

INITIAL DECISION RELEASE NO. 862
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16473

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

In the Matter of : INITIAL DECISION OF DEFAULT
: August 18, 2015
HAIDER ZAFAR :

APPEARANCES: Andrew O. Schiff and Sean O'Neill for the Division of Enforcement, Securities
and Exchange Commission

Samuel H. Shamansky, Esq., for the Respondent

BEFORE: Jason S. Patil, Administrative Law Judge

Summary

This Initial Decision of Default grants the Division of Enforcement's motion for entry of default against Respondent Haider Zafar, and permanently bars Zafar from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, industry bar) and from participating in an offering of penny stock (penny stock bar).

Procedural Background

On April 3, 2015, the Securities and Exchange Commission issued an Order Instituting Administrative Proceedings (OIP) against Zafar, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The OIP alleges that: on September 22, 2014, Zafar pleaded guilty to a five-count indictment alleging wire fraud in violation of 18 U.S.C. § 1343 in *United States v. Zafar*, Case No. 14-cr-20617 (S.D. Fla.) (14-cr-20617); and on January 16, 2015, Zafar was sentenced to forty-six months in prison and was ordered to forfeit title and interest in assets and pay restitution in the amount of \$3,524,469. OIP at 2.

Service of the OIP occurred on April 13, 2015, in accordance with Rule 141(a)(2)(i) of the Commission's Rules of Practice, 17 C.F.R. § 201.141(a)(2)(i). See *Haider Zafar*, Admin. Proc. Rulings Release No. 2550, 2015 SEC LEXIS 1405 (Apr. 16, 2015). Zafar did not file an Answer to the OIP, and on May 13, 2015, I set a schedule for the Division's filing of a motion for default. *Haider Zafar*, Admin. Proc. Rulings Release No. 2665, 2015 SEC LEXIS 1858.

On May 29, 2015, the Division moved for default.¹ Attached to the motion were seven exhibits: Exhibit 1 (the August 28, 2014, Indictment in 14-cr-20617); Exhibit 2 (the September 2014 Plea Agreement in 14-cr-20617); Exhibit 3 (the transcript of a change of plea hearing on February 27, 2014, in *United States v. Zafar*, Case No. 13-cr-148 (S.D. Ohio) (13-cr-148)); Exhibit 4 (the transcript of the arraignment on indictment hearing on October 2, 2014, in *United States v. Zafar*, Case No. 14-cr-205 (14-cr-205); Exhibit 5 (the Judgment in 13-cr-148); Exhibit 6 (the Judgment in 14-cr-205); and Exhibit 7 (the Division's Proposed Findings of Fact and Conclusions of Law). Pursuant to 17 C.F.R. § 201.323, I take official notice of Exhibits 1 through 6; I also take official notice of the docket sheets and entries in 14-cr-20617, 13-cr-148, and 14-cr-205.

Conclusion of Default

I find Zafar to have defaulted in this proceeding. Zafar is in default for failing to file an Answer or to otherwise defend the proceeding. OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f). Likewise, consistent with 17 C.F.R. § 201.155(a), the allegations of the OIP are deemed to be true.

Zafar is notified that he may move to set aside the default in this case. Pursuant to 17 C.F.R. § 201.155(b), a default may be set aside, at any time, for good cause, to prevent injustice, and on such conditions as may be appropriate. 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. 17 C.F.R. § 201.155(b).

Findings of Fact

Zafar's Guilty Plea to the Florida Charges

In February 2014, Zafar pleaded guilty in federal court in Ohio (13-cr-148) to wire fraud, money laundering, and tax charges (the Ohio Charges). Ex. 3 at 326-27. On August 28, 2014, in federal court in Florida (14-cr-20617), a grand jury returned an indictment against Zafar, charging him with five counts of wire fraud, in violation of 18 U.S.C. § 1343 (the Florida Charges). Ex. 1. On September 8, 2014, Zafar entered into a plea agreement as to the Florida Charges. Ex. 2. Later in September 2014, the Florida Charges were transferred, with Zafar's consent, to federal court in Ohio (14-cr-205). Consent to Transfer of Case, 14-cr-205, ECF No. 1; Consent to Transfer of Case, 14-cr-20617, ECF No. 4. In October 2014, Zafar's guilty plea to the Florida Charges was entered in 14-cr-205. Ex. 4 at 110-11. In January 2015, in connection with his plea to the Florida Charges, Zafar was sentenced to forty-six months in prison, and was ordered to forfeit assets and pay restitution in the amount of \$3,524,469 and a special assessment of \$500; his sentence was to be served concurrently with an even more significant sentence imposed in connection with his plea to the Ohio Charges (in 13-cr-148). Exs. 5, 6; Order, 14-cr-205, ECF No. 23.

