / May 23, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6611 / May 23, 2024

Admin. Proc. File No. 3-20400

In the Matter of

DAVID AARON ROCKWELL

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of wire fraud and bank 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 participation in any penny stock offering.

APPEARANCES:

Teresa J. Verges for the Division of Enforcement.

On July 15, 2021, the Securities and Exchange Commission instituted an administrative proceeding against David Aaron Rockwell ("Rockwell") 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 Rockwell 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 Rockwell.

The order instituting proceedings ("OIP") alleges that, on January 13, 2021, Rockwell pleaded guilty to six counts of wire fraud, in violation of 18 U.S.C. § 1343, and two counts of bank fraud, in violation of 18 U.S.C. § 1344. After accepting Rockwell's guilty plea, a court sentenced him to 63 months of incarceration, with five years of supervised release, and ordered him to pay restitution of $1,018,000.[2]

According to the OIP, Rockwell obtained two lines of credit totaling $700,000 in his clients' names, without their knowledge or permission. Using their accounts as collateral, Rockwell transferred the loan proceeds to a company he owned and used nearly $400,000 to purchase a home with this then-girlfriend. The OIP also alleges that Rockwell deceived a client into providing him $418,000 to be invested in real estate, but used at least $318,000 of the funds for Rockwell's own benefit, including paying his credit card bills, purchasing Harley Davidson products, and buying a home in the name of the company he owned.

According to the OIP, during the time Rockwell engaged in this misconduct, he was associated with two dually registered broker-dealer and investment adviser firms, one from December 2015 through approximately November 2018 and the other from November 2018 through approximately June 2019. The OIP further alleges that in February 2020, FINRA barred Rockwell from association with any FINRA member for failing to respond to a FINRA information request.

The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Rockwell to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Rockwell that if he failed to answer, he could be deemed to be in

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1 *David Aaron Rockwell*, Exchange Act Release No. 92423, 2021 WL 3023727 (July 15, 2021).

2 *See United States v. Rockwell*, No. 2:20-CR-107-JLB-MRM, Dkt. No. 62 (M.D. Fla. Sept. 9, 2021).

3 17 C.F.R. § 201.220(b).

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.[4]

B. Rockwell 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.

Rockwell was properly served with the OIP on August 31, 2021, pursuant to Rule of Practice 141(a)(2)(i),[5] but did not respond. On February 8, 2023, more than 20 days after service, the Commission ordered Rockwell to show cause by March 25, 2023, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[6] The show cause order warned Rockwell 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. Rockwell did not respond to the show cause order.

On February 14, 2022, the Division of Enforcement filed a motion requesting that the Commission find Rockwell in default and bar him 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 from the civil action against Rockwell, including the indictment, change-of-plea hearing minutes and transcript, guilty plea acceptance, and judgment. Rockwell did not respond to the Division's motion.

II. Analysis

A. We deem Rockwell 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."[7] Because Rockwell has failed to answer or to respond to the Division's motion or the show cause order, we find it appropriate to deem him to be in default and 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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4 *See* Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

5 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by sending the OIP to the individual by USPS express mail and obtaining confirmation of receipt).

6 *David Aaron Rockwell*, Exchange Act Release No. 96841, 2023 WL 1819103 (Feb. 8, 2023).

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 that barring Rockwell 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 violating the federal wire fraud statute or of a felony or misdemeanor involving the fraudulent conversion or misappropriation of funds; (2) the person was associated with a broker or dealer at the time of the alleged 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 the securities industry 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 violating the federal wire fraud statute or of a felony or misdemeanor involving the fraudulent conversion or misappropriation of funds; (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.[9]

The record establishes the first two of these elements under each statute. Rockwell was convicted of violating the federal wire fraud statute within the applicable period.[10] Rockwell's wire fraud and bank fraud convictions (which fell within the applicable period) also involved the fraudulent conversion and misappropriation of funds. The indictment to which Rockwell pleaded guilty stated, as to all the charges, that he "fraudulently converted and misappropriated monies belonging to his clients and their beneficiaries, for his own purposes" and he "misappropriated and converted . . . approximately $700,000 belonging to TriState Capital Bank."

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[8] 15 U.S.C. § 78*o*(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78o(b)(4)); *see also id.* § 78*o*(b)(4)(B)(iii) (discussing convictions for a felony or misdemeanor involving the fraudulent conversion or misappropriation of funds), (b)(4)(B)(iv) (discussing convictions for violating 18 U.S.C. § 1343).

[9] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)); *see also id.* § 80b-3(e)(2)(C) (involving the fraudulent conversion or misappropriation of funds), (e)(2)(D) (discussing convictions for violating 18 U.S.C. § 1343).

