Initial Decision Release No. 1378
Administrative Proceeding
File No. 3-18481

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

In the Matter of

Angela Rubbo Beckcom Monaco

Initial Decision
May 30, 2019

Appearances: Christine Nestor for the Division of Enforcement, Securities and Exchange Commission

Angela Rubbo Beckcom Monaco, *pro se*

Before: Brenda P. Murray, Chief Administrative Law Judge

Background

The Securities and Exchange Commission began this proceeding with an order instituting proceedings (OIP) on May 15, 2018, pursuant to Section 15(b) of the Securities and Exchange Act of 1934. The OIP alleges that Respondent Angela Rubbo Beckcom Monaco pleaded guilty to one count of mail and wire fraud conspiracy and one count of engaging in a monetary transaction in property derived from illegal activity before the United States District Court for the District of Colorado.[1] The OIP ordered this administrative proceeding to determine the truth of that allegation and what, if any, remedial action is appropriate and in the public interest.

This proceeding was originally assigned to a different administrative law judge but little activity had occurred before it was stayed and reassigned to me in light of the Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018); *see Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536,

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1 *See United States v. Monaco*, No. 17-cr-417 (D. Colo.).

2018 SEC LEXIS 2058, at *2-3 (Aug. 22, 2018); *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2, *4 (ALJ Sept. 12, 2018). After independently reviewing the record, I found that Monaco had been served on June 15, 2018. *Angela Rubbo Beckcom Monaco*, Admin. Proc. Rulings Release No. 6322, 2018 SEC LEXIS 3217 (Nov. 14, 2018). Monaco submitted a letter dated October 31, 2018, that I have accepted as her answer to the OIP.

I held a prehearing conference on December 11, 2018, attended by Monaco, who is representing herself, and counsel for the Division of Enforcement. At the conference, I set a summary disposition briefing schedule. The Division filed a motion for summary disposition on December 21, 2018. The Division seeks an order barring Monaco from associating with six categories of securities industry registrants[2] and from participating in an offering of penny stock. Monaco submitted an opposition dated January 10, 2019. The Division filed a reply on February 1, 2019. The matter is ripe for decision.

Summary Disposition Standard

Rule 250(b) governs summary disposition in cases designated by the Commission as 75-day proceedings. *See* 17 C.F.R. § 201.250(b). Rule 250(b) specifies that a motion for summary disposition may be granted if "there is no genuine issue with regard to any material fact" and "the movant is entitled to summary disposition as a matter of law." *Id.* The facts on summary disposition must be viewed in the light most favorable to the non-moving party. *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 SEC LEXIS 3001, at *8 (Aug. 21, 2014). A motion for summary disposition is generally proper in "follow-on" proceedings like this one, where the administrative proceeding is based on a criminal conviction or civil injunction, because relitigation of "the factual findings or the legal conclusions" of the underlying proceeding is precluded. *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *28 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

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[2] Those six categories are broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization. 15 U.S.C. § 78*o*(b)(6)(A).

Factual Findings

The findings and conclusions below are based on the record consisting of exhibits attached to the Division's motion,[3] Monaco's answer and other submissions, and records of the underlying federal court proceedings, of which I take official notice. 17 C.F.R. §§ 201.111(c), .250(b), .323. I apply preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The findings and conclusions herein are based on the entire record. I have considered and rejected all arguments inconsistent with this initial decision. The findings that follow are based primarily on the stipulation of facts Monaco agreed to in her plea agreement, the accuracy of which cannot be challenged in this proceeding. *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *26 & nn.32-33 (Jan. 14, 2011).

