

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 100231 / May 28, 2024

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6614 / May 28, 2024

Admin. Proc. File No. 3-20091

In the Matter of  
  
CASIMER ANTHONY POLANCHEK

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

**Injunction**

Respondent was permanently enjoined from violations of Sections 5(a) and 5(c) of the Securities Act of 1933 and Section 15(a) of the Securities Exchange Act of 1934. *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:

*Charles E. Canter* and *Gary Y. Leung* for the Division of Enforcement.

On September 28, 2020, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Casimer Anthony Polanchek pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> We now find Polanchek 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 the proceeding against Polanchek.

The OIP alleged that, from February 2008 through May 2013, Polanchek raised money in securities offerings by Arizona Investment Center (“AIC”). According to the OIP, Polanchek controlled Pangaea Investment Group, LLC, which owned AIC. During that time, the OIP alleged, Polanchek was not registered with the Commission in any capacity.

The OIP further alleged that, on March 5, 2020, in a civil action the Commission brought against Polanchek, a federal district court permanently enjoined him from future violations of Section 5(a) and 5(c) of the Securities Act of 1933 and Section 15(a) of the Exchange Act.<sup>2</sup> According to the district court, Polanchek and other defendants in the civil action, through AIC, “engaged in a fraudulent unregistered securities offering in which they promoted and sold \$18 million high-yield promissory notes, claiming that funds raised through the sale of the notes would be used to acquire and develop beachfront property in Mexico, operate recycling facilities, and purchase foreclosed residential properties for later resale at a profit.”<sup>3</sup> However, AIC misappropriated investor funds and made Ponzi-like payments. Polanchek “market[ed]” AIC’s securities offerings to investors through general solicitations and investor presentations, receiving “at least \$400,000 in referral compensation” in connection with the sale of the promissory notes.<sup>4</sup>

In granting the Division’s motion for summary judgment in the civil action, the district court found that Polanchek (i) violated Exchange Act Section 15(a) by “acting as a broker when

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<sup>1</sup> *Casimer Anthony Polanchek*, Exchange Act Release No. 90030, 2020 WL 5766750 (Sept. 28, 2020).

<sup>2</sup> The Division of Enforcement notes in its motion for default that the OIP incorrectly alleged that the district court also enjoined Polanchek from future violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5 thereunder. We find no prejudice in this error. While the Commission initially asserted claims against Polanchek for violations of these provisions in the underlying civil action, it did not seek summary judgement on these claims. And this decision is not based on such allegations.

<sup>3</sup> *SEC v. Mogler et al.*, No. CV-15-0181-PHX-SPL, 2020 WL 1065865, at \*1 (D. Ariz. Mar. 5, 2020).

<sup>4</sup> *See id.* at \*9.

he participated in the fraudulent scheme, receiving several hundred thousand dollars in transaction-based compensation,” and (ii) violated Securities Action Section 5 by “conspir[ing] to offer and sell securities, [when] no registration statement was effective at the time of such sales or offers.”<sup>5</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 Polanchek to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).<sup>6</sup> The OIP informed Polanchek that if he failed to answer, he may be deemed in default, the 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>7</sup>

**B. Polanchek 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 entry of default and sanctions.**

Polanchek was properly served with the OIP on December 19, 2021, pursuant to Rule of Practice 141(a)(2)(i),<sup>8</sup> but did not answer it. On February 8, 2022, more than 20 days after service, the Commission ordered Polanchek to show cause by February 22, 2022, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.<sup>9</sup> The show cause order warned Polanchek that, if the Commission found him to be 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 Polanchek failed to answer the OIP or respond to the order to show cause, the Division filed a motion requesting that the Commission find Polanchek in default and bar him from associating in the securities industry and from participating in an offering of penny stock. The Division supported its motion with the allegations of the OIP and with filings from the

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<sup>5</sup> *Id.* at \*10.

<sup>6</sup> 17 C.F.R. § 201.220(b).

<sup>7</sup> *See* Rule of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

<sup>8</sup> 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by “delivering a copy of the order instituting proceedings to the individual”).

<sup>9</sup> *Casimer Anthony Polanchek*, Exchange Act Release No. 94188, 2022 WL 393051 (Feb. 8, 2022).

underlying civil action and a criminal action against Polanchek,<sup>10</sup> including the civil complaint, the court's order granting summary judgement in the civil case, the criminal indictment, Polanchek's plea agreement, and the judgment of conviction.

After the Division filed its motion for default, Polanchek filed, without explanation, a copy of the judgement entered against him in the 2017 criminal proceeding. On July 5, 2022, the Commission filed an order noting that the copy of the judgement did not constitute an answer to the OIP or response to the show cause order.<sup>11</sup> The Commission therefore directed Polanchek to file an answer consistent with the Rules of Practice. But Polanchek did not subsequently file an answer, respond to the Division's motion, or otherwise participate further in this proceeding.

## II. Analysis

### A. We deem Polanchek 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>12</sup> Because Polanchek has failed to properly 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.<sup>13</sup> 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>10</sup> In 2017, Polanchek pleaded guilty in federal district court to violating 18 U.S.C. § 1508 by knowingly and willfully listening to, observing, and attempting to listen to and observe, a federal grand jury proceeding relating to the conduct alleged in the Commission's civil complaint. After accepting Polanchek's guilty plea, the district court sentenced him to time served. We do not rely on Polanchek's criminal conviction as a basis for our decision in this proceeding.

