SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 100322 / June 12, 2024

Admin. Proc. File No. 3-20305

In the Matter of

CLINTON MAURICE TUCKER II

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a)(1) 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:

Duane K. Thompson for the Division of Enforcement.

On May 13, 2021, we instituted an administrative proceeding against Clinton Maurice Tucker II pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] We now find Tucker 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 Tucker.

The Order Instituting Proceedings ("OIP") alleged that from at least 2014 to 2019, Tucker was engaged in the business of effecting transactions in, or inducing or attempting to induce the purchase and sale of, securities and received transaction-based compensation. During this time, the OIP alleged, Tucker was neither registered with the Commission as either a broker or a dealer, nor was he associated with a broker or dealer registered with the Commission.

The OIP further alleged that, in November 2020, in a civil enforcement action brought by the Commission, a federal district court entered a final judgement against Tucker permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 15(a)(1) of the Exchange Act.[2] According to the OIP, the Commission's complaint in the civil action alleged that Tucker misappropriated investor funds and that he was otherwise engaged in conduct that operated as a fraud and deceit upon investors.

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 Tucker to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[3] The OIP informed Tucker 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.[4]

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1 *Clinton Maurice Tucker II*, Exchange Act Release No. 91888, 2021 WL 1931209 (May 13, 2021).

2 *SEC v. Tucker*, No. 8:20-cv-00875 (C.D. Cal. Nov. 16, 2020) (granting motion for default judgment and imposing injunction).

3 17 C.F.R. § 201.220(b).

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

B. Tucker 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 default and sanctions.

Tucker was properly served with the OIP on June 16, 2021, pursuant to Rule of Practice 141(a)(2)(i),[5] but did not respond. On August 10, 2021, more than 20 days after service, the Division filed a motion requesting that the Commission find Tucker 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 the Complaint and Final Judgement in Tucker's civil proceeding. Tucker did not respond to the Division's motion.

On October 25, 2021, the Commission ordered Tucker to show cause by November 8, 2021, 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 Tucker 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.

On February 9, 2022, the Commission issued an order requesting that the Division provide additional briefing and materials.[7] On March 18, 2022, the Division filed a supplemental brief supporting entry of default judgement. In support of its motion, the Division filed copies of declarations from ten individuals, as well as an excerpt of sworn testimony from a Commission investigation. Tucker did not respond to the Division's supplemental brief.

On September 5, 2023, the Commission issued a renewed order to show cause.[8] The show cause order again warned Tucker 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. Tucker did not respond to the renewed order to show cause.

II. Analysis

A. We hold Tucker 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

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[5] 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").

[6] *Clinton Maurice Tucker II*, Exchange Act Release No. 93417, 2021 WL 4974904 (Oct. 25, 2021).

[7] *Clinton Maurice Tucker II*, Exchange Act Release No. 94208, 2022 WL 394644 (Feb. 9, 2022).

[8] *Clinton Maurice Tucker II*, Exchange Act Release No. 98286, 2023 WL 5716285 (Sept. 5, 2023).

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."[9] Because Tucker 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.[10] 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.

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.[11]

The record establishes the first two of these elements. Tucker was enjoined from violating Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Exchange Act Section 15(a)(1). Thus, Tucker was enjoined both for conduct in connection with the purchase or sale of any security and for conduct in connection with broker activities.[12]

Tucker also acted as an unregistered broker at the time of the misconduct. As alleged in the OIP, Tucker, without being registered, engaged in the business of effecting transactions in

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[9] 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)).

[10] We do not deem true the allegations related to fraud in the OIP, which merely state what was alleged in the Commission's civil action, rather than independently alleging that Tucker engaged in particular conduct. *Tucker*, 2022 WL 394644, at *1. Moreover, because the district court's injunction was entered by default, the court's order does not have preclusive effect as to facts alleged in the Commission's complaint. *See Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *4 (Feb. 4, 2010); *Jaswant Gill*, Advisers Act Release No. 5858, 2021 WL 4131427, at *2 n.7 (Sept. 10, 2021).

[11] 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).