¹ Zafar did not respond to the motion. Thus, the Division did not file a reply brief.

The Misconduct Underlying Zafar's Guilty Plea to the Florida Charges

The facts underlying Zafar's guilty plea to the Florida charges—as outlined in the 14-cr-20617 Indictment—are as follows. See *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *3 (Apr. 23, 2015) (discussing when it is appropriate to rely on the facts of an underlying criminal indictment); *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 n.13 (Mar. 7, 2014) (“This summary of Mandell’s conduct draws from the allegations in the superseding indictment underlying his criminal conviction.”).

Around October 2012, Zafar introduced and portrayed himself as a member of a wealthy Pakistani family which controlled the financially influential Hashoo Group. Ex. 1 at 3. He met with the Vice President of Sales for the professional basketball team the Miami Heat, and informed this VP that his family’s Hashoo Group operated several hotels, including the Marriott Hotel bombed in Islamabad, Pakistan, textile plants, and oil businesses. *Id.* Zafar claimed he lived in his penthouse in the Essex house in New York, but also had residences across the street from where the Miami Heat played in Miami. *Id.* Zafar told the VP that he wanted to purchase a premium ticket package, which would cost over \$1 million, and other services and items related to Miami Heat home games. *Id.* at 1, 3. Based on Zafar’s misrepresentations, the VP provided Zafar with the requested ticket package. *Id.* at 3.

Around January 2013, again under the guise of being a member of the wealthy Pakistani family controlling Hashoo Group, Zafar was introduced to a professional basketball player on the Miami Heat, who had an energy drink business. *Id.* at 2, 3. Zafar informed the basketball player that Zafar’s family had distributorships that could market and distribute his energy drink in Pakistan, Dubai, and London. *Id.* at 3. Zafar offered the basketball player \$25 million for a percentage of his energy drink business, and a separate \$10 million for a percentage of a clothing company the basketball player also owned. *Id.* Zafar also told the basketball player that he had approximately \$35 million dollars in a Swiss bank account, but that he had difficulty getting that money into the United States. *Id.* at 3-4. At no point did Zafar invest money in the basketball player’s energy drink business or clothing company. *Id.* at 4.

Around early February 2013, Zafar told that basketball player that, as a result of his and his family’s finances and influence, Zafar had access to an investment opportunity whereby investors could invest a large sum of money for only a short period of time and quickly obtain a significant return. *Id.* As a result of these misrepresentations, the basketball player gave Zafar about \$2 million as a loan for Zafar’s purported business opportunity. *Id.* Zafar informed the basketball player that a bank account was opened in Switzerland to make their future business operate more smoothly, and on multiple occasions, Zafar showed him account statements and other things showing the supposed strong condition of the business bank account. *Id.*

Zafar was also introduced to two other Miami Heat basketball players under the guise of being a member of the wealthy Pakistani family controlling Hashoo Group, and through misrepresentations, convinced them to give him investments of \$4 million and \$1.5 million, respectively, for the purported investment opportunity. *Id.* at 4-5. With all three of the basketball players, rather than use investor money in the investment he proposed, Zafar falsely and fraudulently used the monies obtained for his personal use and benefit, including to reimburse the Miami Heat a portion of the cost of the premium ticket package. *Id.* at 5.

Ultimately, from approximately October 2012 through May 2013, Zafar knowingly, and with intent to defraud, devised, and intended to devise, a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made and, for the purpose of executing such scheme and artifice to defraud, did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds. Ex. 1 at 2; Ex. 4 at 114-15. The purpose of the scheme and artifice was for Zafar to unjustly enrich himself by claiming to be a member of a wealthy and influential Pakistani family in order to convince entities and individuals to provide him services, objects, and money for his personal use and benefit. Ex. 1 at 2.

Conclusions of Law and Remedial Sanctions

Industry and Penny Stock Bars Are Authorized

Exchange Act Section 15(b)(6) authorizes the imposition of an industry bar or penny stock bar as a sanction against Zafar if: (1) within ten years of the commencement of this proceeding, he was convicted of any offense specified in Exchange Act Section 15(b)(4)(B); (2) at the time of the misconduct, he was associated or seeking to become associated with a broker or dealer; and (3) the sanction is in the public interest. 15 U.S.C. § 78o(b)(6)(A)(ii). Zafar's guilty plea to the Florida Charges involves the violation of 18 U.S.C. § 1343, within the meaning of Exchange Act Section 15(b)(4)(B).² 15 U.S.C. § 78o(b)(4)(B)(iv); Exs. 4, 6.

