INITIAL DECISION RELEASE NO. 729
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16013

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

In the Matter of	:	INITIAL DECISION
	:	December 31, 2014
NICHOLAS D. SKALTSOUNIS	:	

APPEARANCES: Michael J. Rinaldi for the Division of Enforcement, Securities and Exchange Commission

Nicholas D. Skaltsounis, *pro se*

BEFORE: James E. Grimes, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's Motion for Summary Disposition and bars Respondent Nicholas D. Skaltsounis 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.

Procedural Background

Relying on Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisors Act of 1940, the Securities and Exchange Commission issued Skaltsounis an Order Instituting Administrative Proceedings ("OIP"). The OIP alleges that United States District Court for the Eastern District of Tennessee enjoined Skaltsounis from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. OIP at 2.

During a prehearing conference in September 2014, I confirmed that service of the OIP was affected on August 15, 2014. Prehearing Conference Transcript ("Tr.") at 3-4. I also construed Skaltsounis's letter of August 31, 2014, as his Answer and a general denial of the allegations in the OIP. *Id.* at 4. Additionally, I set a schedule for filing motions for summary disposition. *Id*. at 8-10; *see Nicholas D. Skaltsounis*, Admin. Proc. Rulings Release No. 1826, 2014 SEC LEXIS 3492 (Sept. 22, 2014).

The Division filed its Motion for Summary Disposition (Division's Motion) and supporting documents on October 17, 2014.[1] Skaltsounis filed an opposition (Opposition), with no attached exhibits, on November 20, 2014. The Division filed its Reply (Division's Reply), with supporting documents, on December 3, 2014.

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323. *See* 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and considered. I have applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

Findings of Fact

A. Background

Skaltsounis founded AIC, Inc. in 2000. Div. Ex. K at 3. AIC served as a "holding company for several registered broker-dealers," including Community Bankers Securities, Allied Beacon Partners, Inc., and Advent Securities, Inc. *Id.* at 2. AIC owned a substantial interest in these three entities and Allied Beacon Wealth Management, a state-registered investment adviser. *Id.* During the relevant time period, Skaltsounis served as AIC's president and CEO. *Id*. at 3. He held similar positions at Community Bankers Securities, Advent Securities, and Allied Beacon Wealth Management, which was then known as CBS Advisors. *Id*. at 2-3. Skaltsounis was also Chairman of the Board of Allied Beacon Partners, then known as Waterford Investment Services.[2] *Id*. at 2-3.

B. Civil Proceeding: SEC v. AIC, et al.

In 2012, the Commission filed an amended complaint against Skaltsounis and other defendants, alleging that the defendants used AIC and its subsidiaries to carry out a scheme to defraud investors. Div. Ex. I at 1-3. Specifically, the Commission alleged that Skaltsounis orchestrated a Ponzi scheme in which he sold several million dollars in AIC common and preferred stock and promissory notes. *Id*. at 1-3. The Commission also alleged that AIC promised to return between 9% and 12.5% on its notes and preferred stock, while knowing it had no ability to pay the returns. *Id*. at 2. Instead, the Commission alleged, AIC could only generate funds to pay investors by selling new investments. *Id.* at 2.

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[1] Among the exhibits the Division submitted in support of its motion were: the underlying memorandum opinion issued by the district court for the Eastern District of Tennessee (Div. Ex. A); the district court's final judgment as to Skaltsounis (Div. Ex. B); the Commission's first amended complaint (Div. Ex. I); an agreed pretrial order (Div. Ex. J); and the district court's memorandum opinion and order granting partial summary judgment (Div. Ex. K).

[2] Community Bankers Securities, Allied Beacon Partners, Advent Securities, and Allied Beacon Wealth Management are collectively referred to as the "AIC subsidiaries."

