

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20796

<p>In the Matter of</p> <p style="text-align:center">SCOTT ALLEN FRIES,</p> <p>Respondent.</p>

DIVISION OF ENFORCEMENT'S
MOTION FOR DEFAULT JUDGMENT,
SANCTIONS AND OTHER RELIEF

Pursuant to Rules 155(a) and 220(f) of the Commission's Rules of Practice, the Division of Enforcement respectfully requests that the Commission enter a default judgment and impose appropriate sanctions against Respondent Scott Allen Fries ("Respondent" or "Fries"). More specifically, the Division requests that the Commission bar Fries from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical ratings organization ("NRSRO").

I. Procedural History

On March 14, 2022, the Commission issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Notice of Hearing ("OIP"). *See* Exchange Act Release No. 94412, Advisers Act Release No. 5978 (March 14, 2022). The OIP alleged that Fries was a registered representative with various brokerage firms from 1992 until 2019, that he was an investment adviser representative from 2014 until 2019, and that he acted as an investment adviser. (*See* OIP at ¶ 1) The OIP also alleged that, between March 2014 and March 2019, Fries defrauded at least ten investors,

including brokerage customers, by raising at least \$458,000 and spent that money on himself. (*Id.* at ¶ 3) Fries also lied to these same investors about the status of their investments, provided them with false account statements purporting to show that their investments were increasing in value, paid off certain investors who discovered their account statement was fake, and lied to his employer about receiving investment funds from brokerage customers. (*Id.*)

As described in the OIP, the Commission filed a civil enforcement action against Fries in the United States District Court for the Southern District of Ohio. (*Id.* at ¶ 2) The Commission's Amended Complaint alleged that Fries violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act. (*See* Exhibit A) The Commission subsequently moved for the entry of a default judgment against Fries, and supported that motion with the Declaration of Keith Constance, an accountant within the Division of Enforcement (*see* Exhibit B). The District Court entered a default judgment against Fries, imposing permanent injunctive relief and other financial remedies, on February 28, 2022. (*See* Exhibit C)

After initiating this administrative proceeding, the Division served Fries with the OIP by certified mail on March 18, 2022. *See* Notice of Filing Regarding Service of Order Instituting Proceeding (December 13, 2022). Fries failed to answer or otherwise defend this proceeding. *See* Status Report Regarding Service of Order Instituting Proceeding (December 13, 2022). The Commission subsequently issued an Order to Show Cause, requiring Fries to explain why he should not be found in default and this proceeding determined against him.¹ *See* Exchange Act Release No. 97336, Advisers Act Release No. 6290 (April 20, 2023). However, Fries has not filed any response.

¹ The Division served Fries with a copy of the Order to Show Cause by U.S. Mail.

II. Factual Background

A. The Allegations and Evidence in District Court

On September 17, 2020, the Commission filed a district court Complaint alleging that Fries violated the securities laws by raising at least \$178,000, from at least seven investors, and spent that money for his own personal benefit. On December 8, 2020, Fries was served at his home with a Summons and a copy of the Complaint. Two weeks later, on December 23, 2020, the Commission filed an Amended Complaint alleging that Fries had raised at least \$458,000, from at least ten investors, and spent that money for his own personal benefit. (Ex. A) The Commission served Fries with copies of the Amended Complaint, by email and UPS delivery, on December 23 and 24, 2020. However, Fries never filed an answer or a responsive pleading to either version of the complaint.²

Fries was a registered representative with various brokerage firms from 1992 until 2019, and he was an investment adviser representative from 2014 until 2019. (See Ex. A at ¶ 9) From October 2014 to July 2019, Fries served approximately forty brokerage customers, most of whom were located in southern Ohio. (*Id.* at ¶ 10) By 2012, Fries had begun soliciting and personally receiving funds from some of his brokerage customers and other individuals. (Ex. B at ¶¶ 8-10) By July 2019, Fries had obtained at least \$559,334.53 from nine individuals and two couples. (See *Id.* at ¶¶ 7-23; Ex. B at ¶ 7) Over the years, Fries repaid only \$131,000 of principal to the investors, while keeping \$428,334.53 for himself. (*Id.*)

² Under Rule of Practice 323, the Commission may take judicial notice of the record in the district court action. See 17 C.F. R. § 201.343; *In re Conrad A. Coggeshall*, Exchange Act Release No. 97474, Advisers Act Release No. 6306, 2023 WL 3433398, at *2 n.6 (May 10, 2023) (relying on Commission filings in the district court docket).