Zafar acted as an unregistered broker in connection with the activity underlying the Florida Charges. *See Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (affirming Commission authority to bar persons from association with investment advisers, whether registered or unregistered). Zafar acted as a broker, within the meaning of Exchange Act Section 15(b)(6), by holding himself out as a broker, recruiting investors, and handling client funds. *See Anthony Fields, CPA*, Securities Act of 1933 Release No. 9727, 2015 WL 728005, at *18 & n.111 (Feb. 20, 2015). Zafar advertised having access to exclusive investment opportunities, recruited wealthy basketball players to invest in those sham opportunities, and took custody of basketball players' funds placed with him for investment.

Zafar did not file an Answer or oppose the Division's motion for entry of default, and therefore he has not offered any evidence to refute the conclusion that the statutory basis for a sanction has been satisfied. A sanction will be imposed if it is in the public interest.

The Public Interest Supports Imposition of Industry and Penny Stock Bars

The Division seeks industry and penny stock bars against Zafar. Div. Mot. at 8-9. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC* namely: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the

² Zafar's guilty plea to the Ohio Charges also establishes violations within the meaning of Exchange Act Section 15(b)(4)(B). 15 U.S.C. § 78o(b)(4)(B)(iii)-(iv); Exs. 3, 5.

wrongful nature of his conduct; and (6) the likelihood of future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see 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's inquiry into the appropriate sanction to protect the public interest is flexible, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission has also considered the age of the violation and 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).

Before imposing an industry-wide bar, a 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, and the law judge's analysis should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct. *Ross Mandell*, 2014 WL 907416, *2. With these considerations in mind, I have determined that it is appropriate and in the public interest to impose industry and penny stock bars against Zafar.

Zafar's conduct was egregious, recurrent, and involved a high level of scienter. It was egregious because it involved Zafar's soliciting investors into a sham investment by way of multiple lies about his identity. Further, Zafar tricked the investors by never investing their substantial funds but using them for his own benefit. Zafar's conduct was recurrent in that he directed similar lies to four individuals associated with the Miami Heat. Further, his fraud continued for about half a year. Scienter is apparent from Zafar's calculated falsehoods: he misrepresented his family, background, and finances to encourage others to put their trust in him. *See SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 424 (S.D.N.Y. 2007) ("Representing information as true while knowing it is not, recklessly misstating information, or asserting an opinion on grounds so flimsy as to belie any genuine belief in its truth, are all circumstances sufficient to support a conclusion of scienter."), *aff'd sub nom.*, *SEC v. Altomare*, 300 F. App'x 70 (2d Cir. 2008). He also promised sizable returns to investors, but never actually invested their funds.

As to the final three *Steadman* factors, Zafar has not offered assurances against future violations, having defaulted in this proceeding, and his prison sentence, while lengthy, leaves open the possibility that he would attempt to reenter the securities industry upon his release absent the imposition of a bar. While Zafar pleaded guilty in the criminal cases against him, those pleas do not reflect a level of appreciation of wrongfulness that might outweigh the other *Steadman* factors' general support of a hearty sanction.

In conclusion, it is in the public interest to impose a permanent, industry bar and a permanent, penny stock bar against Zafar.³

³ Under Section 15(b)(6)'s plain language, the Commission is authorized to impose the full range of permanent bars, including the penny stock bar, against Zafar if, in relevant part, at the time of the alleged misconduct, he was associated with a broker or dealer, *or* was participating in an offering of penny stock. 15 U.S.C. § 78o(b)(6)(A); *see, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *19-20 (Dec. 12, 2013) (Commission imposed full range of permanent bars against the respondent based on his participation in an offering of penny stock at the time of the alleged misconduct, without requiring a separate broker-dealer nexus). Under the circumstances

Order

It is ORDERED that the Division of Enforcement's motion for entry of default against Haider Zafar is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Haider Zafar 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 a 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 17 C.F.R. § 201.360. Pursuant to 17 C.F.R. § 201.360, 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 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a 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.

Respondent is notified that he may move to set aside the default in this case. Commission 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.*

Jason S. Patil
Administrative Law Judge

of this proceeding, imposing the full range of permanent bars best comports with the statute's remedial purpose and is in the public interest for the reasons discussed.