In September 2013, the district court granted summary judgment on the Commission's claim that Skaltsounis and the other defendants violated Section 5 of the Securities Act by offering and selling AIC securities without registering those securities with the Commission. Div. Ex. K at 36. In October 2013, a jury found Skaltsounis liable under Section 17(a) of the Securities Act, and Sections 10(b) and 20(e) and Rule 10b-5 of the Exchange Act. Div. Ex. A at 3. Following the jury's verdict, the district court granted the Commission's motion seeking permanent injunctive relief, disgorgement, and statutory civil penalties against Skaltsounis and various defendants. *Id.* at 20. In its memorandum opinion, the district court found the following:

- Skaltsounis and the other defendants raised approximately $6.6 million from unaccredited investors without registering the securities sold. *Id.* at 5.

- Skaltsounis and the other defendants did not disclose to investors that AIC (1) was in debt and annually absorbing losses; (2) never had a profitable year; and (3) relied on new funds to pay its obligations. *Id.* at 6. Instead, Skaltsounis and the other defendants conveyed "the impression that AIC was a newly[-]formed company that would begin reaping profits from its subsidiaries in the near future." *Id.* at 18.

- AIC commonly used "rollover letters" to "pay off" its notes. *Id.* at 9. Specifically, AIC would pay off notes by "issuing new notes to be cashed in at a later date." *Id.* At the time these new notes were issued, Skaltsounis knew that AIC could not pay its "outstanding note obligations, much less take on more debt." *Id.* Investors were not given this information. Skaltsounis and the other defendants therefore misrepresented AIC's ability to timely pay off rollover letters. *Id.* at 9-10.

- Skaltsounis supervised the issuance of all promissory notes, subscription agreements, and rollover letters. Indeed, "he signed various promissory notes and subscription letters." He was thus in a position to correct the omissions and misinformation investors received but repeatedly, over a four-year period, failed to do so. *Id.* at 18-19.

- Skaltsounis acted with scienter. This is evidenced by the jury's finding of liability under Exchange Act Sections 10(b) and 20(e). *Id.* at 8. It is also evidenced by the fact that he failed to follow counsel's advice or failed to seek advice before acting. *Id.* at 8-10.

On August 1, 2014, the district court entered final judgment against Skaltsounis finding him liable for violating Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 20(e) of the Exchange Act and Rule 10b-5 thereunder. Div. Ex. B at 2. The district court also permanently enjoined Skaltsounis from future violations of these same provisions. *Id.* at 2-4. Additionally, the district court ordered Skaltsounis to disgorge $948,389.13, plus $138,282.35 in prejudgment interest, and imposed a civil penalty in the amount of $1,505,000. *Id.* at 4.

Conclusions of Law

A. Summary Disposition Standard

Motions for summary disposition are governed by Rule of Practice 250. *See* 17 C.F.R. § 201.250. An administrative law judge "may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250(b). "The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323." 17 C.F.R. § 201.250(a). In order "to survive a motion for summary disposition, the non-moving party must do more than 'simply show that there is some metaphysical doubt as to the material facts.'" *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *21 n.24 (Feb. 13, 2009) (quoting *Jeffrey L. Gibson*, Exchange Act Rel. No. 57266, 2008 SEC LEXIS 236, *22 n.26 (Feb. 4, 2008)), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (citation omitted).

The Commission has recurrently held that summary disposition is appropriate in "follow-on" proceedings where the only real issue involves the determination of the appropriate sanction.[3] *Mitchell M. Maynard*, Investment Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *27 (May 15, 2009); *see Jeffrey L. Gibson*, 2008 SEC LEXIS 236, at *19-20 & nn.21-24, *pet. denied*, 561 F.3d 548 (6th Cir. 2009). The exception occurs in those "rare circumstances" in which "a respondent may present genuine issues with respect to facts that could mitigate his or her misconduct." *Mitchell M. Maynard*, 2009 SEC LEXIS 1621, at *27.

B. The Division's evidence demonstrates that a full collateral bar is warranted

Section 15(b) of the Exchange Act and Section 203(f) of the Investment Advisers Act empower the Commission to impose a collateral bar[4] against Skaltsounis if three statutory factors are met: (1) at the time of his misconduct, he was associated with a broker or dealer or investment adviser; (2) he has been enjoined from any action, conduct, or practice specified in

[3] A "follow-on" proceeding is one "in which the Division seeks to impose sanctions after an individual is enjoined from acts involving securities or investment fraud." *Gibson v. SEC*, 561 F.3d 548, 550 n.1 (6th Cir. 2009).