<sup>11</sup> *Casimer Anthony Polanchek*, Exchange Act Release No. 95199, 2022 WL 2643541 (Jul. 5, 2022).

<sup>12</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)).

<sup>13</sup> *Cf. Sonya D. Camarco*, Exchange Act Release No. 99148, 2023 WL 8613941 (Dec. 12, 2023) (finding a respondent in default who submitted a letter to the Division stating she was unable to prepare a response to the OIP, but did not otherwise participate in the proceeding).

sanctions. We also give preclusive effect to the district court’s summary judgment findings supporting the injunction.<sup>14</sup>

**B. We find associational and penny stock bars 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 any offering of a penny stock 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 activities, or in connection with the purchase or sale of any security; (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.<sup>15</sup>

The record establishes the first two of these elements. Polanchek was enjoined from violating Securities Act Section 5 and Exchange Act Section 15(a), which concern conduct in connection with the purchase or sale of any security.<sup>16</sup> And the injunction from violating Exchange Act Section 15(a) concerns conduct in connection with broker activities.

The district court in the civil action also found that Polanchek was acting as an unregistered broker at the time of the misconduct, noting that he received “several hundred thousand dollars in transaction-based compensation” through the fraudulent scheme.<sup>17</sup> And by acting as an unregistered broker at the time of his misconduct, Polanchek was therefore associated with a broker.<sup>18</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 his conduct, and the

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<sup>14</sup> See *Mark Morrow*, Exchange Act Release No. 90472, 2020 WL 6867614, at \*3 (Nov. 20, 2020); see also *Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at \*4 (June 17, 2011) (finding that “a respondent in a follow-on administrative proceeding may not challenge the findings made by the court in the underlying [injunctive] proceeding”).

<sup>15</sup> 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78o(b)(4)).

<sup>16</sup> 15 U.S.C. §77e (prohibiting generally the offer and sale of unregistered securities), *id* § 78o(a) (requiring broker registration in order to “effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security”).

<sup>17</sup> *Mogler*, 2020 WL 1065865, at \*10.

<sup>18</sup> See *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at \*3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a “person associated with a broker” in Exchange Act Section 3(a)(18)).

likelihood that the respondent's occupation will present opportunities for future violations.<sup>19</sup> Our public interest inquiry is flexible, and no one factor is dispositive.<sup>20</sup> The remedy is intended to protect the trading public from further harm, not to punish the respondent.<sup>21</sup>

We have weighed all of these factors and find associational and penny stock bars are warranted to protect the investing public. Polanchek's conduct was egregious and recurrent. The district court in the civil action found that Polanchek acted an unregistered broker as part of a five-year fraudulent scheme, which raised over 18 million dollars from over 200 investors through the sale of unregistered securities.<sup>22</sup> And Polanchek personally benefited from the scheme, receiving hundreds of the thousands of dollars "in referral compensation for marketing the fraudulent offerings."<sup>23</sup> Polanchek also acted with intent, as the district court found that he "likely knew or was reckless in not knowing that he was not registered as a broker, but was participating in the offer and sale of securities."<sup>24</sup>

Because Polanchek did not properly answer the OIP, or respond to the order to show cause or the Division's motion for entry of default and sanctions, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. It further appears that Polanchek's occupation presents opportunities for future violations because he acted as an unregistered broker during the five-year period of his misconduct, and he offers no evidence of his current occupation or assurances about his future plans.<sup>25</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 Polanchek is unfit to participate in the securities industry and that his

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

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

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

<sup>22</sup> *See Steve G. Blasko*, Exchange Act Release No. 97779, 2023 WL 4126711 (June 21, 2023) (finding egregiousness where underlying civil action established unregistered sales of securities to over 40 investors); *see also supra* note 11 and accompanying text (noting that we give preclusive effect to the district court's summary judgment findings).

<sup>23</sup> *Mogler*, 2020 WL 1065865, at \*9.

<sup>24</sup> *Id.* at \*11; *see also SEC v. Fife*, 311 F.3d 1, 9-10 (1st Cir. 2002) (explaining that scienter may be established by a showing of knowledge or recklessness with respect to the risk).

<sup>25</sup> *See Price*, 2017 WL 405511, at \*3 (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).

participation in it in any capacity would pose a risk to investors.<sup>26</sup> Polanchek's misconduct involved soliciting investors to purchase securities in unregistered offerings that were part of a fraudulent scheme from which he personally benefitted. And given that Polanchek has defaulted in this proceeding, he has not opposed the imposition of any particular associational bar or a bar from participating in an offering of penny stock. We conclude that it is in the public interest to bar Polanchek 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>27</sup>

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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<sup>26</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>27</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. 100231 / May 28, 2024

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6614 / May 28, 2024

Admin. Proc. File No. 3-20091

In the Matter of  
  
CASIMER ANTHONY POLANCHEK

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Casimer Anthony Polanchek 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 Casimer Anthony Polanchek 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