From 2012 to 2017, Monaco and others engaged in a conspiracy to defraud investors in a series of companies, eventually causing investors to lose more than $6 million. The main players in the conspiracy were Monaco, her brothers Joseph Rubbo, Nicholas Rubbo, and Pasquale Rubbo, and an associate, Steven Dykes. Div. Ex. 2, at 9. The conspirators solicited investments in three affiliated companies, all of which were controlled by Monaco or her siblings. *Id.* The companies included VIP Television, LLC, where Monaco was president, and ANJ Productions, LLC, where she was managing member. *Id.* at 9-10. The third company was called The Spongebuddy, LLC, and the pitch to investors involved a cleaning glove called the "Spongebuddy." *Id.* at 9. Dykes was hired to find investors for the Spongebuddy businesses. *Id.* at 10. He received commissions for the investments he obtained. *Id.*

Thirty investors invested more than $6,000,000 in the Spongebuddy businesses, but the majority, over $5,000,000, came from two brothers in Colorado (the Colorado investors). *Id.* at 18, 21. Monaco, Dykes, and Pasquale Rubbo repeatedly solicited investments from the Colorado investors, who were in their eighties during the scheme. *Id.* at 10. The Colorado investors were targeted for these solicitations because of their age. *Id.* at 18.

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[3] The Division's motion is accompanied by three exhibits. Exhibit 1 is Monaco's criminal indictment, filed in the District of Colorado. Exhibit 2 is Monaco's plea agreement. Exhibit 3 is the judgment of conviction issued by the district court.

In January 2014, Dykes falsely told the Colorado investors that Walgreens wanted to carry the Spongebuddy but more capital was needed to produce the gloves to complete the deal. *Id.* at 11. The Colorado investors sent a $600,000 check in return for 800,000 shares of VIP Television and a $0.50 royalty for each glove sold. *Id.* at 12. Monaco sent the Colorado investors a signed stock certificate and an addendum to a previous investment agreement. *Id.*

In February 2014, Dykes again solicited money from the Colorado investors. He falsely told them that another company was considering acquiring VIP Television and that this merger could result in a $19,000,000 gain for the investors—but only if VIP had enough cash on hand. *Id.* The Colorado investors sent a check for $650,000. *Id.* Monaco sent them another investment agreement addendum and stock certificate, both of which she signed. *Id.*

In February and March 2014, Dykes again told the Colorado investors that more gloves needed to be manufactured to complete a deal. *Id.* This time he said that Wal-Mart would soon be selling the gloves. *Id.* As with the previous requests, this claim was false, but the Colorado investors sent two more checks for a total of $550,000 for more shares of stock. *Id.* In November 2014, Dykes approached the Colorado investors with another fabricated story requiring immediate additional funding: now he claimed that QVC was going to sell the Spongebuddy and they needed to manufacture two million pairs. *Id.* at 13. The Colorado investors sent a check for $800,000 in return for a stock grant. *Id.* Monaco sent another signed addendum to the investment agreement. *Id.*

In April 2015, Monaco, Nicholas Rubbo, and an associate met the Colorado investors at their home. *Id.* They asked the investors for a $1,400,000 investment to take VIP public, but the investors refused. *Id.* at 14. They reduced their request to $600,000, but the investors again refused. *Id.*

In May 2015, Dykes claimed that a company named Starz was interested in merging with VIP, but it needed to see $1,000,000 in cash on VIP's balance sheet before completing the deal. *Id.* Unsurprisingly, this was also fictitious. Dykes falsely asserted that he had another investor lined up for $500,000, and he asked the Colorado investors for the remaining $500,000. *Id.* They sent a check for $300,000. *Id.* The next month, Dykes told the investors that VIP now needed to have $1,500,000 to complete the deal. *Id.* The investors mailed an additional check for $700,000. *Id.*

In October 2015, Dykes once again falsely represented that more money was needed—this time to produce 400,000 units of the Spongebuddy to be sold on QVC. *Id.* The Colorado investors mailed a check for $175,000. Monaco again sent an addendum to the investment agreement, which she signed. *Id.*