[4] The term "collateral bar" refers to the authority to "exclude[] an associated person of a regulated entity not only from the type of business the person was in when" that person violated federal securities laws, "but also from any aspect of the securities business." *Toby G. Scammell*, Investment Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *1 n.1 (Oct. 29, 2014). Under the authority to issue a collateral bar, the maximum sanctions authorized in this proceeding are barring Skaltsounis from being associated 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. *See* 15 U.S.C. §§ 78o(b)(6)(A), 80b-3(f).

Exchange Act Section 15(b)(4)(C) and Investment Advisers Act Section 203(e)(4); and (3) the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(C), (b)(6)(A)(iii), 80b-3(e), (f).

As to the first factor, Skaltsounis stipulated in *AIC* that he was associated with Community Bankers Securities, Allied Beacon Partners, and Advent Securities, all registered broker-dealers, and associated with Allied Beacon Wealth Management, a registered investment adviser. Div. Ex. J at 12.[5] The Division has thus met the first factor.

With respect to the second factor, the district court's judgment reflects that it enjoined Skaltsounis from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) of the Exchange Act. Div. Ex. B at 2-4. Skaltsounis has thus been enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C) of the Exchange Act and Section 203(e)(4) of the Investment Advisers Act. 15 U.S.C. §§ 78*o*(b)(4)(C), (b)(6)(A)(iii), 80b-3(e)(4), (f).

As to the third factor, whether imposition of a collateral bar would be in the public interest, the Commission has long approved consideration in follow-on proceedings of a district court's underlying findings. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *43-44 & nn.69-70 (Mar. 7, 2014) (collecting cases). To determine the appropriateness of any remedial sanction, I must consider the public interest factors set forth in *Steadman v. SEC*, namely:

> 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.

603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 603 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. "The . . . inquiry into the appropriate sanction to protect the public interest is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *13 (Sept. 26, 2007). The Commission has also considered the degree of harm resulting from the violation, *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *100 (Jan. 19, 2001), and the deterrent effect of administrative sanctions, *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC

[5] Furthermore, the district court found that Skaltsounis was an officer or board member of each of the AIC subsidiaries. Div. Ex. K at 2-3. Inasmuch as Community Bankers Securities, Allied Beacon Partners, and Advent Securities were broker-dealers and Allied Beacon Wealth Management was an investment adviser, *id*. at 2-3, the record shows that Skaltsounis was associated with both a broker-dealer and an investment adviser at the time of his misconduct. *See* 15 U.S.C. §§ 78c(a)(18) (defining person associated with a broker or dealer as "any person directly or indirectly controlling a broker or dealer or any employee of such broker or dealer"), 80b-2(a)(17) (defining person associated with an investment adviser as "any person directly or indirectly controlling . . . such investment adviser").

LEXIS 195, at *35 (Jan. 31, 2006). In this latter regard, industry bars are considered an effective deterrent. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009).

In *Ross Mandell*, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "'review each case on its own facts' to make findings regarding the respondent's fitness to participate in the industry in the barred capacities." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). The Commission also explained that an administrative law judge's decision "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'" *Id*. at *8 (quoting *McCarthy*, 406 F.3d at 189, 190).

Here, the *Steadman* factors weigh in favor of imposing a full collateral bar. Skaltsounis's conduct was both egregious and recurrent. Over a four-year period, Skaltsounis was a central player in a fraud that raised over $6 million through the offering and sale of unregistered securities to at least forty-three investors, many of them unaccredited. Div. Ex. A. at 5-6. Skaltsounis repeatedly oversaw the issuance of subscription letters and promissory notes while falsely giving investors the impression that AIC would earn profits in the future and failing to disclose AIC's true financial state. *Id.* at 6-7. All the while, Skaltsounis knew or was reckless in not knowing that AIC was in debt, could not pay off its debts, and was reliant on new investments in order to pay its obligations. *Id.* at 6-7. As the district court explained, the result of Skaltsounis's fraud was that the majority of the forty-three investors about whom evidence was presented "lost their entire investment." *Id.* at 17. As a result of his misconduct, Skaltsounis was enjoined from violating the federal securities laws, including the antifraud provisions. *Id.* at 11.