[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) (holding 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), *pet. 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) (holding that "when there has been a verdict or plea of guilt or a plea of *nolo contendere* accepted by the court, 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").

Rockwell was also associated with a broker-dealer and an investment adviser at the time of his misconduct between October 2017 and December 2018. Specifically, the allegations of the OIP deemed true establish that during that period, he was associated with two dually-registered broker-dealer and investment adviser firms.[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 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.[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 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. Rockwell's misconduct was egregious and recurrent. The OIP's allegations, which we deem true, and Rockwell's admissions during his guilty plea established that, over more than one year, Rockwell misappropriated more than $1,000,000 from a bank and from his clients, including by submitting loan applications with his clients' forged signatures and pledging their assets as collateral.

Rockwell also acted with a high degree of scienter.[15] The federal wire fraud and bank fraud statutes to which Rockwell pleaded guilty both require a specific intent to defraud.[16]

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[11] Pursuant to Rule of Practice 323, we take official notice of Rockwell's BrokerCheck report and his entry in the Commission's Investment Adviser Public Disclosure records, which reflect that he was associated with Cetera Advisor Networks LLC between December 2015 and November 2018 and with World Choice Securities, Inc. between an unspecified date and June 2019. *See* 17 C.F.R. § 201.323 (permitting the Commission to take official notice of "any material fact which might be judicially noticed by a district court of the United States" and "any matter in the public official records of the Commission"); https://brokercheck.finra.org/individual/summary/4236377; https://adviserinfo.sec.gov/individual/summary/4236377; *see also Roman Sledziejowski*, Exchange Act Release No. 97485, 2023 WL 3433408, at *4 n.29 (May 11, 2023) (taking official notice of BrokerCheck records); *cf. Action Indus., Inc.*, Exchange Act Release No. 99836, 2024 WL 1257325, at *2 n.9 (Mar. 22, 2024) (taking official notice of EDGAR filing).

[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 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).

[16] *See* 18 U.S.C. §§ 1343, 1344; *see also Charles K. Topping*, Exchange Act Release No. 98700, 2023 WL 6537830, at *3 & n.16 (Oct. 6, 2023) (acknowledging that wire fraud

Indeed, the indictment to which Rockwell pleaded guilty charged that he acted "knowingly and with intent to defraud" in committing both wire fraud and bank fraud. And Rockwell admitted at his change-of-plea hearing that he acted with the intent to defraud.

Because Rockwell failed to answer the OIP or respond to the Division's motion or the show cause order, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. It also appears that Rockwell's occupation presents opportunities for future violations because he was associated with a broker-dealer and an investment adviser during the period of his misconduct, he offers no assurances of his future plans, and, absent a bar, he would have the opportunity to participate in the securities industry and commit further violations.[17]

These concerns are not diminished by a bar that FINRA imposed on Rockwell on February 25, 2020, which prohibits Rockwell from associating with any FINRA member.[18] If we declined to impose a bar, Rockwell would still be able to reenter the securities industry as an investment adviser.[19] Although Rockwell is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.[20] And although Rockwell's guilty plea may evidence some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses a risk to the investing public.[21]

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

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conviction under 18 U.S.C. § 1343 requires specific intent); *Jose G. Ramirez, Jr.*, Exchange Act Release No. 96440, 2022 WL 17401566, at *3 & n.14 (Dec. 2, 2022) (acknowledging that bank fraud conviction under 18 U.S.C. § 1344 requires specific intent).

17 *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).

18 *See* BrokerCheck Report for David Aaron Rockwell, https://brokercheck.finra.org/individual/summary/4236377; *see also supra* n.11.

19 *See Bruce C. Worthington*, Exchange Act Release No. 98789, 2023 WL 7039955, at *4 & n.27 (Oct. 24, 2023).

20 *See Kimm Hannan*, Advisers Act Release No. 5906, 2021 WL 5161855, *3 (Nov. 5, 2021) (citing *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (finding that "there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again")).

21 *See Roman Sledziejowski*, Exchange Act Release No. 97485, 2023 WL 3433408, at *4 & n. 28 (May 11, 2023) (citing *James S. Tagliaferri*, Securities Act Release No. 10308, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility")).

propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that Rockwell is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[22] Rockwell defrauded a bank and his clients by misappropriating more than $1,000,000 and using at least $717,000 for his own benefit. Given that Rockwell has defaulted in this proceeding, he has not opposed the imposition of any associational bar or a bar from participating in an offering of penny stock. Because Rockwell poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.[23]

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

[23] *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

DAVID AARON ROCKWELL

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that David Aaron Rockwell 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 David Aaron Rockwell 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