SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6739 / October 2, 2024

Admin. Proc. File No. 3-20941

In the Matter of

DONALD S. LAGUARDIA, JR.

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of securities fraud, investment adviser fraud, and wire fraud in connection with misconduct that occurred while he was an investment adviser. *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.

APPEARANCES:

Jason C. Moreau and John A. Sten, of Armstrong Teasdale, LLP, for Donald S. LaGuardia, Jr.

Christopher J. Dunnigan for the Division of Enforcement.

On August 1, 2022, the Securities and Exchange Commission instituted an administrative proceeding against Donald S. LaGuardia, Jr., pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] The Division of Enforcement now has filed a motion for summary disposition. Based on our review of the record, we grant the Division's motion and find that it is in the public interest to bar LaGuardia from the securities industry.

I. Background

A. LaGuardia was convicted of three counts of fraud.

In November 2020, LaGuardia was criminally charged with securities fraud, investment adviser fraud, and wire fraud. The indictment alleged that LaGuardia, together with others, founded L-R Managers, LLC ("L-R Managers"), an unregistered investment adviser. L-R Managers served as an investment adviser to, among other funds, the LR Global Frontier Funds ("Frontier Funds").[2] The prosecution presented evidence that, between 2013 and 2017, LaGuardia solicited investments in the Frontier Funds by making misrepresentations to investors and potential investors and fraudulently misappropriated investor funds. The jury returned a verdict of guilty on all three counts. The district court sentenced LaGuardia to five years in prison and ordered him to pay $4,039,872.46 in restitution and $2,571,500 as forfeiture.

B. The Commission instituted this proceeding against LaGuardia.

The order instituting proceedings ("OIP") alleges that LaGuardia was criminally convicted of one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) & 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2; one count of investment adviser fraud in violation of 15 U.S.C. §§ 80b-6 & 80b-17 and 18 U.S.C. § 2; and one count of wire fraud in violation of 18 U.S.C. §§ 1343 & 1342.[3] The OIP also alleges that LaGuardia founded L-R Managers, an investment adviser not registered with the Commission; that L-R Managers was the investment adviser to the Frontier Funds; and that during the period of the misconduct, LaGuardia was one of two managing principals of L-R Managers, as well as a portfolio manager of the Frontier Funds.[4] The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest.

LaGuardia filed an answer that, in pertinent part, denied the OIP's allegation that he founded L-R Managers and that L-R Managers was the investment adviser to the Frontier Funds. LaGuardia also requested a stay of this proceeding pending his appeal of the criminal conviction. On August 8, 2023, the Commission denied LaGuardia's request for a stay as moot on the ground that the U.S. Court of Appeals for the Second Circuit affirmed his conviction on

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1 *Donald S. LaGuardia, Jr.*, Advisers Act Release No. 6078, 2022 WL 3043217 (Aug. 1, 2022).

2 There were three similarly named entities, two of which were "feeder funds," and the third of which was the master fund where, LaGuardia explained, "all the trading happens"; we, like the parties, will collectively refer to them as the Frontier Funds.

3 *LaGuardia*, 2022 WL 3043217, at *1.

4 *Id*.

December 15, 2022.[5] Counsel for LaGuardia subsequently informed counsel for the Division of Enforcement that "Respondent does not intend to further litigate this administrative proceeding." The Division then filed its motion for summary disposition on September 22, 2023, supported by, among other things, excerpts of testimony from the underlying criminal case and several exhibits from that case. On October 13, 2023, LaGuardia filed a letter reiterating that he did not oppose the Division's motion for summary disposition.

II. Analysis

A. LaGuardia forfeited any objection to our deciding this proceeding by summary disposition.

Under Rule of Practice 250, a motion for summary disposition may be granted if there is "no genuine issue with regard to any material fact" and the movant is "entitled to summary disposition as a matter of law."[6] Although LaGuardia denied in his answer certain aspects of his role as an investment adviser, he later stated that he "does not intend to further litigate this administrative proceeding" and "does not oppose the Motion for Summary Disposition." He thus has forfeited any objection to resolution of this proceeding through summary disposition.[7] And at any rate, we find, based on our review of the record,[8] that the Division has satisfied its

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[5] *Donald S. LaGuardia*, *Jr.*, Exchange Act Release No. 6371, 2023 WL 5089862 (Aug. 8, 2023) (citing *United States v. LaGuardia*, No. 21-2206, 2022 WL 17684596 (2d Cir. Dec. 15, 2022)).

[6] 17 C.F.R. § 201.250(b); *see also ERHC Energy, Inc.*, Exchange Act Release No. 90517, 2020 WL 6891409, at *2 (Nov. 24, 2020) (discussing summary disposition standard).