Fries told the investors from whom he obtained funds that he would invest their money in stocks, mutual funds or other securities. (Ex. A at ¶ 12; Ex. B at ¶ 6) He also provided each of these investors with assurances, orally and in writing, that their investments were safe and increasing in value. (Ex. A at ¶¶ 14-15, 19, 21, 24, 28-29, 31-32; Ex. B at ¶ 6) However, Fries did not actually invest any funds on behalf of investors; instead, he misappropriated the investors' funds and spent their money. (See Ex. A at ¶¶ 12, 15-16, 20, 26, 30, 32, 35-37; Ex. B at ¶¶ 6, 14, 16, 18-19, 23) Fries used most of the investors' funds to pay his own personal expenses -- such as mortgage payments, payday loans and credit card bills. (Ex. A at ¶ 12; Ex. B at ¶¶ 14, 19) But he also used some of the investor funds he received to make payments to other investors. (Ex. A at ¶¶ 26, 35, 37; Ex. B at ¶¶ 7, 15-16)

In addition, Fries also lulled the investors by creating false account statements purporting to show that he had deposited the investors' funds into a brokerage account and used the funds to buy securities on their behalf. (Ex. At at ¶¶ 19, 21-22, 29, 31-32; Ex. B at ¶ 6) Additionally, when one of the investors discovered that there was a problem with the investment, Fries made at least one Ponzi-like payment to hide his theft and allow his fraud to continue. (Ex. A at ¶¶ 23-26, 35, 37; Ex. B at ¶¶ 13-15, 16) Finally, Fries lied about what he had done with the money to both the investors and his employer. (Ex. A at ¶¶ 3-4, 12, 39)

B. Fries' Criminal Case and Sentencing

On November 21, 2021, before the district court action was completed, the State of Ohio filed a criminal proceeding against Fries. The criminal proceeding involved many of the same fraudulent actions described in the OIP and alleged by the Commission in the prior district court proceeding. See Status Report Regarding Service of Order Instituting Proceeding (December 13, 2022). Fries initially contested those charges but, on October 17, 2022, he changed his plea to “no

contest.” Fries subsequently was found guilty of 16 felonies under Ohio law, including Misrepresentations in the Sale of Securities, Securities Fraud, and Fraudulent and Deceptive Conduct as an Investment Advisor Representative. (*See* Exhibit D, at 1, 3-4)

On April 12, 2023, at Fries’ sentencing hearing, the Court noted that the criminal conduct at issue was particularly serious because of the age of some of Fries’ victims, his close personal relationship to his victims, the trust they all placed in him, and the fact that Fries’ occupation should have discouraged him from engaging in fraud. (Ex. D at 1-2) The Court also found that:

The Defendant held himself out as an investment advisor but with every victim, he only deposited the funds into his personal accounts. There was no investment made for any victim. Additionally, when victims asked for verification of the investment and its progress, the Defendant intentionally fabricated false investment statements showing accounts that did not exist...

The fraudulent activity took place over a period of five years. This was not an isolated incident but a calculated scheme on convincing those who trusted him to invest, where the money was then spent by the Defendant on his personal expenses, including his mortgage, vehicle payments and daily expenses such as food and gas. The Defendant also promised to pay every victim in full, yet as of the sentencing date, which was over 16 months after the filing of the original indictment, despite the Defendant working 12-plus hour days to earn extra income for the payment, none of the victims had been paid any money.

(*Id.* at 2) The Court also noted that, as of the date of his sentencing, Fries had made no effort to comply with the SEC’s district court February 2022 judgment. (*Id.*)

Based on the foregoing facts, the Court sentenced Fries to serve three years in prison, plus up to five years’ probation, and to pay restitution and costs. (*Id.* at 3-5)

III. Argument

Under Section 15(b) of the Exchange Act, and Sections 203(e) and (f) of the Advisers Act, the Commission may impose remedial sanctions on a person associated with a broker, dealer, or investment adviser, consistent with the public interest, if the associated person has

been permanently enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities. *See* 15 U.S.C. §§ 78o(b), 80b-3(e) and (f).

