

INITIAL DECISION RELEASE NO. 574  
ADMINISTRATIVE PROCEEDING  
FILE NO. 3-15236

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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In the Matter of :  
: INITIAL DECISION BY DEFAULT  
STEPHEN SHEA : March 12, 2014

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APPEARANCES: Shannon Keyes and Jack Kaufman for the  
Division of Enforcement, Securities and Exchange Commission

Respondent Stephen Shea pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

### SUMMARY

This Initial Decision (ID) bars Stephen Shea (Shea) from the securities industry.

### I. BACKGROUND

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on March 8, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Shea was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on August 20, 2013, and has failed to file an Answer, due within twenty days of service on him. See OIP at 2; 17 C.F.R. § 201.220(b). Accordingly, he is in default, and the undersigned finds that the allegations in the OIP are true as to him. See OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f).

The proceeding is a follow-on proceeding based on United States v. Mandell, No. 09-cr-662 (S.D.N.Y.), in which Shea has pleaded guilty to securities fraud and conspiracy to commit securities fraud, mail fraud, and wire fraud. A judgment of conviction has not been entered as to Shea; rather, the court adjourned sentencing sine die pending the outcome of Shea's co-defendants' appeal. Id. (Aug. 28, 2012). Accordingly, the undersigned previously ruled that there was no basis to impose a sanction on Shea based on Exchange Act Section 15(b);<sup>1</sup> and that if Shea had not been convicted before the due date for the ID, the ID would dismiss the proceeding, and if he were convicted, the ID would bar him from the securities industry. Stephen Shea, Admin. Proc. Rulings Release No.

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<sup>1</sup> Specifically, Exchange Act Section 15(b)(6)(A)(ii) authorizes the imposition of sanctions against any person associated with a broker-dealer who "has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)]."

1106, 2013 SEC LEXIS 3969 (A.L.J. Dec. 17, 2013).<sup>2</sup> Subsequently, however, the Commission ruled that a jury verdict of guilty is a “conviction” within the meaning of the Exchange Act. Gregory Bartko, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at \*28 (Mar. 7, 2014).<sup>3</sup> Thus, Shea’s plea of guilty is a “conviction” within the meaning of the Exchange Act, as well.

## II. FINDINGS OF FACT

On February 14, 2011, Shea pleaded guilty to securities fraud and to conspiracy to commit mail, wire, and securities fraud in United States v. Mandell, 09-cr-662 (S.D.N.Y.). The underlying misconduct occurred from 1998 through 2006. Shea and others carried out a fraudulent scheme by soliciting millions of dollars from investors under false pretenses, manipulating the market for affiliated companies’ stocks, failing to use investors’ funds as promised, and misappropriating and converting investors’ funds without their knowledge. They used material misrepresentations and omissions to cause individuals to invest in a series of purported investment opportunities, including private placements. Shea and others raised a total of approximately \$140 million from investors through their fraudulent scheme and used those funds to enrich themselves, pay undisclosed commissions to brokers, and pay off earlier investors who had lost funds on prior purported investment opportunities. During the time of his misconduct Shea was associated with Commission-registered broker-dealers – The Thornwater Company, L.P., from 1997 to 2002 and Sky Capital LLC from 2001 to 2009.

## III. CONCLUSIONS OF LAW

Shea has been convicted within ten years of the commencement of this proceeding of a felony that “arises out of the conduct of the business of a broker [or] dealer” within the meaning of Sections 15(b)(4)(B)(ii) and 15(b)(6) of the Exchange Act.

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<sup>2</sup> The Division of Enforcement filed a Motion for Reconsideration of that ruling, arguing that Shea’s guilty plea is a conviction within the meaning of Exchange Act Section 15(b) and citing Alexander Smith, 22 S.E.C. 13 (1946) in support of its argument. In that case, which was not a follow-on proceeding, the Commission concluded that the respondent had violated the antifraud and other provisions of the Securities Act of 1933 and the Exchange Act, after finding that he had engaged in a series of fraudulent transactions with an elderly woman that were typical of his course of conduct. Id. at 15-19 The Commission also discussed, as *obiter dictum*, the Pennsylvania state criminal case brought against the respondent. Specifically, the respondent had pleaded *nolo contendere* to the state charges, and the court had suspended imposition of sentence, which was equivalent to placing him on probation, according to Pennsylvania law at that time. Id. at 19-21 & n. 12. Thus, the Commission concluded that the respondent had been convicted within the meaning of Exchange Act Section 15(b).

<sup>3</sup> The Commission based its ruling on the Alexander Smith case. It also stated that there is no reason to ascribe a differing meaning to “convicted” as it appears in the Exchange Act and in the Investment Advisers Act of 1940 (Advisers Act). Id. at \*23 n. 31, \*28-29. While the Exchange Act does not contain a provision making a plea of guilty equivalent to a conviction, Section 202(6) of the Advisers Act provides: “ ‘Convicted’ includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of *nolo contendere*, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.”

#### IV. SANCTION

Shea will be barred from the securities industry. This sanction will serve the public interest and the protection of investors, pursuant to Section 15(b)(6) of the Exchange Act, and accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). As described in the Findings of Fact, Shea's unlawful conduct was recurring and egregious and involved a high degree of scienter; extending over a period of several years, Shea's scheme resulted in the misappropriation of millions of dollars. There is a reasonable foreseeable risk that, if he were allowed to resume his former business activities, he would engage in similar criminal conduct. Because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

#### V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), STEPHEN SHEA IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.<sup>4</sup>

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.<sup>5</sup>

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Carol Fox Foelak  
Administrative Law Judge

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<sup>4</sup> Thus, he will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging 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, pursuant to Exchange Act Section 15(b)(6)(A), (C).

<sup>5</sup> A respondent may also file a motion to set aside a default pursuant to 17 C.F.R. § 201.155(b). See Alchemy Ventures, Inc., Exchange Act Release No. 70708, 2013 SEC Lexis 3459, at \*5-6 (Oct. 17, 2013).