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ADMINISTRATIVE PROCEEDING
FILE NO. 3 - 18791



**UNITED STATES OF AMERICA**
**before the**
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of**

**TRAVIS A. BRANCH,**

**Respondents.**

# DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS

August 13, 2019

Division of Enforcement
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### Cases

Pursuant to the Order Requesting Additional Written Submissions, Securities and Exchange Act of 1934 ("Exchange Act") Rel. No. 86285 (July 2, 2019), the Division of Enforcement ("Division") hereby submits this motion for default and sanctions.

## I. INTRODUCTION

This is a follow-on administrative proceeding based on entry of a permanent injunction against Travis A. Branch ("Respondent"). Respondent was properly served with the Order Instituting Proceedings ("OIP") on September 27, 2018, pursuant to Rule 141(a)(2)(i) of the Commission's Rules of Practice, and was originally required to file an answer within 20 days of service of the OIP. Respondent has not filed an answer and has twice failed to adequately explain why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceedings. Respondent is thus in default and the Division hereby moves, pursuant to Rule 155(a)(2) and 220(f) of the Securities and Exchange Commission ("SEC")'s Rules of Practice, for a finding that Respondent is in default and for the imposition of remedial sanctions. The Division specifically requests that Respondent be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock. The Divisions submits that, in accordance with Section 15(b)(6) of the Exchange Act, such a sanction is in the public interest.

## II. BACKGROUND

### A. Underlying Action

On August 7, 2018, an amended final judgment was entered against Respondent, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the matter of *SEC v. William Betta, Jr., Travis A. Branch, James J. Caprio, Troy L. Gagliardi, Russell M. Kautz, Barry M. Kornfeld, Shane A. McCann, Clifford A. Popper, Alfred B. Rubin, and Steven I. Shrago* (collectively, "defendants"), Civil Action Number 9:09-

cv-80803-KAM, filed in the United States District Court for the Southern District of Florida. *See* Declaration of Douglas M. Miller ("Miller Decl."), ¶ 4, Ex. 1.

The Commission's complaint was filed in May 2009 and alleged, in substance, that between 2004 and 2007, defendants, formerly registered representatives at Brookstreet Securities Corp. ("Brookstreet"), made false and misleading statements in connection with the offer, sale, or purchase of certain types of Collateralized Mortgage Obligations ("CMOs"). *See* Miller Decl. ¶ 5, Ex. 2. According to the complaint, defendants told their customers that the CMOs in which they would invest were safe, secure, liquid investments that were suitable for retirees, retirement accounts, and investors with conservative investment goals. *Id.* at 1. Contrary to what they told customers, however, defendants invested in risky types of CMOs that: (1) were not all guaranteed by the United States government; (2) jeopardized customers' yield and principal; (3) were largely illiquid; and (4) were only suitable for sophisticated investors with a high-risk investment profile. *Id.* Defendants heavily margined customers' accounts (up to a ten to one margin to equity ratio), making the CMOs in which they invested even more sensitive to changes in interest rates and downturns in the CMO market. *Id.* at 2.

Defendants' fraudulent misrepresentations and omissions attracted more than 750 investor accounts with CMO investments of more than $175 million. *Id.* Beginning in early 2007, the CMO market began to fail, resulting in significant losses for defendants' customers and margin calls for those customers on margin. *Id.* By June 2007, the margin calls had snowballed to the point where Brookstreet failed to meet its net capital requirements, causing the company to cease operations. Many of defendants' CMO customers lost their savings, their homes, and/or their ability to retire or stay retired. *Id.* In addition, many margined CMO customers ended up owing Brookstreet's clearing firm hundreds of thousands of dollars. *Id.*

With respect to Respondent and his conduct, the complaint alleged that he worked as a registered representative in Brookstreet's Honolulu office from February 1995 to June 2007, where he held Series 6, 7, 22, 24, and 63 securities licenses. *Id.* at 3. The complaint alleged that Respondent misrepresented to customers that CMOs were backed by the United States

government. *Id.* at 10. For example, it alleged that in February and May 2005, and October 2006, Branch represented to customers that CMOs were guaranteed by the federal government. *Id.* The complaint further alleged that Respondent misrepresented to customers that CMOs presented low or no risk to principal, telling customers that the safety of principal was guaranteed and that CMOs were safe and appropriate for retirees, retirement accounts, and investors with conservative investment objectives. *Id.* at 12, 15. It also alleged that Respondent represented to a customer that investing in CMOs with a high margin balance was safer than no or a low margin balance because using margin afforded more buying power. *Id.* at 16.

