

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

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In the Matter of :  
: INITIAL DECISION ON DEFAULT  
MARK ANDREW SINGER : July 15, 2014  
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APPEARANCES: Steve Varholik and David Frohlich, Division of Enforcement, Securities and Exchange Commission

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

On February 18, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) alleging that Mark Andrew Singer (Singer), who was formerly associated with a registered broker-dealer and an investment adviser, was convicted on January 19, 2011, of five counts of theft in an amount greater than \$100,000 in Indiana v. Mark Singer, Cause No. 49G03-0807-FC-167038 (Ind. Super. Ct. for Marion Cnty.) (Singer). OIP at 1. Singer was served with the OIP on February 22, 2014, but did not file an Answer within twenty days of service of the OIP as required by the OIP and the Commission's Rules of Practice. OIP at 2; 17 C.F.R. §§ 201.160(b), .220.

In an Order Following Prehearing Conference, I: (1) Found Singer in default for not filing an Answer to the allegations in the OIP, not participating in the April 14, 2014, prehearing conference, and not otherwise defending the proceeding. Mark Andrew Singer, Admin. Proc. Rulings Release No. 1379, 2014 SEC LEXIS 1321 (Apr. 15, 2014) (citing OIP at 2; 17 C.F.R. §§ 201.155(a), .220(f), .221(f)). (2) Asked the Division of Enforcement (Division) to file a motion for default. Id. (citing Ross Mandell, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at \*7 (Mar. 7, 2014)). (3) Took official notice, pursuant to Rule 323 of the Commission's Rules of Practice, of certified documents from Singer, specifically the Grand Jury Indictment, the Amended Grand Jury Indictment, the Abstract of Judgment, the Order of Probation, the Abstract of Judgment (Amended), and the Order of Probation (Amended). Id. (citing 17 C.F.R. § 201.323).

On May 9, 2014, the Division filed a Motion for Default (Motion) with the Declaration of Steve Varholik in Support of the Motion, which had five exhibits attached. Exhibit 1 is a Central Registration Depository (CRD) printout of Singer's employment history, which is available

through FINRA's website; Exhibit 2 is a CRD printout on Citigroup Global Markets Inc. (Citigroup Global Markets), which is also available through FINRA's website; Exhibit 3 comprises certified Jury Instruction Numbers and Jury Instruction Forms from Singer; Exhibit 4 is a portion of the certified Sentencing Transcript from Singer; and Exhibit 5 is certified Jury Instruction Number 15 from Singer. I take official notice of these exhibits, two of which are publicly available material and three of which are certified copies from Singer. See 17 C.F.R. § 201.323. The Division requests imposition of an industry-wide bar preventing Singer from participating in the securities industry and any penny stock offering as measures needed to protect the public interest. Motion at 5, 7-8.

I find the allegations in the OIP to be true as to Singer. 17 C.F.R. § 201.155(a).

### **Findings of Fact**

Singer, forty-eight years of age, entered the securities industry in 1998. OIP at 1; Ex. 1. Between December 1998 and September 2004, Singer was registered with Zachary Jackson Securities, LP, then Deutsche Bank Securities Inc. Ex. 1. From September 2004 to February 2007, Singer was a registered representative associated with Citigroup Global Markets, a broker-dealer and investment adviser registered with the Commission. OIP at 1; Exs. 1-2.

The Amended Grand Jury Indictment in Singer, dated April 9, 2009, charged Singer and two co-defendants with five counts of Class C Felony theft in an amount greater than \$100,000, and alleged that Singer's illegal conduct occurred on or about December 29, 2004, and April 14, 2005. On January 19, 2011, Singer was convicted of all five counts. OIP at 1; Abstract of Judgment. The theft counts on which Singer was convicted alleged that, in December 2004 and April 2005, Singer and two co-defendants knowingly exerted unauthorized control over perpetual care trust and/or pre-need trust monies of a corporation, with the intent to deprive the corporation of the value or use of the monies, by unlawfully wiring the funds to third parties. OIP at 2; Amended Grand Jury Indictment. The Indiana jury found Singer to have participated in stealing property valued at over \$22 million in crimes that occurred in two separate years. OIP at 2; Amended Grand Jury Indictment; Ex. 3; see also Ex. 4 at 1961-62.

Singer was initially sentenced to serve three years of incarceration at the Indiana Department of Corrections in addition to two years to be served through community corrections. OIP at 1-2; Abstract of Judgment. On January 31, 2012, the court modified the sentence, giving him additional credit for confinement prior to sentencing, and reducing his term of incarceration to one year. OIP at 2; Abstract of Judgment (Amended).

### **Conclusions of Law**

This proceeding was instituted pursuant to Section 15(b)(6) of the Securities and Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act), which empower the Commission, when it is in the public interest, to take certain actions where a person who has been convicted, within ten years of the OIP, of a felony that involves theft. Certain actions may be taken against Singer, as he was convicted of multiple counts of felony theft within the past ten years, and when he was associated with a broker-dealer and an investment adviser.

## Sanction

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, the Commission can censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or bar a person 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.<sup>1</sup> The generally accepted criteria for making a public interest determination are:

[T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant'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)); see Ross Mandell, Exchange Act Release No. 71668 (Mar. 7, 2014), 2014 WL 907416 at \*2 (law judge's analysis for industry-wide bar should be grounded in specific findings regarding the protective interests served by the bar and risk of future misconduct); see also Joseph J. Barbato, Securities Act of 1933 Release No. 7638 (Feb. 10, 1999), 69 SEC Docket 178, 200 n.31; Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995).

Singer's crimes were egregious, and he acted with scienter in that, on two separate occasions in two separate years, he committed acts that resulted in five separate felony counts of theft. Singer was found guilty beyond a reasonable doubt of knowingly exerting unauthorized control over property that was "perpetual care trust and/or pre-need trust money of Memory Gardens Management Corporation" with the intent of depriving the lawful owner of the property's value or use. Ex. 3; see also Ex. 5. Singer was found to have engaged in the unlawful assumption of valuable property, worth over \$22 million. Exs. 3; 4 at 1962. The presiding judge in Singer found that the "the planning and the length of time involved, along with the position of trust that [Singer] held as a financial advisor" and "the amount of money involved" were aggravating factors in determining Singer's sentence, and that Singer's actions went "above and beyond that which was required to meet the elements of a Class C Felony." Ex. 4 at 1961-62.

Singer has chosen not to participate in this administrative proceeding, and thus relinquished his opportunity to admit to wrongdoing and to provide assurances that illegal activity would not continue if he were allowed to continue to participate in the securities industry. Further, his age and short prison sentence provide the opportunity for him to reenter the securities industry.

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<sup>1</sup> A collateral bar imposed pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) is not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct because such bars are prospective remedies meant to protect the investing public from future harm. See John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

For all the reasons stated, I find an industry-wide bar, preventing Singer from participating in the securities industry and from participating in any penny stock offering, to be necessary and appropriate to protect the public.<sup>2</sup>

### Order

I ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Mark Andrew Singer is permanently BARRED from associating with a 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, including acting as any 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.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. See 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. See 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 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 occurs, the Initial Decision shall not become final as to that party. In addition, a respondent has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend, and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. Id.; see Alchemy Ventures, Inc., Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at \*5-6 (Oct. 7, 2013).

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Brenda P. Murray  
Chief Administrative Law Judge

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<sup>2</sup> Imposition of a penny stock bar is authorized under Section 15(b)(6) of the Exchange Act because Singer's alleged misconduct occurred when he was associated with a broker-dealer.