In January 2016, Dykes falsely told the Colorado investors that a company named Pandora was interested in acquiring VIP. *Id.* at 15. Similarly to the claimed merger in 2015, Dykes said that Pandora needed to see $1,000,000 in cash on VIP's books before agreeing to the merger. *Id.* But this time he added that the Colorado investors could trade one million shares of VIP for half a million shares of Pandora. *Id.* The Colorado investors sent two checks for a total of $225,000 and one million shares of VIP. *Id.* Monaco once again sent a new addendum to the investment agreement. *Id.* Of course, there was never any agreement with Pandora, and the investors never received the promised Pandora stock. *Id.*

In May and June 2016, Dykes and Pasquale Rubbo repeatedly told the Colorado investors that a celebrity was investing $250,000 to market the Spongebuddy on QVC. *Id.* at 16. This was false. *Id.* The celebrity was not involved, and there was no agreement to sell the gloves through QVC. *Id.* Nevertheless, Pasquale Rubbo assured the Colorado investors that there was a contract with the celebrity. *Id.*

In August 2016, Monaco entered into a one-year marketing contract with a product development agency to help launch the glove. *Id.* at 15-16. Up to that point, no gloves had been manufactured outside of a few low-quality prototypes. *Id.* at 13, 15. Monaco received an email from the product development agency referencing the Spongebuddy and QVC. *Id.* at 17. Monaco altered the email to make it seem like QVC was interested in the gloves. *Id.* She then printed the fake email and mailed a hard copy to the Colorado investors. *Id.* Dykes later used the same fake email to solicit investors in 2017. *Id.*

Sometime in 2016, the Colorado investors learned of law enforcement investigations into ANJ, VIP, and Spongebuddy. *Id.* at 15. In July 2016, Pasquale Rubbo threatened to sue the Colorado investors if they spoke with investigators about their investments in the Spongebuddy companies. *Id.* at 16. The Colorado investors eventually ceased giving money to the Spongebuddy companies. *See id.* at 19. In total, the Colorado investors invested $5,195,000 with Monaco, Joseph Rubbo, Nicholas Rubbo, Pasquale Rubbo, and Dykes. *Id.* at 18. The Colorado investors received ten purported distributions or earnings from the conspirators totaling $56,244.47. *Id.* But this money did not actually represent any earnings related to the

Spongebuddy and was only about one percent of what the Colorado investors had invested.

After losing the Colorado investors, Monaco, Joseph Rubbo, Nicholas Rubbo, Pasquale Rubbo, and Dykes sought investments from new investors. *Id.* at 19. The pitches followed the same general pattern, with the solicitations being aimed at mostly elderly investors. *Id.* From January to July 2017, they received more than $400,000 in investments from seventeen new investors. *Id.* The conspirators sent these investors promissory notes purporting to secure the investments against $1,500,000 in nonexistent inventory. *Id.* These new investors were again told various lies about deals and potential deals to sell the gloves. *Id.* For example, Dykes falsely told one investor that QVC planned a segment to sell the gloves once 500,000 units were ready. *Id.* at 20.

Also in 2017, Monaco and the other conspirators became aware of criminal and regulatory investigations into their practices. *Id.* As a result, they created new entities and bank accounts in an attempt to evade detection. The Spongebuddy was rebranded as the "Scrubbieglove," and a new entity, Magic Wand Brands LLC, was created to handle funds raised from new investors. *Id.* at 9, 20. Monaco was the registered agent of Magic Wand, and her husband was the manager. *Id.* at 20. In August and September 2017, two new investors invested more than $200,000. *Id.* at 21. In October and November 2017, three new investors gave $115,000. *Id.*

Monaco benefitted from the scheme. Between 2012 and 2017, Monaco (or third parties for her benefit) received $603,765 in distributions from the Spongebuddy companies. *Id.* at 22. These funds were transferred from the companies' accounts to Monaco's personal accounts. *Id.* For example, Monaco transferred $25,000 from ANJ's account to her personal account in February 2014 and another $20,000 in March 2014. *Id.*