Skaltsounis violated the antifraud provisions. 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) (citation omitted), *pet denied*, - - F.3d - -, 2014 WL 6765066 (D.C. Cir. Dec. 2, 2014). "Ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to bar from participation in the securities industry a respondent enjoined from violating [the] antifraud provisions." *Toby G. Scammell*, 2014 SEC LEXIS 4193, at *25 (internal citations omitted).

Additionally, both the jury's determination of liability under Sections 10(b) and 20(e) of the Exchange Act and the district court's own examination of the evidence at trial demonstrate that Skaltsounis committed these violations with scienter. *See* Div. Ex. A at 8-10. Skaltsounis's failure to heed the advice of counsel lends further support to this determination. *See id.* at 9.

There is no evidence that Skaltsounis recognizes the wrongfulness of his conduct. To the contrary, he has made plain that he does accept that he did anything wrong. In response to the Commission's motion in district court for final judgment, he persisted in raising rejected arguments. *See* Div. Ex. A at 10-11. In both his answer to the OIP and his Opposition, Skaltsounis asserts that "[t]he jury got it wrong" and "the jury erred." Answer at 1; Opposition at 1. Furthermore, Skaltsounis has also offered no assurance that he will not violate securities

laws in the future. Unwillingness to accept responsibility for one's actions "has long been deemed an appropriate measure of fitness for association in the industry." *Gregory Bartko*, 2014 SEC LEXIS 841, at *41.

Skaltsounis argues that he has no intention to re-enter the securities industry, citing his lack of participation in the industry over the past five years. Opposition at 3-4. Instead, Skaltsounis contends that he is pursuing a career as an artist, and provides links to websites featuring his art. *Id*. at 4.

However, Skaltsounis's current intention to not re-enter the securities industry does not necessarily lead to a conclusion that he poses no threat to commit future violations. Indeed, although the bare fact of a past violation is not enough, by itself, to warrant imposing a collateral bar, past fraudulent conduct is relevant because "the existence of a violation raises an inference that" the acts in question will recur. *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). When combined with his failure to make assurances against future violations, Skaltsounis's "refusal to recognize his wrongdoing" suffices to demonstrate the threat of future violations. *See Christopher A. Lowry*, Investment Company Act Release No. 2052, 2002 SEC LEXIS 2346, at *19 (Aug. 20, 2002); *see also Toby G. Scammell*, 2014 SEC LEXIS 4193, at *29.

Skaltsounis resists imposition of a bar because he believes it is unnecessary. Opposition at 7. Specifically, he says the Commission would necessarily have to approve his registration as an investment adviser and FINRA would have to permit him to "retake several qualification examinations." *Id*. According to Skaltsounis, neither outcome is likely. *Id*. Skaltsounis's speculation as to what FINRA or the Commission might or might not do in the future is irrelevant; what matters is that he has demonstrated through his actions that a permanent bar is warranted.

Skaltsounis also argues that a collateral bar is inappropriate because the Division could have but did not put the issue to the district court. Opposition at 2-3, 6. Congress, however, has left the decision whether to impose a bar to the Commission, not district courts. *See* 15 U.S.C. §§ 78*o*(b)(6)(A); 80b-3(f).

In sum, the balance of *Steadman* factors weighs in favor of a full collateral bar. Skaltsounis's claim to forego any future participation in the securities industry is more than outweighed by his egregious and recurrent misconduct, high degree of scienter, refusal to recognize his wrongdoing, and lack of assurances against future violations of the federal securities laws. Given Skaltsounis's obstinacy, I can have no confidence that he will not engage in future violations if given the opportunity. Furthermore, a sanction will further the Commission's interest in deterring others from engaging in similar misconduct. I find that it is in the public interest to impose a permanent, direct and collateral bar against Skaltsounis.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition against Respondent Nicholas D. Skaltsounis is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1934, Nicholas D. Skaltsounis is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Nicholas D. Skaltsounis 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 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.

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James E. Grimes
Administrative Law Judge