The district court held a four-week bench trial on the claims against Respondent, Betta, Gagliardi, Kautz, McCann, Rubin, and, Steven Shrago, which concluded on November 2, 2011. *See* Miller Decl., ¶ 6, Ex. 3. On March 30, 2018, the district court issued its 134-page findings pursuant to Fed. R. Civ. P. 52, finding that Respondent and Betta were liable for securities fraud and exonerating the remaining five defendants. *Id.* at 1. Specifically, the district court found that the evidence showed Branch had acted severely recklessly when he recommended to two of his clients (a married couple) that they invest in CMOs on margin. *Id.* at 121. The district court found that Respondent knew, based on an email he had received from a colleague, that his clients' investment objectives had to include "speculation" if they were going to invest on margin and yet the clients' had investment objectives of "capital appreciation and trading profits." *Id.* Respondent ignored this and the clients initially invested $150,000 based on Respondent's recommendation and later invested another $100,000. In the end, they were left with a negative balance of $385,000. *Id.*

On August 7, 2018, the district court issued an amended final judgment, permanently restraining Branch and enjoining him from violating, directly or indirectly, Section 10(b) of the Exchange Act. *See* Miller Decl., ¶ 4, Ex. 1. The district court found that Branch was liable for disgorgement of the commissions he earned from the clients whose money he invested on margin against their client profile, together with prejudgment interest. *Id.* at 2. However, the district

court found there was insufficient evidence in the record for it to determine the amount of disgorgement, but retained jurisdiction to conduct further proceedings on this issue.[1] *Id.*

### B. The Institution of this Proceeding, the Service of the OIP and Respondent's Failures to Respond

On September 19, 2018, the Commission issued the OIP pursuant to Section 15(b) of the Exchange Act. See Miller Decl. ¶ 7, Ex. 4. It summarized the allegations in the May 2009 complaint and, based on those allegations, advised Respondent that the OIP was initiated to determine: (1) whether the allegations are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; (2) what, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and (3) what, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act. Id.

On May 10, 2019, the Commission issued an order directing the Division to file a status report concerning service of the OIP on Respondent. See Miller Decl., ¶ 8, Ex. 5. On May 28, 2019, the Division filed a status report evidencing that service of the OIP was made on September 27, 2018, pursuant to Rule 141(a)(2)(i) of the Commission's Rules of Practice, which meant that Respondent's answer was required to be filed within 20 days of service of the OIP. See Miller Decl., ¶ 9, Ex. 6. The Division pointed out that no answer had been filed as of the Commission's May 10, 2019 order. Id.

On May 30, 2019, the Commission issued an order to show cause ("OSC"), ordering Respondent to show cause by June 13, 2019 "why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and

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[1] The district court also exercised its discretion not to impose a civil penalty against Branch. *Id.*

to otherwise defend this proceeding." See Miller Decl., ¶ 10, Ex. 7. The Commission ordered that if Respondent failed to respond to the OSC, the Division could file its motion for default and other relief on or before July 11, 2019. Id.

On June 13, 2019, Respondent faxed a handwritten, one line sentence attached to the last page of the Commission's May 30, 2019 OSC saying, "Please explain in writing what I am being accused of. Please be specific as of dates and actions." See Miller Decl., ¶ 11, Ex. 8. On June 26, 2019, the Division filed a reply to Respondent's email communication with the Commission. The Division argued that Respondent's email failed to "answer" the OIP, failed to adequately respond to the OSC, and was intended solely to delay these proceedings. See Miller Decl., ¶ 12, Ex. 9. Therefore, the Division requested that it still be allowed to file a motion for default and other relief on or before July 11, 2019. Id.

On July 2, 2019, the Commission denied the Division's request to file a motion for default on or before July 11, 2019, finding that Respondent's May 30th email suggested he "may wish to participate in this proceeding." See Miller Decl., ¶ 13, Ex. 10. The Commission gave Respondent until July 16, 2019 to "explain why he should not be deemed to be in default and why this proceeding should not be determined again him." Id. at 3. The Commission warned Respondent – once again – that "failure to make a filing in response to this order may result in [him] being held in default." Id. The Commission ordered that the Division could file a motion for default and other relief by August 13, 2019, if Respondent failed to file a response. Id. Respondent never responded to this order and never filed an answer to the OIP.

## III. ARGUMENT

### A. Respondent Is In Default and the Allegations of the OIP May Be Deemed To Be True

Because Respondent has not responded to the OIP or the Court's July 2, 2019 order, he is

conduct specified in Section 15(b)(4)(C), which provision includes permanent and temporary injunctions against "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security." Here, the district court permanently enjoined Respondent from, violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder "in connection with the purchase or sale of any security."

**c. A Bar Is In The Public Interest**

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) the likelihood that the respondent's occupation will present future opportunities for violations. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 81 (1981); Lonny S. Bernath, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (Apr. 4, 2016) (Steadman factors used to determine whether a bar is in the public interest). The district court made several findings that all weigh in favor of issuing a permanent injunction.