[7] *See, e.g.*, *Albert K. Hu*, Advisers Act Release No. 6497, 2023 WL 8469447, at *2 (Dec. 6, 2023) (finding forfeiture where the respondent did not "argue that summary disposition is inappropriate or that an in-person hearing is necessary"); *see also Palma v. Johns*, 27 F.4th 419, 429 n.1 (6th Cir. 2022) ("Generally, at the summary judgment stage, the non-moving party can forfeit an argument if they fail to respond to the moving party's arguments."); *Vaughner v. Pulito*, 804 F.2d 873, 877 n.2 (5th Cir. 1986) ("If a party fails to assert a legal reason why summary judgment should not be granted, that ground is waived . . . .").

[8] Although LaGuardia's failure to oppose the Division's summary disposition would support a finding of default under Rule of Practice 155(b), we do not deem true the OIP's allegations pertaining to LaGuardia's fraud, which merely state what was alleged in the criminal indictment, rather than independently alleging that LaGuardia engaged in the misconduct. *Donald S. LaGuardia*, *Jr.,* 2022 WL 3043217, at *2; *cf. Clinton Maurice Tucker II*, Exchange Act Release No. 94208, 2022 WL 394644, at *1 (Feb. 9, 2022). Moreover, we do not give issue-preclusive effect to the indictment's factual allegations because the jury rendered a general verdict, and the Division has not presented any basis upon which we could determine that the jury, in convicting LaGuardia, necessarily found that each and every such allegation was established. *See Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *3 (Apr. 23, 2015).

burden under the summary disposition standard, that summary disposition is appropriate, and that an in-person hearing is unnecessary in this case.

B. The threshold requirements for the imposition of a bar are satisfied.

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) the person was convicted, within ten years of the commencement of the proceeding, of an offense involving the purchase or sale of any security, an offense that arises out of the conduct of the business of an investment adviser, or an offense involving the violation of the wire fraud statute; (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]

No genuine issue of material fact exists as to the first two of these elements. LaGuardia was convicted of an offense involving the purchase or sale of any security (securities fraud), an offense arising out of the conduct of the business of an investment adviser (investment adviser fraud), and wire fraud itself.[10]

There is also no genuine dispute that LaGuardia was associated with an investment adviser at the time of his misconduct. Although LaGuardia denied in his answer the OIP's pertinent allegation, the jury, in convicting him of investment adviser fraud, necessarily found that he was in fact an investment adviser as to the misconduct at issue.[11] LaGuardia cannot relitigate that determination.[12] Moreover, the Division submitted with its motion for summary disposition unrebutted evidence that LaGuardia acted as an investment adviser at all relevant times. For example, LaGuardia testified at his criminal trial that he founded and eventually

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[9] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(2), 15 U.S.C. § 80b-3(e)(2)); *see also id.* § 80b-3(e)(2)(A)-(B), (D) (discussing qualifying convictions).

[10] *See* text accompanying footnote 3, *supra* (identifying statutes of conviction). The indictment (like the OIP) lists not only the statutes defining these offenses, but the general federal aiding-and-abetting statute, 18 U.S.C. § 2. Regardless of whether the jury convicted LaGuardia as a principal or as an aider and abettor, the offenses would qualify. *Stephen Condon Peters*, Advisers Act Release No. 6556, 2024 WL 624010, at *3 n.11 (Feb. 14, 2024) (explaining that the "'criminal activities of . . . aiders and abettors' of a crime fall within the scope of the crime itself because 'criminal law now uniformly treats' principals and aiders and abettors") (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 189-90 (2007)).

[11] 15 U.S.C. § 80b-6 ("It shall be unlawful for any *investment adviser* by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly . . . .") (emphasis added).

[12] Here, to convict LaGuardia, the jury must have found every *element* of the offense of investment-adviser fraud established beyond a reasonable doubt. *See Emich Motors Corp. v. Gen. Motors Corp*., 340 U.S. 558, 569 (1951) ("In the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment."). By contrast, we have not given issue-preclusive effect to the indictment's *factual allegations*. *Cf.* note 9 *supra*.

acquired a 70% ownership interest in L-R Managers; that L-R Managers operated several investment funds, including the Frontier Funds; and that he himself served as a portfolio manager for the funds. Furthermore, the Frontier Funds' Private Placement Memorandum (PPM) stated that LaGuardia was L-R Managers founding and managing principal and a portfolio manager for the Frontier Funds specifically. Accordingly, we find that LaGuardia acted as an investment adviser at the time of his misconduct and necessarily was also a person associated with an investment adviser.[13]

C. We find an industry bar to be in the public interest.

In determining whether remedial action is in the public interest, we consider the *Steadman* factors: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter of 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.[14] Our public interest inquiry is flexible, and no one factor is dispositive.[15] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[16] We have weighed all these factors and find industry bars are warranted to protect the investing public.

The evidence that the Division submitted establishes that LaGuardia's misconduct was egregious, recurrent, and done with a high degree of scienter. While acting as an investment adviser, LaGuardia solicited investments from investors by making material misrepresentations and fraudulently misappropriated investor funds. For example, LaGuardia admitted in his testimony at the criminal trial that he repeatedly authorized the transfer of investor funds from the Frontier Funds to cover L-R Managers' operating and other expenses, despite knowing the funds were not to be used for that purpose.[17] LaGuardia falsely assured at least one investor that

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[13] *Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *3 (Mar. 1, 2017) ("[T]he finding that Desai acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f).") (citing *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who acts "as an investment adviser in an individual capacity" is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an investment adviser'")).