As a result of this conduct, Monaco, Dykes, and Pasquale Rubbo were indicted in the District of Colorado on November 7, 2017. Div. Ex. 1, at 1; *see United States v. Monaco*, No. 17-cr-417 (D. Colo.). The indictment charged the defendants with one count of conspiracy to commit mail and wire fraud, eight counts of mail fraud, two counts of securities fraud, and seven counts of engaging in monetary transactions in property derived from illegal activity. *Id.* at 1-10. Monaco pleaded guilty to one count of conspiracy to commit fraud in violation of 18 U.S.C. § 1349 and one count of engaging in monetary transactions in property derived from illegal activity in violation of 18 U.S.C. § 1957. Div. Ex. 3, at 1. Monaco was sentenced to a term of imprisonment of seventy-four months followed by three years of supervised release and ordered to pay $6,011,900 in restitution, joint and several with her

codefendants and Joseph and Nicholas Rubbo, who were charged and convicted in a separate criminal prosecution. *Id.* at 2, 3, 8; *see United States v. Rubbo*, No. 17-cr-411 (D. Colo.).

Legal Conclusions

Exchange Act Section 15(b)(6)(A) empowers the Commission to bar Monaco from participating in the securities industry or in an offering of penny stock if, as relevant here, (1) she was associated with a broker or dealer at the time of her misconduct, (2) she was convicted of an offense that "involves" the violation of 18 U.S.C. § 1341, and (3) the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(B)(iv), (6)(A)(ii).

Association with Broker or Dealer

A sanction under Section 15(b) can be imposed only if Monaco was associated with a broker or dealer. Monaco was not associated with a registered broker-dealer, but the statute also applies to unregistered broker-dealers. *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 SEC LEXIS 481, at *12 (Feb. 15, 2017). A broker is "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). Being "engaged in the business" of effecting securities transactions requires "more than a few isolated transactions" but does not mean that securities transactions must be the person's primary income source or business. *Anthony Fields*, Exchange Act Release No. 74344, 2015 SEC LEXIS 662, at *75 (Feb. 20, 2015) (quoting *Gordon Wesley Sodorff, Jr.*, Exchange Act Release No. 31134, 1992 SEC LEXIS 2190, at *15 (Sept. 2, 1992)). Some activities that the Commission considers indicative of being a broker are "holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation." *Id.*

Whether Monaco was a broker is a close question. While there is no evidence that Monaco held herself out as a broker, Monaco's conduct involved several other indicative activities. She was engaged in recruiting and soliciting potential investors. For example, she traveled to Colorado to solicit funds from the Colorado investors in person. Her companies VIP and ANJ received investor funds. And Monaco personally signed and sent stock certificates and modified securities contracts. This activity was not limited to a few transactions—there were thirty investors and numerous transactions over five years.

The Division argues that the $603,765 distributed to Monaco was transaction-based compensation. Div. Mot. at 10. Whether a particular

compensation arrangement is based on securities transactions "depends on all of the particular facts and circumstances." Persons Deemed Not To Be Brokers, Exchange Act Release No. 20943, 1984 SEC LEXIS 1585, at *16 (May 9, 1984). On the current record, the facts and circumstances about Monaco's compensation are limited. We know that Monaco received $603,765 from the scheme—no gloves were ever manufactured or sold. We also know that some of the distributions were closely connected in time to the receipt of investor funds. For example, in February 2014, the Colorado investors send a check for $650,000. That month, Monaco transferred $25,000 from ANJ to her personal account. Then, in March 2014, the Colorado investors sent two checks that totaled $550,000 and Monaco transferred $20,000 to herself. But aside from proximity in time, there is no evidence that these two transfers were tied to the successful completion of specific securities transactions.[4] We do not know the frequency of her compensation, and we do not know whether it varied based on the value or the volume of transactions. Based on this limited factual record and because I must view this evidence in the light most favorable to Monaco, I do not find, as a factual matter, that these specific transfers were transaction based.[5]

The Division also argues, as a legal matter, that "transaction-based compensation can include investor funds misappropriated by a person regularly involved in the active solicitation of investors." Div. Mot. at 10; *see United States v. Elliott*, 62 F.3d 1304, 1310 (11th Cir. 1995) (finding that investment principal commingled with personal funds is a form of transaction-based compensation for an investment adviser). While it may be true that misappropriating funds can be a form of transaction-based compensation, I would still need to find some evidence connecting Monaco's receipt of investment principal to specific transactions. I am unable to make this finding on this record.

There is an additional complicating factor. All the securities in which Monaco effected transactions were issued by companies that Monaco was an officer of or otherwise associated with. By rule, the Commission deems

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[4] *Cf.* Order Exempting the Federal Reserve Bank of New York, Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 from Broker-Dealer Registration, Exchange Act Release No. 61884, 2010 SEC LEXIS 1085, at *7 (Apr. 9, 2010) (transaction-based compensation means "compensation tied to the successful completion of a securities transaction").

[5] This is in contrast to Dykes's compensation, which was explicitly in the form of commissions for each investment closed.

associated persons of an issuer not to be a broker "solely by reason of his participation in the sale of the securities of such issuer" if four conditions are met. 17 C.F.R. § 240.3a4-1. The first three conditions are that the associated person is not (1) subject to a statutory disqualification, (2) receiving transaction-based compensation, or (3) associated with a broker or dealer. There is no evidence that Monaco was statutorily disqualified and, as addressed above, I have not found that she received transaction-based compensation or was associated with a registered broker or dealer.

That leaves the fourth condition of the safe harbor, which has three alternatives. The first requires the associated person to restrict his or her participation to offers and sales that are (A) directed to registered brokers or dealers, investment companies, banks, or several other similar entities; (B) exempted from registration under Securities Act Section 3(a)(7), (9), or (10); (C) related to a reclassification, merger, or consolidation; or (D) related to stock options or similar plans for employees of the issuer. 17 C.F.R. § 240.3a4-1(a)(4)(i). None of those was the case here, as the securities were not exempted under Securities Act and Monaco and her coconspirators specifically targeted elderly individual investors whom they considered easy marks. The second alternative is not met because Monaco participated in offering the securities more than once every twelve months. 17 C.F.R. § 240.3a4-1(a)(4)(ii)(C). And the third does not apply because Monaco participated in an oral solicitation of potential purchasers. 17 C.F.R. § 240.3a4-1(a)(4)(iii)(A). For these reasons, I conclude that the safe harbor rule does not apply and that Monaco may be considered a broker despite having solely participated in the sale of securities of issuers with which she was associated.

In her opposition, Monaco asserts that she never sold stocks, but the facts in her plea agreement, which she cannot dispute in this proceeding, establish the contrary. Although not every indication of being a broker is present, on balance Monaco's conduct shows that she regularly recruited investors and transacted in securities for the account of others. *See SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) (finding that evidence of regular involvement "in communications with and recruitment of investors for the purchase of securities" was sufficient to qualify as a broker, even if no compensation was received). Based on her activity, I conclude that Monaco acted as an unregistered broker and was therefore associated with a broker or dealer for the purposes of Section 15(b). *See* 15 U.S.C. § 78c(a)(18); *Tagliaferri*, 2017 SEC LEXIS 481, at *17-18.

Conviction

Exchange Act Section 15(b) authorizes sanctions on a person associated with a broker or dealer who has been convicted of a felony or misdemeanor that "involves" the violation of 18 U.S.C. § 1341, the federal mail fraud statute. 15 U.S.C. § 78*o*(b)(4)(B)(iv). Monaco's conviction satisfies this requirement. She pleaded guilty to conspiracy to commit fraud in violation of 18 U.S.C. § 1349.[6] In her plea agreement, she admitted to conspiring to "use the mails to defraud multiple investors of millions of dollars." Div. Ex. 2, at 10. And Monaco's overt conduct in furtherance of the conspiracy included accepting checks mailed by investors, signing and mailing stock certificates and investment agreements to investors, and falsifying an email that was then printed out and mailed to investors.[7]

Monaco notes in her opposition that she is appealing her conviction and sentence. But the pendency of an appeal does not limit the Commission's ability to impose an administrative sanction based on Monaco's conviction. *Daniel Joseph Touizer*, Exchange Act Release No. 85321, 2019 SEC LEXIS 472, at *3 (Mar. 14, 2019) (denying stay). If Monaco is successful in reversing her conviction, however, she may apply for an order vacating any sanctions ordered or dismissing the proceeding if it is still pending. *See Evelyn Litwok*, Investment Advisers Act of 1940 Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing proceeding).

Public Interest

That leaves the public interest as the final consideration in whether to impose a sanction. To determine whether a sanction is in the public interest, the Commission considers, among other things, the following 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.

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[6] This section provides that attempt and conspiracy to commit an offense under chapter 63 of title 18, which includes mail fraud under 18 U.S.C. § 1341 and other fraud offenses, is subject to the same penalties as the underlying offense.

[7] Monaco's conviction also satisfies at least one alternative basis under Exchange Act 15(b)(4) as it was for a felony that "involve[d] the purchase or sale of any security." 15 U.S.C. § 78*o*(b)(4)(B)(i).

See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission's inquiry regarding the appropriate sanction is flexible, and no one factor is dispositive. *Kornman*, 2009 SEC LEXIS 367, at *22. The Commission also considers the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5 (July 25, 2003). And, although not dispositive, both specific and general deterrence are relevant considerations. *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *48 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Each case should be reviewed "on its own facts" to determine the respondent's fitness to participate in the relevant industry capacities before imposing a bar. *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *8 (Mar. 7, 2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 SEC LEXIS 1886 (May 26, 2016).

Egregiousness

The scheme that resulted in Monaco's criminal conviction was egregious. The conspirators victimized thirty investors. They specifically targeted elderly investors. They went back to the Colorado investors with lie after lie for years. They ultimately defrauded their victims of more than $6,000,000.

Monaco, in her opposition, minimizes her role in the scheme. She is in this situation because she trusted her family and they used her name. She never sold stocks and has "no knowledge of how it all works." Opp'n at 1. There may be some truth to this claim, as it is clear from the stipulation of facts that others, particularly Dykes and Pasquale Rubbo, had a more active role in soliciting investors and peddling falsehoods. But Monaco cannot escape responsibility by claiming that others were merely using her name. She admitted in federal court that she was a knowing and voluntary participant in the conspiracy and that there was interdependence among the members of the conspiracy. Div. Ex. 2, at 7. She met with her coconspirators to discuss tactics. She signed and sent stock certificates and investment contracts, while knowing that the Spongebuddy glove was never manufactured and that no retailer had agreed to sell it. She repeatedly paid herself from the funds invested by the victims.

The Commission has repeatedly emphasized that dishonest and fraudulent conduct in the securities industry requires a severe sanction. *See Kornman*, 2009 SEC LEXIS 367, at *23; *Melton*, 2003 SEC LEXIS 1767, at *29-30. Monaco's conduct was serious and wrongful.

Recurrence

The wrongful conduct was repeated. It started in 2012 and lasted until 2017. In fact, the scheme continued until law enforcement intervened. One victim's investment was deposited on November 1, 2017, just days before Monaco was indicted. Div. Ex. 2, at 20. The Colorado investors sent at least eleven checks to the conspirators. In total there were thirty victims.

Scienter

In the context of securities fraud, scienter is "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Despite claiming to be the victim of trusting her family and "having no knowledge of how it all works," Opp'n at 1, Monaco acted with scienter. Monaco's guilty plea to a mail fraud conspiracy establishes that she acted with scienter. *See United States v. Kalu*, 791 F.3d 1194, 1203-04 (10th Cir. 2015) (mail fraud requires specific intent); *United States v. Blair*, 54 F.3d 639, 642 (10th Cir. 1995) (conspiracy requires specific intent); 18 U.S.C. § 1341. Monaco's scienter is further demonstrated by her overt act of falsifying an email to make it appear that QVC was interested in investing in the Spongebuddy glove. Div. Ex. 2, at 17.

Recognition of Wrongfulness

Monaco pleaded guilty, which shows at least some recognition that her conduct was criminal. *See* Div. Ex. 2, at 23 (reflecting the agreement of Monaco and the United States Attorney that the sentencing guideline range be reduced for "acceptance of responsibility"). But in her answer and opposition, she deflects blame and asserts that her family was using her name. This factor does not weigh in her favor.

Harm to Investors

The harm to investors was considerable. Investors gave Monaco and her coconspirators over $6,000,000. Of this, a small percentage was returned or refunded. But the vast majority was never returned and was incorporated into the restitution of $6,011,900 that the sentencing court imposed on Monaco, joint and several with her coconspirators. Given Monaco's substantial prison sentence, it is unclear when, if ever, the victims will recover this money.

Other Factors

In her opposition, Monaco points to her seventy-four month prison sentence and three-year period of supervised release to argue that she is not a threat. She asks for leniency given the significant criminal punishment she

has already received. She states that she will never go into business with her family again. And she asks how an associational bar against her serves the public interest.

That is a valid question and at the heart of the analysis. The likelihood that Monaco will commit future violations while incarcerated or on supervised release is almost zero.[8] And if Monaco attempted to engage in fraudulent schemes after completing her sentence, an associational bar may not completely prevent her from doing so. After all, Monaco was not associated with a registered broker-dealer when she committed this offense but was acting as an unregistered broker. Given her record, she is not likely to be able to associate with a broker-dealer or any of the other registered entities to which an associational bar applies, even without the imposition of a bar.

Nevertheless, it has been the Commission's practice to impose associational bars when appropriate in cases of incarcerated respondents. *See Reinhard*, 2011 SEC LEXIS 158, at *51 ("[W]e do not view [a fifty-one-month] criminal sentence as mitigative of the appropriate sanction to be imposed in the public interest in this administrative proceeding."); *Richard N. Cea*, Exchange Act Release No. 8662, 1969 SEC LEXIS 268, at *36 (Aug. 6, 1969) (stating that administrative and criminal proceedings are "parallel and compatible procedures" for achieving the goals of the Exchange Act and that "administrative and criminal remedies are designed to serve different purposes"). Similarly, the Commission has found it appropriate to impose associational bars on unregistered brokers. *See, e.g.*, *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 SEC LEXIS 3125, at *28 (Dec. 2, 2005).

While the deterrence offered by an associational bar may be small compared to the punishment Monaco has already received, a bar offers some level of both specific and general deterrence. Given this and the seriousness of the fraud, the repeated nature of the conduct, and the harm to the investors, it is in the public interest to impose collateral associational and penny stock bars.

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[8] Among the conditions of her supervision is a prohibition on any activity in which she would solicit funds for investment and a requirement to give the probation officer access to any financial information. All employment must be approved by the probation officer, and she must document all income from any source. Div. Ex. 3, at 5.

Order

Under Commission Rule of Practice 250(b), I GRANT the Division of Enforcement's motion for summary disposition and ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934, that Angela Rubbo Beckcom Monaco is 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.[9]

This initial decision shall become effective in accordance with and subject to the provisions of Commission Rule of Practice 360, 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, 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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Brenda P. Murray
Chief Administrative Law Judge

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[9] Participating in an offering of penny stock includes "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." 15 U.S.C. § 78*o*(b)(6)(C).