A. Fries Is In Default, and the Factual Allegations of the OIP Should Be Deemed True.

Under Rule 155(a) of the Commission’s Rules of Practice, “a party to a proceeding may be deemed to be in default and the Commission . . . may 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, if that party fails . . . to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . .”³ *See* 17 C.F.R. § 201.155(a). Fries was served with the OIP in March 2022, but has not appeared or filed response in this proceeding.

Accordingly, Fries is in default and all of the factual allegations against him in the OIP should be deemed true. *See In re Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *2 (March 29, 2023) (deeming allegations of OIP as true against respondent in default). Here, the allegations of the OIP establish that: (1) Fries was employed by a broker dealer as a registered representative and an investment adviser representative; (2) Fries was enjoined by the U.S. District Court for the Southern District of Ohio from future violations of anti-fraud provisions of Securities Act, the Exchange Act and the Advisers Act; and (3) Fries raised more than \$450,000 from investors, used that money for himself, and engaged in deceptive acts including creating false account statements, paying off investors and lying to his employer. *See* OIP, at ¶¶ 1-3.

³ The OIP expressly advised Fries of this possibility. *See* OIP at IV (“If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true...”).

B. The Division Has Submitted Evidence of Fries' Misconduct.

The Division acknowledges that a default judgment in a district court generally lacks preclusive effect because the allegations and underlying merits of the case were not litigated. *See In re Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *2 (April 23, 2015) (remanding for further evidentiary proceedings). However, the Commission may consider other evidence supporting the allegations of the OIP, including findings in a related criminal case involving the same respondent. *See In re Don Warner Reinhard*, Exchange Act Release No. 63720, Advisers Act Release No. 3139, 2011 WL 121451, at *3-4 (relying on plea agreement and related documents). Such evidence may also include documents from the Division's investigation. *See In re John Sherman Jumper*, Exchange Act Release No. 96407, Advisers Act Release No. 6193, 2022 WL 1736044, at *2 (Nov 30, 2022) (relying on investigative transcript, documents prepared by the respondent and brokerage statements).

Here, the Division has submitted the same evidentiary declaration the District Court relied upon in granting the Commission a default judgment. The Constance declaration establishes that since 2012, Fries solicited nearly \$560,000 from his brokerage customers and others, repaying only \$131,000, while keeping more than \$428,000 for himself. (Ex. B at ¶ 7) Fries told the investors from whom he obtained funds that he would invest their money in stocks, mutual funds or other securities. (*Id.* at ¶ 6) He also provided each of these investors with assurances, orally and in writing, that their investments were safe and increasing in value. (*Id.*) However, Fries did not actually invest any funds on behalf of investors; instead, he spent their contributions on himself. (*Id.* at ¶¶ 6, 14, 16, 18-19, 23) Finally, Fries made at least one Ponzi-like payment to hide his theft and allow his fraud to continue. (*Id.* at ¶¶ 13-15, 16)

C. The Commission Also May Rely on the Findings Against Fries in the Criminal Case.

Although this administrative proceeding was initiated on the basis of the district court's injunction against Fries, both the Exchange Act and the Advisers Act *also* allow the Commission to bar a person from the securities industry based on a criminal conviction involving the purchase or sale of a security. *See* 15 U.S.C. §§ 78o(b)(6), 80a-9(b). The Commission may rely on the facts established in Fries' criminal prosecution because the doctrine of collateral estoppel prevents him from attempting to re-litigate any of those findings. *See In re Allan Michael Roth*, Exchange Act Release No. 90343, 2020 WL 6488283, at *3 (Nov. 4, 2020); *In re James S. Tagliaferri*, Exchange Act Release No. 80047, Advisers Act Release No. 4650, 2017 WL 632134, at *3 (Feb. 15, 2017).

The Ohio criminal court found that Fries' conduct was particularly serious, because of the age of some of his victims, his close personal relationship to them and the trust they placed in him, and Fries' occupation. (Ex. D at 1-2) The court also found that Fries held himself out as an investment advisor but deposited the funds from every victim into his personal accounts. Additionally, Fries fabricated false investment statements and provided them to his victims showing accounts that did not exist. Finally, Fries' fraudulent activity took place over five years. It was not an isolated incident but a calculated scheme, benefitting only himself. (*Id.* at 2)

D. Fries Should Be Subject an Industry Bar.

This case meets all the requirements for the imposition of remedial sanctions against Fries. Further, the public interest would be served, and investors protected, if Fries were barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

1. Section 15(b) of the Exchange Act

Section 15(b) of the Exchange Act authorizes the Commission to impose an industry bar against a person who: (1) at the time of the misconduct was associated with a broker; (2) has been made subject to an injunction; (3) and a bar is in the public interest. Each of these elements is satisfied here. Fries was employed as a registered representative for nearly 20 years at various broker-dealers, including during the period in which the misconduct occurred. The District Court imposed a permanent injunction as a consequence of Fries actions, which are described above. As explained below, an industry bar against Fries would serve the public interest.

