INITIAL DECISION RELEASE NO. 724
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16140

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

In the Matter of JAMES PRANGE	INITIAL DECISION ON DEFAULT December 19, 2014

APPEARANCE: Martin F. Healey for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Jason S. Patil, Administrative Law Judge

Summary

In this Initial Decision, I GRANT the Division of Enforcement's motion for default and find that Respondent James Prange violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) thereunder. Prange is ordered to cease and desist from further violations and permanently barred from participating in an offering of penny stock.

Procedural Background

On September 22, 2014, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Prange pursuant to Exchange Act Sections 15(b) and 21C. The OIP alleges that Prange willfully violated Exchange Act Section 10(b) and Rule 10b-5(a) based on his participation in a scheme to pay secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the Federal Bureau of Investigation (FBI), in exchange for the fund manager's purchase of restricted stock of penny stock companies on behalf of a purported hedge fund, which did not actually exist. OIP at 3-8.

On October 16, 2014, I issued an order notifying the parties that a telephonic prehearing conference would be held on November 6, 2014. *See James Prange*, Admin. Proc. Rulings Release No. 1910, 2014 SEC LEXIS 3863. At the November 6, 2014, prehearing conference, the Division appeared, but Prange did not; Prange was notified of the prehearing conference and arrangements were made for him to attend. *See James Prange*, Admin. Proc. Rulings Release No. 1992, 2014 SEC LEXIS 4259 (Nov. 10, 2014); Prehr'g Conference Tr. 2-5.

Prange was served with the OIP on September 30, 2014, and his Answer was due October 23, 2014. *James Prange*, 2014 SEC LEXIS 4259. After he failed to file a timely Answer, I directed Prange to show cause by November 17, 2014, why this proceeding should not be determined against him due to the failure to file an Answer, appear at the prehearing conference, or otherwise defend this proceeding. *See id.* Prange failed to respond. On December 2, 2014, the Division filed a motion for default, as well as a brief, declaration, and exhibits in support. Prange failed to make any response.

Prange is in default for failing to answer the OIP, appear at the prehearing conference, or otherwise defend this proceeding. *See* 17 C.F.R. §§ 201.155(a)(1)-(2), .220(f), .221(f). Accordingly, I deem true the OIP's allegations and determine this proceeding upon consideration of the OIP and evidence submitted by the Division. In addition, I take official notice of the facts and elements of the criminal charges proved against Prange, as articulated in *United States v. Prange*, 771 F.3d 17 (1st Cir. 2014), which affirmed Prange's conviction on three counts of conspiracy to commit securities fraud and other charges. *See SEC v. Bilzerian*, 29 F.3d 689, 693-94 (D.C. Cir. 1994) (a criminal conviction constitutes estoppel in favor of the government in a subsequent civil proceeding arising out of the same underlying conduct); 17 C.F.R. § 201.323.

Findings of Fact

1. From June through September 2011, Prange, who operated Northern Equity, Inc., and was in the business of assisting public companies in finding sources of funding, participated in penny stock offerings of China Wi-Max Communications, Inc., the Small Business Company, Inc. (SBCO), and Vida-Life International, Ltd. OIP at 1, 3-8.

2. Prange learned of a purportedly corrupt hedge fund manager – who was in fact an undercover FBI agent (Fund Manager) – willing to invest monies on behalf of a purported hedge fund (the Fund) in the stock of companies in exchange for a secret fifty percent kickback. The Fund Manager told Prange that the Fund knew nothing about the kickbacks. The Fund Manager and Prange entered into an agreement for Prange to steer companies to the Fund Manager for potential investment of Fund monies. In exchange, the Fund Manager and Prange agreed that Prange would receive approximately ten percent of the monies those companies kicked back to the Fund Manager. OIP at 3-4.

3. Under that arrangement, Prange introduced individuals affiliated with China Wi-Max, SBCO, and Vida-Life to the Fund Manager. Executives from each of the three companies who Prange referred to the Fund Manager ultimately agreed to, and paid a kickback to the Fund Manager in exchange for the Fund Manager's share purchases, purportedly on the Fund's behalf. In connection with the investments, each of the executives also caused stock certificates to be issued representing the purchase by the Fund of shares in their respective companies. OIP at 4.

4. The kickback payments from the various companies Prange referred to the Fund Manager were made by wire transfers from the various companies to a Citizens Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts. Based on his agreement with the Fund Manager, on various dates between August 2011 and September 2011, Prange received a portion of the kickbacks paid by company executives he had referred to the Fund Manager. Prange's shares of the kickbacks were paid by wire transfer from a Citizens

Bank account held in the name of one of the Fund Manager's nominee companies in Massachusetts to Community Bank & Trust account number ending in 0231, a bank account controlled by Prange. OIP at 4.

5. In January 2012, a federal grand jury indicted Prange, in part, with three separate counts of conspiracy to commit securities fraud. *See* Declaration of Martin F. Healey (Healey Decl.) ¶ 7 & Ex. 2.

