Initial Decision Release No. 1376
Administrative Proceeding
File No. 3-18534

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

In the Matter of

Jason A. Halek

Initial Decision
May 9, 2019

Appearances: Keefe Bernstein for the Division of Enforcement, Securities and Exchange Commission

Jason A. Halek, *pro se*

Before: Brenda P. Murray, Chief Administrative Law Judge

Background

The Securities and Exchange Commission instituted this proceeding pursuant to Section 15(b) of the Securities Exchange Act of 1934 on June 7, 2018. This proceeding is based on the civil injunction entered against Respondent Jason A. Halek in a 2014 lawsuit. *See* OIP at 2. The order instituting proceedings (OIP) reiterates the same allegations as the 2014 lawsuit—that is, between September 2009 and June 2010, Halek operated as an unregistered broker-dealer and fraudulently offered and sold unregistered securities. *Id.*

Halek was served with the OIP on June 13, 2018. *See Jason A. Halek*, Admin. Proc. Rulings Release No. 6308, 2018 SEC LEXIS 3124, at *2 (ALJ Nov. 7, 2018). Halek submitted an answer on December 14, 2018, and attended the prehearing conference the next day. *See Halek*, Admin. Proc. Rulings Release No. 6402, 2018 SEC LEXIS 3516, at *1 (ALJ Dec. 13, 2018). At the prehearing conference, I determined that summary disposition was an appropriate method of resolving the proceeding and ordered a procedural schedule with extended time for Halek to respond. *Id.* at *1-2; *see* 17 C.F.R. § 201.250(b).

Delays occurred because of the five-week government shutdown from December 27, 2018, to January 25, 2019. *See Pending Admin. Proc.*, Securities Act of 1933 Release No. 10603, at *1 (Jan. 30, 2019). The Division of Enforcement filed its motion for summary disposition on February 14, 2019.[1] The Division seeks to bar Halek from association with a broker or dealer and argues that application of public interest factors to the undisputed facts shows that the requested bar is in the public interest. Mot. at 1, 11.

Halek submitted his brief in opposition on March 28, 2019. Halek argues that the Division's motion contains false and misleading statements and that he needs oral argument to explain his position, which is that his attorney had a conflict of interest and that he was pressured to sign a consent that he did not understand. Opp'n at 1. Halek states that he is remorseful that people lost money. *Id.* at 2.

The Division submitted its reply on April 12, 2019. The Division argues that the opposition brief does not dispute the relevant evidence. Reply at 1. It also argues that Halek's prior attorney's involvement was limited to an earlier lawsuit and is therefore irrelevant. *Id.* at 2.

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[1] The motion included the declaration of Keefe M. Bernstein with nine exhibits: from a 2010 Commission lawsuit against Halek, the complaint (Ex. A), Halek's consent (Ex. B), and the final judgment (Ex. C); from the 2014 lawsuit, the complaint (Ex. D), Halek's consent (Ex. E), and the final judgment (Ex. F); from a 2015 criminal action against Halek, the indictment (Ex. G) and judgment (Ex. H); and an email from Halek on October 16, 2018 (Ex. I).

Findings of Fact[2]

Halek owned and operated Halek Energy, LLC, a Texas limited liability company. Ex. A at 2. Halek Energy filed for bankruptcy under Chapter 11 in 2011, and a final decree was entered on February 19, 2014. Ex. D at 4.

The Commission filed two complaints against Halek alleging securities law violations in the United States District Court for the Northern District of Texas in 2010 and 2014. The complaint in the 2010 lawsuit, *SEC v. Halek Energy, LLC*, No. 3:10-cv-1719 (N.D. Tex.), was filed on August 31, 2010. As alleged in the complaint, between June 2007 and September 2009, Halek participated in unregistered securities offerings of working interests in oil and gas projects and pre-IPO shares that raised approximately $22 million from at least 300 investors. Ex. A at 1. The offering materials contained false and misleading statements and Halek misused investor funds. *Id.* at 1-2. The 2010 lawsuit resulted in a final judgment on consent entered on September 13, 2012. Ex. C at 1. The court enjoined Halek from committing any future violations of Sections 5 and 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5, imposed a $50,000 civil penalty, and determined that Halek was jointly and severally liable to disgorge $26.6 million in profits from the conduct alleged in the complaint and prejudgment

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[2] The record consists of the pleadings, the exhibits attached to the Division's Motion which I accept as evidence, the prehearing conference transcript, and facts officially noticed. 17 C.F.R. §§ 201.111(c), .250(b), .323.