As to whether a permanent bar is appropriate in a follow-on proceeding, precedents hold that, "[v]iolations involving the antifraud provisions of the federal securities laws are especially serious and merit the severest of sanctions." Vinay Kumar Nevatia, Initial Dec. Rel. No. 1021, 2016 WL 3162186, at *5 (June 7, 2016), citing Peter Siris, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013), pet. denied, 773 F.3d 89 (D.C. Cir. 2014); accord Eichler, 2016 WL 4035559, at *6 ("The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions ... Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on

antifraud injunctions in which the Commission issued opinions, and all of the respondents were barred ... ") (internal citations omitted). Moreover, "[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." Michael V. Lipkin and Joshua Shainberg, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), notice of finality, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

In this case, Respondent's violations were egregious, extremely reckless and recurrent. As previously noted, in the underlying district court action, the district court found that Respondent acted severely recklessly when he recommended to his clients that they invest on margin in CMOs when he knew that it went against their investment objectives. This led the district court to find that Respondent acted with scienter and that he made highly unreasonable omissions or misrepresentations to his clients that involved an extreme departure from the standards of ordinary care, and mislead investors. It was not difficult for the district court to make these findings given the clear evidence that Respondent had received the email saying that his clients were "unsuitable" to invest in CMOs on margin because of their investment objectives, which did not include "speculation." The district court found that Respondent viewed this as "ridiculous" and "nonsense" and did not even inform his clients that their investment objectives had to be changed if they wanted to invest on margin. See Miller Decl., ¶ 6, Ex. 3, p. 119.

The district also made findings that showed Respondent's fraudulent conduct was not an isolated incident. The district court found that Respondent received the email explaining which clients were suitable to invest on margin in August 2006, before his clients had invested in the CMO Program. Respondent made no mention of the email to his clients, so they initially

invested $150,000 in the fall of 2006. Then, in March 2007, Respondent's clients invested another $100,000 and again Respondent made no mention of the email he had received about who was suitable to make that investment. See Miller Decl., ¶ 6, Ex. 3, pp. 119-121. For all these reasons, the egregiousness and extent of Respondents' conduct clearly favors a permanent bar under Steadman.

The remaining Steadman factors also favor a permanent bar in this matter. Respondent has provided no assurance against future violations and lacks any apparent recognition of his wrongful conduct. All Respondent has done is repeatedly ignore the Commission's orders and filing deadlines in what can only be described as an attempt to delay these proceedings. And instead of recognizing the wrongfulness of his conduct, Respondent has gone in the total opposite direction, pretending he does not even know why he is a party to these proceedings and asking the Commission to "Please explain in writing what I am being accused of. Please be specific as of dates and actions." The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. Jonathan D. Havey, CPA, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); Siming Yang, Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow on proceeding to civil injunction, that, "[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct"); Delsa U. Thomas and The D. Christopher Capital Management Group, LLC, Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181, at 24 (Nov. 4, 2014) (imposing permanent bar and revoking adviser's registration on summary disposition following civil fraud injunction, noting that "Respondents do not recognize the wrongful nature of their conduct.

Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission's witnesses of bias or lying"); Terrence O'Donnell, Initial Dec. Rel. No. 334, 2007 SEC LEXIS 2148, at *14 (Sept. 20, 2007) (weighing in favor of bar respondent's "protest" that the securities laws were not sufficiently clear, finding this "evidence that [respondent] still seeks to minimize his misconduct"); Steadman, 603 F.2d at 1140.

The final Steadman factor considers "the likelihood that the respondent's occupation will present future opportunities for violations." Here, because Respondent has refused to participate meaningfully in these proceedings, there is no clear evidence in the record as to his current occupation or whether it will present future opportunities for violation. The Division has uncovered some evidence that Respondent is continuing to offer investment advice. See Miller Decl., ¶ 14, Ex. 11. Moreover, the Court should not reward Respondent for his failure to meaningfully participate in these proceedings and should find that the imposition of the bar is supported by all of the other Steadman factors and thus in the public's interest.

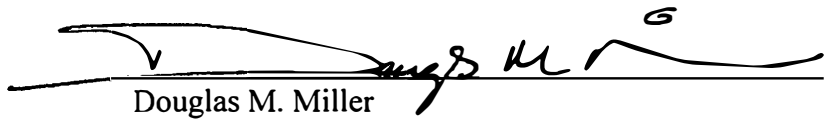
## IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that Respondent be barred from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

Dated: August 13, 2019

Respectfully submitted,

DIVISION OF ENFORCEMENT



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**File No. 3-18791**

**In the Matter of**

Travis A. Branch

**Respondent.**

**CERTIFICATE OF SERVICE**

Douglas Miller, an attorney, hereby certifies that on August 13, 2019, caused a true and correct copy of **DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS** to be served on the following via UPS Next Day Air:

Mr. Travis A. Branch, *pro se*
[redacted]
Kaneohe, Hawaii [redacted]

Dated: August 13, 2019

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