6. At Prange's jury trial, the district court instructed the jury prior to its deliberations as to the elements of conspiracy to commit securities fraud. Healey Decl., Ex. 4. The court instructed that in order for the jury to find Prange guilty of one or more of the charged conspiracies, the jury had to find that: 1) an agreement existed between at least two people to commit the alleged securities fraud, and 2) Prange willfully joined in that agreement. *Id*. at 117-21. The court further instructed that in order to conclude that one or more of the conspiracies to commit securities fraud existed, the jury had to find that: 1) there was a scheme to defraud or to obtain money or property by means of materially false or fraudulent pretenses, 2) Prange knowingly and willfully participated in that scheme with the intent to defraud, and 3) the scheme to defraud was executed in connection with the purchase or sale of securities of a company a) with a class of securities issued under Exchange Act Section 12, 15 U.S.C. § 78*l*, or b) that is required to file reports with the Commission under Exchange Act Section 15(d), 15 U.S.C. § 78*o*(d). *Id.* at 121-22. The court then gave expanded instructions as to each of those elements. *Id.* at 122-28.

6. In May 2013, the jury returned guilty verdicts as to each of these three charged conspiracies. Healey Decl. ¶ 9 & Ex. 3. The criminal conspiracies of which Prange was convicted were described in the indictment and specified in the verdict form as schemes and artifices involving China Wi-Max, SBCO, and Vida-Life. Prange was also convicted of eight counts of wire fraud. *Id.*, Ex. 3.

7. In September 2013, Prange was sentenced to a prison term of thirty months followed by twenty-four months of supervised release. He was also ordered to pay a fine of $15,250 and to forfeit $4,750. OIP at 1.

8. In November 2014, the First Circuit affirmed Prange's conviction on the three conspiracies as well as other charges, but remanded for resentencing on issues not relevant here. *United States v. Prange*, 771 F.3d 17 (1st Cir. 2014). The First Circuit opinion sets out testimony adduced at the criminal trial that supports the criminal conviction for, among other things, the three conspiracies to commit securities fraud. *Id*. at 21-22.

Conclusions of Law

To establish a violation of Exchange Act Section 10(b) and Rule 10b-5(a), the Division must prove that Prange: (1) employed a device, scheme, or artifice to defraud; (2) with scienter; (3) in connection with the purchase or sale of securities; (4) by jurisdictional means. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(a); *see VanCook v. SEC*, 653 F.3d 130, 138 (2d Cir. 2011). Under the theory of "scheme liability," Prange is liable if he "committed a deceptive or

manipulative act as part of a scheme to defraud." *Gregory O. Trautman*, Exchange Act Release No. 61167, 2009 SEC LEXIS 4173, at *53 & n.55 (Dec. 15, 2009) (citing *SEC v. Tambone*, 417 F. Supp. 2d 127, 131-32 (D. Mass. 2006)). "[E]ngaging in a transaction, the principal purpose and effect of which is to create the false appearance of fact, constitutes a 'deceptive act.'"[1] *Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds sub nom.*, *Avis Budget Group, Inc. v. Cal. State Teachers' Ret. Sys.*, 552 U.S. 1162 (2008); *see John P. Flannery*, Exchange Act Release No. 73840, 2014 SEC LEXIS ---- , at p. 17 & n.52 (Dec. 15, 2014).

Prange's conviction on three counts of conspiracy to commit securities fraud and the OIP's allegations establish all the necessary elements of the causes of action for violations of Exchange Act Section 10(b) and Rule 10b-5(a). Prange committed deceptive acts by directly orchestrating transactions designed to give the false appearance of investments of Fund monies in the penny stock offerings of three companies. This scheme was orchestrated in exchange for kickbacks of a percentage of those monies for himself and the Fund Manager. Prange was convicted of knowingly and willingly participating in the scheme with the intent to defraud, in connection with the purchase or sale of securities. *See United States v. Feola*, 420 U.S. 671, 686 (1975) (holding that in order to sustain a judgment of conviction on a charge of conspiracy to violate a federal statute, the government must prove at least the degree of criminal intent necessary for the substantive offense). Prange's conviction, which was affirmed by the First Circuit, collaterally estops him from relitigating the facts and issues on which his conviction was based and contesting liability on claims based on that same conduct. *See Bilzerian*, 29 F.3d at 693-94. Further, Prange's misconduct involved jurisdictional means, including use of wire transfers. *See United States v. Vilar*, 729 F.3d 62, 93 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 2684 (2014).

Lastly, based on his actions and scienter, Prange's violations were willful. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (willfulness does not require intent to violate the law, but intent to commit the act which constitutes the violation); *Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *48-49 n.139 (May 16, 2014) (scienter demonstrates willfulness), *pet. for review docketed*, No. 14-1134 (D.C. Cir. July 11, 2014).

Sanctions

The Division requests a penny stock bar and cease-and-desist order against Prange.[2]

[1] In the context of private securities litigation, the Supreme Court rejected a scheme liability theory premised on a similar definition of a deceptive act because the plaintiffs failed to establish investor reliance. *See Stoneridge Invs. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 159-64 (2008). The Division, unlike a private plaintiff, need not prove reliance. *See United States v. Vilar*, 729 F.3d 62, 88-89 & n.23 (2d Cir. 2013) (collecting circuit case-law), *cert. denied*, 134 S. Ct. 2684 (2014); *Joseph John VanCook*, Exchange Act Release No. 61039A, 2009 SEC LEXIS 3872, at *40 (Nov. 20, 2009), *pet. denied*, 653 F.3d 130 (2d Cir. 2011).