[12] *See* 15 U.S.C. § 77q(a) (prohibiting fraud "in the offer or sale of any securities"); *id.* § 78j(b) (applying to conduct "in connection with the purchase or sale of any security"); 17 C.F.R. § 240.10b-5 (same); 15 U.S.C. §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").

securities and received transaction-based compensation.[13] The evidence submitted by the Division also shows that Tucker acted as a broker by, among other things, holding himself out as a broker to potential investors.[14] By acting as an unregistered broker at the time of his misconduct, Tucker was therefore associated with a broker.[15]

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 likelihood that the respondent's occupation will present opportunities for future violations.[16] Our public interest inquiry is flexible, and no one factor is dispositive.[17] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[18]

We have weighed all of these factors and find associational and penny stock bars are warranted to protect the investing public. Tucker's conduct was egregious and recurrent. The evidence submitted by the Division shows that Tucker participated in a matched trading scheme through his work as a sales agent in a boiler room operation. Specifically, Tucker was paid by the shareholders of illiquid microcap securities to cold call prospective investors and induce them buy the microcap securities in quantities and at prices set by the shareholders under the guise that such transactions were open-market trades and without disclosing that he was being paid by the shareholders. Tucker received approximately $600,000 in commissions for facilitating such transactions. Matched trading schemes have long been recognized as a form of

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13 *See* 15 U.S.C. § 78c(a)(4)(A) (defining a "broker" as "any person engaged in the business of effecting transactions in securities for the accounts of others").

14 *See James S. Tagliaferri*, Advisers Act Release No. 4650, 2017 WL 632134, at *4 (Feb. 15, 2017) (holding that activities indicative of being a broker include "holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers" and, in particular, "[t]ransaction-based compensation, or commissions").

15 *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)).

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

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

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

fraud prohibited by Section 10(b) and Rule 10b-5.[19] In addition, Tucker misappropriated at least $165,000 from individual investors by convincing them to send him money for purported investment opportunities, which he instead used to pay for personal expenses. Many of those whom Tucker convinced to invest with him were elderly. And Tucker engaged in such conduct repeatedly over the course of at least four years.

Tucker also acted with a high degree of scienter.[20] In the matched trading scheme, Tucker deliberately deceived investors about his connection to the selling shareholders, leading investors to believe that they were making standard open-market trades. He also used aliases to deceive investors and falsely told at least one investor that he did not receive commissions. In addition, he intentionally deceived investors by telling them that he was making investments on their behalf when he was actually misappropriating their money for his personal use.

Because Tucker 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. It appears that Tucker's occupation presents opportunities for future violations because he acted as a broker during the at least four-year period of his misconduct, and he offers no evidence of his current occupation or assurances about his future plans.[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 propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that Tucker is unfit to participate in the securities industry and that his participation in

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[19] *See Ofirfan Mohammed Amanat*, Exchange Act Rel. No. 54708, 2006 WL 3199181, at *8 & n.35 (citing *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 476-77 (1977)) (imposing an associational bar where respondent engaged in wash and matched trading); *see also Graham v. SEC*, 222 F.3d 994, 1000-01 (D.C. Cir. 2000) (concluding that a matched trading scheme constituted fraud when it involved, *inter alia*, failing to disclose that an individual "was on both sides of the transaction").

[20] *See SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (scienter is an "intent to deceive, manipulate, or defraud").

[21] *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); *cf. Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *41 (May 29, 2015) (explaining that respondent offered "no assurance against future violations other than to assert that he has left the industry voluntarily, which provides no guarantee that he will not seek to return at some point in the future," and concluding that "[a]bsent a bar, nothing would prevent [respondent] from reentering the industry").

it in any capacity would pose a risk to investors.[22] Tucker's misconduct directly harmed investors and enriched himself, and the fraudulent trading scheme he participated in involved microcap securities, i.e., penny stocks.[23] Given that Tucker 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 Tucker 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.[24]

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 *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).

23 *See* https://www.investor.gov/introduction-investing/investing-basics/glossary/microcap-stock ("The term 'microcap stock' (sometimes referred to as 'penny stock') applies to companies with low or micro market capitalizations.").

24 *Tagliaferri*, 2017 WL 632134, at *6 (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. 100322 / June 12, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6626 / June 12, 2024

Admin. Proc. File No. 3-20305

In the Matter of

CLINTON MAURICE TUCKER II

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Clinton Maurice Tucker II 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 Clinton Maurice Tucker II 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