

INITIAL DECISION RELEASE NO. 1380
ADMINISTRATIVE PROCEEDING
FILE NOS. 3-17874 and 3-17875

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

In the Matter of :
: INITIAL DECISION AS TO
TALMAN HARRIS and : TALMAN HARRIS
VICTOR ALFAYA : June 28, 2019

APPEARANCE: Dugan Bliss and John O. Enright for the Division of Enforcement,
Securities and Exchange Commission

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Talman Harris from the securities industry. He was previously enjoined from violating the antifraud provisions of the federal securities laws and convicted of wire fraud and conspiracy to commit securities fraud and wire fraud.

I. INTRODUCTION

The Securities and Exchange Commission instituted proceedings against Respondents Talman Harris and Victor Alfaya with Orders Instituting Proceedings, pursuant to Section 15(b) of the Securities Exchange Act of 1934, on March 10, 2017, and the two proceedings were consolidated on March 13, 2017. The proceeding is a follow-on proceeding based on *SEC v. Cope*, No. 1:14-cv-7575 (S.D.N.Y.), in which Respondents were enjoined from violating the antifraud provisions of the federal securities laws and on *United States v. Scholander*, No. 1:15-cr-335 (N.D. Ohio), in which Respondents were convicted of conspiracy to commit securities fraud and wire fraud, and Harris was convicted of wire fraud. On October 30, 2017, an Initial Decision imposed associational bars on Respondents. *Talman Harris*, Initial Decision Release No. 1213, 2017 SEC LEXIS 3450 (A.L.J.).

On August 22, 2018, in light of *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the Commission ordered a new hearing in each pending proceeding, including this one, before an administrative law judge (ALJ) who had not previously participated in the proceeding, unless the parties expressly agreed to alternative procedures, including agreeing that the proceeding remain with the previous presiding ALJ. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at *2-3 (August 22 Order). Accordingly, the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018).

As to each affected proceeding, including this one, in which the parties had not agreed to alternative procedures, the Commission ordered that the newly assigned presiding ALJ “issue an order directing the parties to submit proposals for the conduct of further proceedings.” August 22 Order, 2018 SEC LEXIS 2058, at *4. The Commission specified, “if a party fails to submit a proposal, the ALJ may enter a default against that party.” *Id.* Accordingly, after the reassignment of the proceeding, Harris was afforded the opportunity to file an Answer to the OIP, and the parties were ordered to submit proposals for the conduct of further proceedings by December 14, 2018; Harris was warned that an associational bar would be imposed on him by default if he failed to answer or to submit a proposal. *Talman Harris*, Admin. Proc. Rulings Release No. 6121, 2018 SEC LEXIS 2696 (A.L.J. Sept. 28, 2018). In response, Harris submitted a letter dated October 9, 2018, in which he “den[ie]d all of the charges in this civil matter” and proposed dismissal by summary disposition in accordance with 17 C.F.R. § 201.250.¹ In light of that response, the undersigned ordered that the Division of Enforcement might file an opposition to his motion for summary disposition and/or a motion for summary disposition of its own by April 24, 2019, and that any responsive opposition or reply might be filed by May 24, 2019. *Talman Harris*, Admin. Proc. Rulings Release No. 6531, 2019 SEC LEXIS 694 (A.L.J. Apr. 1, 2019). The Division timely filed a motion for summary disposition; Harris did not respond.

II. PROCEDURAL ISSUES

A. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission’s public official records and of the docket reports and courts’ orders in *SEC v. Cope* and *United States v. Scholander*, and from Financial Industry Regulatory Authority, Inc. (FINRA), records as well. See *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App’x 1 (D.C. Cir. 2014).

B. Collateral Estoppel

Harris is estopped from relitigating *SEC v. Cope* and *United States v. Scholander* in this proceeding. It is well established that the Commission does not permit criminal convictions or civil injunctions to be collaterally attacked in its administrative proceedings. See *Ira William Scott*, Investment Advisers Act of 1940 Release No. 1752, 1998 SEC LEXIS 1957, at *8-9 (Sept. 15, 1998); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 SEC LEXIS 193, at *7-8 (Feb. 12, 1998) (criminal convictions); see also *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *11 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *10 (Sept. 17, 1992); *John Francis D’Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *7 (Jan. 21, 1998); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007), *pet. denied*, 285 F.

¹ He also stated that he was not afforded an attorney. However, a respondent in an administrative proceeding does not have a right to a government appointed attorney. See *Boruski v. SEC*, 340 F.2d 991, 992 (2d Cir. 1965); *V.F. Minton Sec., Inc.*, Exchange Act Release No. 32074, 1993 SEC LEXIS 642, at *18 (Mar. 31, 1993), *pet. denied*, 18 F.3d 937 (5th Cir. 1994) (unpublished table decision).

App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, Exchange Act Release No. 38389, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997) (civil proceedings) (injunctions). Nor does the pendency of an appeal preclude the Commission from follow-on administrative proceedings. See *Joseph P. Galluzzi*, 2002 SEC LEXIS 3423, at *10 n.21; *Charles Phillip Elliott*, 1992 SEC LEXIS 2334, at *11.