[2] At the prehearing conference, the Division indicated that its requested relief would be "essentially focused on industry bars," as opposed to disgorgement and civil penalties, because

A. Penny Stock Bar

Exchange Act Section 15(b)(6) authorizes the Commission to bar Prange from participating in an offering of penny stock if he willfully violated federal securities laws while participating in the offering of any penny stock, and the bar is in the public interest. 15 U.S.C § 78*o*(b)(4)(D), (6)(A)(i); *Vladlen "Larry" Vindman*, Exchange Act Release No. 53654, 2006 SEC LEXIS 862, at *46 (Apr. 14, 2006).

To determine whether a sanction is in the public interest, the Commission considers the *Steadman* 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); *Vladlen "Larry" Vindman*, 2006 SEC LEXIS 862, at *46. The Commission's inquiry into the appropriate sanction to protect the public interest is flexible, and no one factor is dispositive. *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 (Jan. 31, 2006); *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003).

The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, --- F.3d ----, No. 14-1018, 2014 U.S. App. LEXIS 22606 (D.C. Cir. Dec. 2, 2014).

B. Cease-and-Desist Order

Under Exchange Act Section 21C, the Commission may issue a cease-and-desist order if it finds that Prange violated the Exchange Act or any rule thereunder. 15 U.S.C. § 78u-3(a). Although there must be some likelihood of future violations whenever the Commission issues a cease-and-desist order, the required showing is "significantly less than that required for an injunction." *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101, *114 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). Absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. *Id.* at *102-03.

To determine whether a cease-and-desist order is in the public interest, the Commission's considerations are essentially the same as those I consider in determining whether to impose a

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there had "already been a criminal prison sentence" with "forfeiture orders and the like." Prehr'g Conference Tr. 9. Consistent with the representation at that conference, the only sanctions sought by the Division in its motion for default are a penny stock bar and cease-and-desist order.

penny stock bar. *Id.* at *116. In addition, the Commission considers "the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *Id.*

C. **Analysis**

As noted above, the factors considered in assessing the appropriateness of the sanctions sought are substantially similar. Here, each of the pertinent factors weighs in favor of issuance of a penny stock bar and cease-and-desist order. The violations of the securities laws were egregious, as reflected by Prange's criminal conviction and his orchestration of a criminal scheme involving kickback payments. Prange's violations were not isolated. He brought three different companies and related individuals into the criminal scheme. Had the FBI not stopped the undercover operation, there is every reason to believe Prange would have continued to recruit other companies into it. Prange's state of mind reflects a high degree of scienter. He acted repeatedly, with full understanding of the illegal nature of the conduct, and the clear intention to illegally enrich himself. *See Prange*, 771 F.3d at 22. As to assurances against future violations, Prange offered none. Prange failed to answer or otherwise defend the allegations brought by the Division, punctuated by his failure to appear at the prehearing conference scheduled and noticed by this Court. In that same vein, nothing before, during or since his trial and conviction on the related criminal charges indicates any recognition or acknowledgment by Prange of the wrongful nature of his conduct.

Finally, the violations alleged against Prange, and for which he already has been convicted in the criminal case, involve companies that trade in the relatively unregulated over-the-counter stock market. *See Prange*, 771 F.3d at 21 (because penny "stocks, generally speaking, are thinly traded and not listed on organized securities exchanges . . . their prices are often volatile and subject to manipulation"). Those markets are easily accessible, offering many opportunities for Prange to commit future violations of the federal securities laws. The cumulative weight of these factors easily meets the standard for the risk of future violations. The fact that he currently is incarcerated does not militate against the penny stock bar, given that Prange would be free to rejoin the industry after his release, which is currently set for November 2015.[3] The cumulative weight of these factors easily meets the standard for imposition of a penny stock bar against Prange. Therefore, the issuance of a penny stock bar and cease-and-desist order are both appropriate and necessary to ensure the highest possible barriers to a recurrence of these sorts of violations by Prange.

[3] I take official notice of Prange's release date from the Federal Bureau of Prisons' website. 17 C.F.R. § 201.323; *Byron S. Rainner*, Exchange Act Release No. 59040, 2008 SEC LEXIS 2840, at *1-2 n.1 (Dec. 2, 2008). Although Prange's prison term may, ultimately, be different following the First Circuit's remand for resentencing, there is no indication that his sentence will be longer than the term originally imposed. *See Prange*, 771 F.3d at 35-37 & n.7.

Order

IT IS ORDERED that, pursuant to Section 21C of the Securities Exchange Act of 1934, James Prange shall CEASE AND DESIST from committing any violations or future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, James Prange is permanently BARRED 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 of Practice 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 of Practice 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.

Prange is notified that he may move to set aside the default in this case. Rule of Practice 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

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Jason S. Patil
Administrative Law Judge