2. Section 203(f) of the Advisers Act

Section 203(f) of the Advisers Act authorizes the Commission to impose an industry bar against a person who: (1) at the time of alleged misconduct was associated with an investment adviser, (2) who has been permanently or temporarily enjoined by a court from violating the federal securities laws, and (3) against whom the Commission finds that it is in the public interest to impose remedial sanctions. *See* 15 U.S.C. § 80b-3(f). Fries was registered as an investment adviser representative for five years, including during the period in which the misconduct occurred. Fries was permanently enjoined by the federal district court from violating the federal securities laws in the civil action brought by the Commission. And, as explained below, imposing an industry bar against Fries would serve the public interest.

3. An Industry Bar Against Fries Serves the Public Interest

The public interest requires the imposition of remedial sanctions against Fries, which should include barring him from associating with an investment adviser, registered or unregistered, or with a broker, dealer, municipal securities dealer, municipal advisor, transfer

agent, or NRSRO in the future. In determining whether an administrative remedy is in the public interest, the Commission considers the following factors:

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.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the extent to which the sanction will have a deterrent effect. *See In re Stanley C. Brooks*, S.E.C. Rel. No. 475, 2012 WL 6132660 at *3 (Dec. 11, 2012). A severe sanction is warranted when a respondent's misconduct involved fraud "because opportunities for dishonesty recur constantly in the securities business." *In re Anthony Tyrone Jones, Jr.*, S.E.C. Rel. No. 1088, 2016 WL 7210100 at *3 (Dec. 12, 2016).

Here, each of the foregoing factors weigh heavily in favor of imposing an industry bar against Fries. His conduct was egregious, repeated and involved a high degree of scienter. Fries used his position as a financial adviser to convince numerous clients over the course of several years to invest money with him outside of his firm. Fries then immediately used their investment funds for his own personal benefit, including paying his own bills. Fries' actions were intentional, and not the product of negligence or mistake. To the contrary, Fries kept his fraud going through lies – by assuring his investors that he had invested their funds as promised, and that their investments were growing in value. Fries even provided his investors with fabricated account statements showing fictional, profitable investments. Finally, Fries made a Ponzi-like payment to one client after she discovered that her account statement was false -- repaying her entire principal plus more than \$7,000

in fake investment gains -- to the detriment of other clients. This deceptive conduct allowed Fries to avoid admitting the extent of his fraudulent and deceptive conduct with respect to other investors.

Fries has not made any meaningful assurances against future violations or taken any steps in this matter (or the District Court case) to demonstrate that he recognizes the wrongful nature of his conduct. Fries is relatively young and has spent nearly his entire career as a licensed securities professional. As such, his future employment opportunities are likely to present him with the possibility of additional violations. Sanctioning Fries would promote the well-being of investors in the marketplace by providing both general and specific deterrence.

IV. Conclusion

Wherefore, for all of the foregoing reasons, the Division of Enforcement respectfully requests that the Commission enter a default judgment against Respondent Scott Allen Fries pursuant to Rules 155(a) and 220(f) of the Rules of Practice. The Division also requests that Fries be barred from any position in the securities industry bar pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

Dated: June 1, 2023

By: /s/ Robert M. Moyer

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CERTIFICATE OF SERVICE

In accordance with the Commission's Rules of Practice, I hereby certify that I have caused a copy of the forgoing document to be served by First Class U.S. Mail upon:

Scott Allen Fries [REDACTED]
[REDACTED]

/s/ Robert M. Moye
Robert M. Moye

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DIVISION OF ENFORCEMENT'S
INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Number of Pages</u>
A	Amended Complaint	15
B	Keith Constance Declaration	10
C	District Court Judgment	7
D	Miami County (Ohio) Court of Common Pleas, Sentencing Entry	6