III. FINDINGS OF FACT

Harris was convicted of conspiracy to commit securities fraud and wire fraud, in violation of 18 U.S.C. § 1349, and wire fraud, in violation of 18 U.S.C. § 1343. Amended Criminal Judgment, *United States v. Scholander* (Jan. 25, 2019), ECF No. 398,² *appeal dismissed sub nom. United States v. Harris*, No. 19-3088 (6th Cir. Feb. 13, 2019), ECF No. 5 (granting Harris's motion to dismiss his appeal). He was sentenced to thirty-seven months of imprisonment followed by five years of supervised release and ordered to pay, jointly and severally with other defendants, restitution of \$843,423.91. He was enjoined, by default, against violations of the antifraud provisions of the federal securities laws, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933, and barred from participating in an offering of penny stock; he was also ordered to pay disgorgement of \$775,104 plus prejudgment interest of \$201,984.17 and a civil penalty of \$1,000,000. Final Judgment as to Defendants Talman Harris and Victor Alfaya, *SEC v. Cope* (Feb. 7, 2017), ECF No. 294.

In the criminal case, Harris was convicted after a jury found him guilty of one count of conspiracy, occurring between 2006 and 2014, to commit securities fraud, 18 U.S.C. § 1348, and wire fraud, 18 U.S.C. § 1343, in violation of 18 U.S.C. § 1349; and three counts of wire fraud, occurring in 2010, 2011, and 2012, in violation of 18 U.S.C. § 1343. Superseding Indictment, *United States v. Scholander*, ECF No. 155 at 12-28; Jury Verdict Forms, ECF No. 223 at 1-4.

According to the Commission's official records and FINRA records, Harris was associated with several registered broker-dealers between 1999 and 2015 (some of which FINRA expelled on various dates between 2001 and 2018).³ FINRA barred him from association with a broker-dealer in any capacity; the sanction was upheld on appeal. *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209 (Mar. 31, 2016), *pet. denied sub. nom. Harris v. SEC*, 712 F. App'x 46 (2d Cir. 2017).

IV. CONCLUSIONS OF LAW

Harris has been permanently enjoined "from engaging in or continuing any conduct or practice in connection with . . . the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and has been convicted within ten years of the commencement of this proceeding of a felony that "involves the purchase or sale of any security" and that "arises out of the conduct of the business of a broker [or] dealer" within the meaning of

² This followed his appeal to the Court of Appeals, which reversed a conviction for obstruction of justice and ordered resentencing. *United States v. Harris*, 881 F.3d 945 (6th Cir. 2018).

³ See Talman Anthony Harris BrokerCheck Report, available at <http://brokercheck.finra.org> (last visited June 25, 2019).

Sections 15(b)(4)(B)(i), (ii), (iv) and 15(b)(6)(A)(ii) of the Exchange Act. The misconduct underlying the criminal and civil cases occurred while Harris was associated with a registered broker-dealer.

V. SANCTION

A collateral bar will be ordered.⁴

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 78o(b)(6). The Commission considers factors including:

the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the age of the violation and 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). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schild Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

As described in the Findings of Fact, Harris's conduct was egregious and recurrent, over a period of several years, and involved a high degree of scienter as indicated by the fact that his misconduct included wire fraud and conspiracy to commit securities fraud and wire fraud. His occupation, which included fifteen years as a registered representative associated with broker-dealers, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could engage in fraud in the securities industry. The violations are relatively recent. Consistent with a vigorous defense of the charges against him, Harris has not otherwise recognized the wrongful nature of his conduct or made assurances against future

⁴ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. At least some of the conduct that led to the cases against Harris occurred after July 22, 2010. *See Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017) (holding that a collateral bar cannot be imposed when the violative conduct on which a follow-on proceeding was based ended before the July 22, 2010, effective date of the Dodd-Frank Act).

violations. The \$843,423.91 that he and others were ordered to pay in restitution and the disgorgement of \$775,104 that he was ordered to pay are measures of the direct harm to the marketplace. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See *Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). An injunction involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

The Commission considers fraud to be especially serious and to subject a respondent to the severest of sanctions. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *29-30. Indeed, from 1995 to the present, there have been over fifty litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred⁵ – at least fifty unqualified bars and three bars with the right to reapply after five years.⁶ Further, in every such case that followed the statutory provision of collateral bars, the Commission imposed a collateral bar rather than an industry-specific bar, reasoning that the antifraud provisions of the securities laws apply broadly to all securities-related professionals and violations demonstrate unfitness for future participation in the securities industry, even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. See *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 SEC LEXIS 1926 (May 27, 2016).

VI. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 TALMAN HARRIS IS BARRED from associating with any 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.⁷

⁵ In the cases authorized before the effective date of the Dodd-Frank Act, which authorized collateral bars, the Commission imposed industry-specific bars, such as a bar from association with an investment adviser on a respondent who had been associated with an investment adviser at the time of his violation.

⁶ Those three were *Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987 (Oct. 22, 1996), *Martin B. Sloate*, Exchange Act Release No. 38373, 1997 SEC LEXIS 524 (Mar. 7, 1997), and *Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504 (June 30, 2008). The Commission's opinions do not make clear the factors that distinguished these cases from those in which unqualified bars were imposed, but there is little difference between a "bar" and a "bar with the right to reapply in five years."

⁷ Thus, Harris will be barred from acting as promoter, finder, consultant, or agent; or otherwise engaging 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, pursuant to Exchange Act Section 15(b)(6)(A), (C).

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.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge