INITIAL DECISION RELEASE NO. 1022
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17013

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

In the Matter of ALLEN M. PERRES, and WILLARD R. ST. GERMAIN	INITIAL DECISION June 7, 2016

APPEARANCES: Anne C. McKinley and Emily A. Rothblatt, for the Division of Enforcement, Securities and Exchange Commission

Allen M. Perres, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

Respondent Allen M. Perres consented to the entry of an order issued by the Securities and Exchange Commission finding that he willfully violated Section 5(a) and (c) of the Securities Act of 1933 and Section 15(a) of the Securities Exchange Act of 1934. He was ordered to cease and desist from committing such violations and to pay disgorgement; due to his financial condition, the majority of the disgorgement amount was waived and no civil penalty was imposed. This proceeding was then held to determine what, if any, additional non-financial remedial sanctions under Exchange Act Section 15(b)(6) are in the public interest. In this initial decision, I grant the Division of Enforcement's motion for summary disposition and find that it is in the public interest that Perres be 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 (industry bar), with the right to reapply in five years.

Procedural Background

On December 21, 2015, the Commission issued an order instituting administrative and cease-and-desist proceedings (OIP) against Perres, pursuant to Section 8A of the Securities Act

and Sections 15(b) and 21C of the Exchange Act.[1] The OIP alleges that Perres violated Section 5(a) and (c) of the Securities Act by offering for sale shares of Southern Cross Resources Group, Inc., when the shares were not registered and did not satisfy an exemption from registration. OIP at 3-4. The OIP also alleges that Perres acted as an unregistered broker, in violation of Exchange Act Section 15(a), by soliciting investments in Southern Cross, providing investors with offering materials and information on the company, and earning commissions for bringing in investors. *Id.* The OIP followed Perres' submission and the Commission's acceptance of an offer of settlement, pursuant to which Perres was ordered to pay disgorgement and to cease and desist from violations of Securities Act Section 5(a) and (c) and Exchange Act Section 15(a). *Id.* at 1, 5-7. Perres agreed that, solely for purposes of determining additional non-financial sanctions, the allegations of the OIP "shall be accepted as and deemed true by the hearing officer." *Id.* at 9-10. The OIP provides that the issues raised in this proceeding may be determined "on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence." *Id.* at 10.

On February 12, 2016, the Division filed a motion for summary disposition, attaching one exhibit. Perres filed an opposition to the motion on March 14, and on March 29, 2016, the Division filed a reply with one exhibit.

Legal Standard

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). In accordance with the OIP's instructions, I accept and deem true the factual allegations in the OIP. OIP at 9-10. I have also considered stipulations and admissions made by Perres, uncontested affidavits, and facts officially noticed pursuant to 17 C.F.R. § 201.323. *See* 17 C.F.R. § 201.250(a). The filings, documents, and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this initial decision have been considered and rejected.

Findings of Fact

Perres, age 68 at the time the OIP was issued, is a resident of Chicago, Illinois. OIP at 2. He holds Series 22 and 39 securities licenses. *Id.*; Allen Mark Perres BrokerCheck Report at 3.[2] During the time at issue, Perres served as one of the marketers for Southern Cross, a Nevada corporation. OIP at 2. Southern Cross is headquartered in Vernon Hills, Illinois, and purports to be an asset-based trading company with a focus on energy producing assets. *Id.*

[1] The OIP included a second respondent, Willard R. St. Germain, who settled with the Commission and agreed to an industry bar with the right to apply for reentry after three years. OIP at 7-8.

[2] I take official notice of Perres' BrokerCheck report pursuant to 17 C.F.R. § 201.323.

From approximately April 2012 through September 2014, Southern Cross sold shares of its common stock and debt, raising a total of $5,120,587 from approximately 97 investors located in twelve different states. OIP at 2. Perres brought in at least ten of these investors, and he received $125,145 in commissions through the sale of Southern Cross' common stock. *Id.* at 3. He and St. Germain together raised over $2 million for Southern Cross. *Id.*

Perres and St. Germain often served as the primary sources of information for the investors, and frequently provided investors with private placement memoranda, informational brochures, and other offering materials. OIP at 3. The two also organized several meetings at a friend's place of business in order to pitch Southern Cross to potential investors. *Id.* Perres did not take any steps to determine whether any of the individuals who purchased Southern Cross' common stock through him were sophisticated or accredited investors, and he did not provide the investors access to registration-equivalent information about Southern Cross. *Id.*

No registration statements were filed in connection with any of Southern Cross' securities, and no exemption from registration applied to any of the sales effected by Perres. OIP at 3. As a result, the OIP found that Perres willfully violated Section 5(a) and (c) of the Securities Act, which prohibit the direct or indirect offer and sale of securities through the mails or interstate commerce unless a registration statement has been filed or is in effect or an exemption from registration is available. *Id.* at 3-4; *see* 15 U.S.C. § 77e(a), (c).

Perres was not registered with the Commission in any capacity during the period at issue, nor was he associated with a registered broker-dealer. OIP at 3. Accordingly, the OIP also found that he willfully violated Section 15(a) of the Exchange Act, which prohibits a person from acting as a broker or dealer and using the mail or interstate commerce to effect or induce transactions in securities without registering with the Commission or being associated with a broker or dealer. *Id.* at 3-4; *see* 15 U.S.C. § 78*o*(a).

Conclusions of Law

The Division seeks an industry bar against Perres pursuant to Exchange Act Section 15(b)(6), with the right to apply for reentry after five years. Div. Mem. at 4, 10-11; *see* 15 U.S.C. § 78*o*(b)(6). Section 15(b)(6) authorizes the Commission to censure, limit the activities of, suspend, or bar Perres from the industry if the following criteria are met: (1) at the time of the alleged misconduct, Perres was associated or seeking to become associated with a broker or dealer; (2) Perres has willfully violated any provision of the Securities or Exchange Acts or their rules or regulations; and (3) the sanction imposed is in the public interest. 15 U.S.C. § 78*o*(b)(4)(D), (6)(A)(i). The first requirement is met because Perres consented to an order finding that he acted as an unregistered broker in violation of Exchange Act Section 15(a), and because he admitted that he engaged in brokering activities without being registered. OIP at 3-4; *see David F. Bandimere*, Exchange Act Release No. 76308, 2015 SEC LEXIS 4472, at *99-100 (Oct. 29, 2015) (holding that a person acting as a broker satisfies Section 15(b)(6)'s requirement of association with a broker); *SEC v. Imperiali, Inc.*, 594 Fed. App'x 957, 961 (11th Cir. 2014) ("Evidence that tends to establish someone has acted as a broker includes 'regular participation in securities transactions, . . . involvement in advice to investors and active recruitment of investors.'" (quoting *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005))). That

order also found that he willfully violated provisions of both the Securities and Exchange Acts, thereby satisfying the second requirement. OIP at 3-4. Accordingly, I will impose a sanction if it is in the public interest.

A. The Public Interest Factors

The criteria to determine whether a sanction is in the public interest are the *Steadman* factors: (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 wrongful nature of his conduct; and (6) 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); *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 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.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). 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. In deciding whether the public interest warrants an industry bar, I must determine that "such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014).

B. Egregiousness, Recurrence, and Recency

Perres' conduct was egregious. He violated the registration requirements of both the Securities and Exchange Acts, provisions which are critical to the securities regulatory system. OIP at 3-4; *see Charles F. Kirby*, 56 S.E.C. 44, 49 (2003) ("The registration requirements [of Securities Act Section 5] are the heart of the securities regulatory system."); *Eastside Church of Christ v. Nat'l Plan, Inc.*, 391 F.2d 357, 362 (5th Cir. 1968) ("The requirement that brokers and dealers register is of the utmost importance in effecting the purposes of the [Exchange] Act."). He took no steps to ensure that the investors he solicited were sophisticated or accredited, and he did not provide any of them with registration-equivalent financial information about Southern Cross. OIP at 3. These failures harmed both the investors and the marketplace by depriving them of information necessary to make fully informed investment decisions. *See Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 839, at *84 (Mar. 7, 2014), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015). And by acting as a broker without registering with the Commission or associating with a registered broker, Perres evaded the Commission's standards with respect to the training, experience, and recordkeeping required of those acting in such an important capacity.

I reject Perres' claim that his violations were not egregious because he "never cold called or solicited investors." Resp. Opp. at 7. First, he cannot contest that he solicited investors for Southern Cross; I have accepted that fact as true as instructed by the OIP. OIP at 3 ("In addition to soliciting investors, . . . Perres often provided investors with offering materials."). Furthermore, even if all the investors he solicited were known to him from prior relationships, Resp. Opp. at 7, it is beyond dispute that he failed to provide them with registration-equivalent

information and did nothing to verify their status as accredited or sophisticated. OIP at 3. Finally, I am unpersuaded by Perres' suggestion that his violations were not egregious because he "had good reason to believe the Company would keep its commitments to: prepare complete disclosure documents, [and] hire me as a full time employee who could legally speak to possible investors and be compensated in a proper manner." Resp. Opp. at 7-8. As discussed below, the fact that he was aware of the legal requirements being violated makes him more culpable, not less, and therefore does nothing to mitigate the egregiousness of his actions.

Perres' violations were recurrent. He brought in at least ten investors in Southern Cross and earned commissions for his efforts for over two years, accumulating a total of $125,145. OIP at 3. The violations were also recent, continuing through at least September 2014. *Id.* at 2-3.

C. Assurances Against and Recognition of Misconduct

The evidence shows that the sincerity of Perres' assurances against future violations and his recognition of the wrongful nature of his conduct are minimal. His settlement with the Commission, though done on a neither-admit-nor-deny basis, suggests that he recognizes his misconduct. *See* Resp. Opp. at 9. He also acknowledges in his opposition brief that he was "careless" and that the monetary sanction he agreed to was fair based on his conduct. *Id*. But his opposition goes on to disclaim and diminish many of the facts to which he consented in the OIP. For example, Perres claims that: he did not solicit any investors; the only investors he "recruited" were accredited and were "properly informed of the risk"; and he was paid $3,000 per month by Southern Cross for only one year for performing "various functions." *Id.* at 5, 7, 9. As noted above, the OIP established that Perres did solicit investors and received $125,145 in commissions for doing so. OIP at 3, 9-10. It also established that the stock sold to investors did not meet an exemption to registration and that investors did not receive registration-equivalent information about Southern Cross. *Id.* at 3-4, 9-10. Perres' continued attempts to undermine these facts call into question the sincerity of his assurances against future violations and the degree to which he recognizes his misconduct.

Read as a whole, Perres' opposition makes clear that his recognition of the wrongful nature of his conduct is lukewarm at best. He characterizes his decision to enter a partial settlement with the Commission as one motivated by pragmatism, explaining that he "felt this was practical because I needed to take responsibility for the careless actions of the company for which I worked . . . and for my lack of assertive action as I witnessed behavior which I believed was inappropriate but which I felt I could help improve." Resp. Opp. at 2. His opposition is peppered with other examples of his attempts to minimize his wrongdoing and shift the blame for his misconduct to others. *See, e.g.*, *id.* at 4 ("Unfortunately and to my dismay, almost immediately upon my arrival at Southern Cross, I was asked to change my job description to speak to small investors on the Company's behalf."), 5 ("I was repeatedly promised that I would become an employee . . . [and] the Company committed that it would solicit small investors for 'only a few months.'"), 6 ("I repeatedly admonished the company to follow proper securities law guidelines . . . ."), 7 ("I had good reason to believe the Company would keep its commitments . . . ."). These statements belie his professed contrition for his misconduct. *See id*. at 9-10.

D. Scienter

Perres insists that "while [he] made mistakes, . . . at no time was [he] willful" in violating the securities laws. Resp. Opp. at 6. But his opposition makes clear that he knew both that the Southern Cross securities offerings did not comply with the law and that he could not receive commissions for the sales he effected. Regarding the former, Perres insists that he was hired to source institutional debt and equity only and "expressly indicated that [he] would not be involved in any sourcing of funds from individuals considered non-institutional." *Id*. at 3. Yet he acknowledges that this changed soon after he started the job – "Unfortunately and to my dismay, almost immediately upon my arrival at Southern Cross, I was asked to change my job description to speak to small investors on the Company's behalf." *Id.* at 4. He claims to have refused initially but ultimately to have "relented and agreed to spend 'a few months' speaking to small investors." *Id.* As established by the OIP, this "few months" was in fact an over two-year period during which he raised money from individual investors without inquiring about their status or providing them access to registration-equivalent information about Southern Cross. OIP at 3.

Perres' opposition also suggests that he knew that raising funds from small investors implicated additional regulatory requirements. For example, he claims that his agreement with Southern Cross required the company to create "proper documentation," including "proper disclosure information," and to "file a Form D for investors [he] might source." Resp. Opp. at 5. He also insists that he had "good reason to believe the Company would keep its commitments to . . . prepare complete disclosure documents." *Id.* at 7-8. Yet he did not provide this information to investors he solicited, and he makes no claim that he thought it was being provided to them through alternate means. OIP at 3. Indeed, his insistence that he witnessed "inappropriate" behavior and "repeatedly admonished the company to follow proper securities guidelines" supports the conclusion that he knew that the Southern Cross securities offerings were not complying with applicable law. Resp. Opp. at 2, 6. Even if it were true, as Perres asserts, that he eventually encouraged the company to make an offer of rescission with respect to the securities offerings, this single act does nothing to diminish the scienter with which he acted throughout the period in question. *Id*. at 6.

On the subject of compensation, Perres claims that he "expressly warned the company that neither [he n]or any other person could be compensated for raising money" from investors. Resp. Opp. at 4. Yet he went on to receive over $125,000 in commissions for that very activity. OIP at 3. He cannot plausibly claim that he was unaware that this money was tied to the sales he facilitated.[3] The OIP established that he and the second marketer each received commissions amounting to approximately 17% of the funds they raised from investors. *Id*. Perres either knew, or was extremely reckless in not knowing, that the "intended structure of [his] compensation" – i.e., a salary or stipend rather than commissions – did not materialize. Resp.

[3] Regarding his compensation, Perres asserts that he received $3,000 a month for one year for "various functions" and did not receive the other monthly "stipend" he was promised. Resp. Opp. at 4-5. This would amount to only $36,000. Perres does not provide any explanation for his receipt of $125,145, nor can he dispute that such money was a commission for raising funds from investors and was not an advance on his promised stipend. OIP at 3; *see* Resp. Opp. at 5.

Opp. at 6; *see also id.* at 5. Indeed, Perres acknowledges that he continued working at Southern Cross even after he "saw the extent to which Southern Cross broke its commitments to [him] regarding stipend and/or salary . . . ." *Id.* at 6. Perres' opposition, combined with the facts in the OIP, leads me to conclude that his violations of the Securities and Exchange Acts were committed with scienter.[4]

E. Future Occupation

Perres asserts that he has "no intention of speaking with small investors in the future." Resp. Opp. at 7. But he admits that he does plan to continue in the financial industry, suggesting that he will "guide entrepreneurs to the right attorneys, accountants, financial plans, etc." and assist clients with choosing broker-dealers, investment opportunities, and funding and marketing strategies. *Id.* It is therefore likely that his occupation will present opportunities for future violations.

F. A Bar is in the Public Interest

The majority of the public interest factors weigh in favor of a significant penalty. Perres acted with a high degree of scienter, has largely failed to recognize the wrongful nature of his conduct or provide sincere assurances against future misconduct, and his violations were egregious, recurrent, and recent. While there is no evidence that individual investors lost money, Perres' willingness to continue soliciting investors for Southern Cross despite witnessing the company's repeated improprieties suggests a lack of concern for investors, and his continued occupation in the financial industry therefore puts future investors at risk. An industry bar for a minimum of five years, including a penny stock bar, is not "excessive" or "vague" but is appropriate in the public interest. Resp. Opp. at 1.

I reject Perres' assertion that the "financial penalty" to which he agreed was "sufficient punishment." Resp. Opp. at 1. His settlement required the payment of disgorgement, which is intended not to punish him but merely to prevent him from being unjustly enriched by his violations. *See SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230-31 (D.C. Cir. 1989). I was directed to determine whether the public interest warranted remedial sanctions in addition to disgorgement and a cease-and-desist order, and I have concluded that an industry bar for a minimum of five years is appropriate.

Order

Accordingly, it is ORDERED that the Division's motion for sanctions against Allen M. Perres is GRANTED, and that pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Allen M. Perres is BARRED from associating with a broker, dealer, investment adviser,

[4] The Division contends that an injunction issued against Perres in 1975 is probative on the issue of scienter. Div. Mem. at 9. The relevant portion of the record consists of only a one-sentence summary of the case from the SEC News Digest, which the Division submitted, and Perres' BrokerCheck report. *See* Div. Mem. Ex. A. Without more information about the violation, and particularly in view of its age, its existence is not helpful to the public interest determination.

municipal securities dealer, municipal advisor, transfer agent, and 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; provided, however, that Perres may apply to become so associated after five years.

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.

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Cameron Elliot
Administrative Law Judge