In addition, facts are taken from the allegations in the complaints from underlying civil cases, which Halek agreed that he could not contest in later administrative proceedings before the Commission. Exs. B at 5, E at 3; *see Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) ("Whether or not issues established in the consent judgment were 'actually litigated' for purposes of [collateral] estoppel, the Commission's application of factual preclusion in the follow-on proceeding was appropriate because the judgment unambiguously barred Siris from making any future challenge to the allegations in the [civil] complaint."); *Marshall E. Melton*, Investment Advisers Act of 1940 Release No. 2151, 2003 WL 21729839, at *2-3, *9 (July 25, 2003) (clarifying the Commission's position that, having consented to an injunction based on the allegations in a civil complaint, respondents may not question those allegations in a proceeding based on the injunction); 17 C.F.R. § 202.5(e).

interest. *Id.* at 1-5. The court of appeals affirmed the district court's final judgment. *SEC v. Halek*, 537 F. App'x 576 (5th Cir. 2013).[3]

The Commission initiated the 2014 lawsuit, *SEC v. Halek*, No. 3:14-cv-1106 (N.D. Tex.), on March 28, 2014. When Halek became aware of the investigation that resulted in the 2010 lawsuit, he engaged in a new fraudulent scheme. Ex. D at 2-3. Between September 2009 and June 2010, Halek and associates offered and sold more than $5.5 million of unregistered securities in the form of working interests in six oil and gas projects to more than 100 investors nationwide. *Id.* at 1-2. Halek employed a "straw man scheme" where Halek Energy's ownership of the oil and gas projects was disguised by offering documents falsely stating that the projects were instead owned by other LLCs. Ex. D at 1-2. The 2014 lawsuit resulted in a final judgment entered on consent on April 20, 2017. Ex. F at 1. The court enjoined Halek from violating Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5. *Id.* at 1-4.

In his consents to judgment in the 2010 and 2014 lawsuits, Halek acknowledged that entry of the permanent injunctions would have collateral consequences, including statutory disqualification from membership in or association with a member of a self-regulatory organization. Exs. B at 5, E at 3.

On August 6, 2015, Halek was indicted for conspiracy, violations of the Safe Drinking Water Act, making false statements, and obstructing an official proceeding in *United States v. Halek*, No. 1:15-cr-130 (D.N.D.). Ex. G at 7-26. Halek pleaded guilty to three counts of violating the Safe Drinking Water Act; he was sentenced to time served and ordered to pay a $50,000 fine and $35,000 in restitution. Ex. H at 1-3, 7.

Conclusions of Law

As an initial mater, summary disposition is frequently an appropriate way to resolve follow-on administrative proceedings. *Gibson v. SEC,* 561 F.3d 548, at 553 (6th Cir. 2009); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). This is true, in part, because the parties are precluded from contesting issues that were previously litigated or settled in district court. *See, e.g.*, *Siris*, 773 F.3d at 96. Halek may believe that his attorney had a

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[3] As of 2014, Halek had not made any payments despite the Fifth Circuit's affirmance of the judgment. *See* Ex. D at 2.

conflict and that he should therefore not be bound by his consent in the 2010 and 2014 lawsuits, *see* Opp'n at 1, but—as I told him during the prehearing conference, Prehr'g Tr. 13-15 (Dec. 13, 2018)—he cannot collaterally attack those final judgments in this proceeding. *See Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *5 & n.39 (July 26, 2013).

The issue here is whether a sanction is appropriate. Section 15(b)(6) of the Exchange Act authorizes the Commission to impose a sanction on a person who has been enjoined from violating the securities statutes based on their conduct while associated with a broker or dealer where it is in the public interest to do so. 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii).

Two of the Section 15(b) requirements were established in the 2014 lawsuit. Halek was enjoined against violating the federal security laws in 2017. Ex. F at 1-4. At the time he was acting as an unregistered broker by engaging in the business of effecting transactions in securities for the accounts of others. Ex. D at 9, 12-13; *see* 15 U.S.C. § 78c(a)(4)(A). And, for the purposes of Section 15(b), unregistered brokers are considered to be associated with a broker-dealer. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1 n.2 (Apr. 23, 2015). That leaves only the question whether a sanction would be in the public interest.

The established criteria for assessing the public interest are found in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *5 (Oct. 29, 2014). The public interest factors include:

> 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.

Id. The Commission also considers the deterrent effect of administrative sanctions. *Peter Siris*, Advisers Act Release No. 3736, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). The public interest inquiry is "flexible" and "no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

Egregiousness and recurrent nature

Halek's conduct is egregious and recurrent in at least two respects. First, Halek knowingly violated the antifraud provisions of the both the Securities Act and Exchange Act. Ex. D at 1-2, 10-11. Halek's fraudulent acts that were the basis of the 2014 lawsuit involved sales of over $5.5 million in unregistered securities to over 100 investors located across the country during a nine month period. *Id.* at 1-2. Fraud is considered among the most serious types of conduct prohibited by the securities statutes. *Melton*, 2003 WL 21729839, at *9 ("[C]onduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest sanction under the securities laws.").

Second, when Halek engaged in the activities that were the basis for the 2014 lawsuit in 2009, he did so while he was being investigated for similar fraudulent conduct that he engaged in between June 2007 and September 2009. Ex. D at 2; *see* Ex. A at 1-2, 7-10.

Degree of scienter involved

Halek acted with scienter as shown by the fact that violations of the statutory and regulatory provisions covered by the injunction in the 2014 lawsuit require scienter—that is, Section 10(b) of the Exchange Act and Rule 10b-5, and Section 17(a)(1) of the Securities Act. *See Aaron v. SEC*, 446 U.S. 680, 701-02 (1980). Moreover, the fact that his violations were so similar to the violations for which he was already being investigated in connection with the 2010 lawsuit suggests that he must have been at least extremely reckless to repeat his illicit behavior. *Cf. Andresen v. Maryland*, 427 U.S. 463, 483 (1976) ("The Court has often recognized that proof of similar acts is admissible to show intent or the absence of mistake."). And extreme recklessness establishes scienter. *See Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008); *Gregory O. Trautman*, Securities Act Release No. 9088A, 2009 WL 6761741, at *16 (Dec. 15, 2009).

Sincerity of assurances against future violations and recognition of the wrongful nature of his conduct

Halek has not offered any assurances against future violations. Nor has he recognized the wrongful nature of his conduct. One could argue that by consenting to the judgment in the 2014 lawsuit, Halek has acknowledged his wrongdoing. But that assumption lacks support because Halek's answer denied all of the allegations in the OIP and, at every stage in this proceeding, Halek has denied the legitimacy of the injunction in the 2014 lawsuit. *See* Answer at 1; Ex. I at 1 ("I believe this to be an illegal and/or unethical action on several accounts."); Preh'rg Tr. 7-9, 11-13 (Dec. 13, 2018) (asserting that

the consent judgments in the 2010 and 2014 lawsuits are "fraudulent judgments"); Opp'n at 1-2. Despite his remorse for investor losses, Halek does not appear to acknowledge that he caused them. *See, e.g.*, Opp'n at 2 (placing the blame on the "high risk" oil-and-gas business and muddling causality with statements such as "[e]verything I have been through has cost people money").

Opportunities for future violations

Based on Halek's record of failing to comply with securities laws and regulations, barring him from association with a broker or dealer is appropriate to offer some protection to the investing public. *See Korem*, 2013 WL 3864511, at *6 & n.50. Even if the level of protection provided by an industry bar is minimal given that Halek was not associated with a broker or dealer when he violated the securities statutes from June 2007 through June 2010, the bar will at least prevent him from applying a patina of legitimacy to his actions in the event of future misconduct.

For all of the reasons stated, I find it to be in the public interest to bar Halek from association with a broker or dealer.

Order

I GRANT the Division of Enforcement's motion for summary disposition.

I ORDER that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Jason A. Halek is BARRED from association with any broker or dealer.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 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 of the Commission's Rules of Practice, 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 a 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 occur, the initial decision shall not become final as to that party.

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Brenda P. Murray
Chief Administrative Law Judge