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

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

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

[17] L-R Managers' Director of Operations similarly testified that LaGuardia instructed him on multiple occasions to transfer money out of the Frontier Funds' accounts to LaGuardia's personal account and as well as to pay L-R Managers' expenses. As the director explained, these transfers were not in accordance with the Funds' PPMs because L-R Managers was entitled only to a monthly fee based on the net asset value of the Funds and no additional reimbursements or other expenses.

the Frontier Funds would not bear L-R Managers' operating expenses and then secured a new $2 million investment from that investor. Testimony at trial established that, of this investment, $156,287.36 went to pay L-R Managers' expenses and another $89,535.30 went to LaGuardia personally. LaGuardia also admitted that he and his wife charged at least $9,000 in personal and family expenses to a L-R Managers corporate credit card, transferred Frontier Funds assets to L-R Managers' account, and used those funds to pay off the credit card charges. Overall, LaGuardia personally received at least $327,000 from his fraudulent actions over a four-year period. LaGuardia did not submit any contrary evidence in response to the Division's motion for summary disposition.

The district court's $4 million restitution order and $2.5 million forfeiture against LaGuardia further confirms that his misconduct caused substantial financial losses for his clients.[18] The record therefore establishes that LaGuardia repeatedly abused the position of trust he occupied as an investment adviser.[19]

There is also no genuine dispute that LaGuardia acted with a high degree of scienter.[20] LaGuardia was convicted of securities fraud under Exchange Act Section 10(b) and Rule 10b-5, which requires scienter, as well as wire fraud, which requires specific intent to defraud.[21] Furthermore, the Division has submitted evidence, including LaGuardia's own trial testimony, that establishes that he knew that the transfers he directed were impermissible and that his representations about how investments would be used were false. He admitted on cross-

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[18] *See, e.g.*, *Conrad A. Coggeshall*, Exchange Act Release No. 97474, 2023 WL 3433398, at *3 (May 10, 2023) (finding respondent's conduct egregious and recurrent where, for around a year, he raised $700,000 from elderly investors without disclosing that he used the funds for personal expenses and to trade securities); *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (finding misconduct was egregious and recurrent where individual misappropriated "hundreds of thousands of dollars" from investor funds over a several year period).

[19] *See James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious."); *cf. Tagliaferri*, 2017 WL 632134, at *6 (finding misconduct egregious where individual "violated the fiduciary duties he owed his clients as an investment adviser by failing to disclose the conflict of interest inherent in receiving kickbacks for investing client funds in [certain] securities" and caused ten to fifty victims to lose millions of dollars).

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

[21] *See, e.g.*, *United States v. Miller*, 953 F.3d 1095, 1098-99, 1101-03 (9th Cir. 2020) (holding that wire fraud requires specific intent to deceive and cheat); *Korem*, 2013 WL 3864511, at *6 (finding that respondent acted with "a high degree of scienter," in part because the "Exchange Act § 10(b), and Rule 10b-5 charges . . . required knowing, willful, or, at the very least, reckless conduct").

examination that, despite understanding that investors' funds were not supposed to be used to pay L-R Managers' operating expenses or his own personal expenses, he nevertheless diverted those funds for his own benefit. Given that he repeated this fraudulent misconduct for several years, his behavior cannot be explained away as the product of mere negligence or innocent mistake.[22]

There is also no genuine dispute that LaGuardia has failed to provide assurances against future violations. Neither LaGuardia's answer nor his non-opposition to summary disposition contains any such assurances or any indication that he recognizes the wrongful nature of his conduct. It appears that LaGuardia's occupation presents opportunities for future violations because he acted as an investment adviser during the four-year period of his misconduct, and he offers no evidence of his current occupation or assurances about his future plans.[23] Although LaGuardia is currently incarcerated, he has made no assurances that he will not reenter the securities industry after he is released from custody. Accordingly, should LaGuardia reenter the industry upon his release, his occupation will present opportunities for future violations.[24]

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 LaGuardia is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[25] Given that LaGuardia did not oppose the Division's motion for summary disposition, he has not opposed the imposition of any associational bar. Because LaGuardia poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any investment adviser, broker, dealer,

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22 *See, e.g.*, *Hai Khoa Dang*, Advisers Act Release No. 6630, 2024 WL 3028381, at *5 (June 17, 2024) (collecting citations).

23 *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").

24 *See, e.g.*, *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").

25 *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).

municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[26]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

[26] *Id.* (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6739 / October 2, 2024

Admin. Proc. File No. 3-20941

In the Matter of

DONALD S. LAGUARDIA, JR.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Donald S. LaGuardia, Jr., is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary