INITIAL DECISION RELEASE NO. 1382
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16795

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

In the Matter of	:	
	:	INITIAL DECISION
JOSEPH J. FOX	:	July 30, 2019

APPEARANCES: Anne C. McKinley and Jedediah B. Forkner for the Division of Enforcement, Securities and Exchange Commission

Joseph J. Fox, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Joseph J. Fox from the securities industry, with the right to reapply after five years.

I. PROCEDURAL BACKGROUND

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 on September 8, 2015. The OIP embodied a partial settlement. It ordered Fox to cease and desist from violating Sections 5(a) and 5(c) of the Securities Act and to pay disgorgement of $125,210 plus prejudgment interest of $5,426 and a civil penalty of $75,000 in installments, with the final payment due in 284 days (June 18, 2016). The OIP ordered additional proceedings to determine what, if any, non-financial remedial sanctions pursuant to Section 15(b) of the Exchange Act are in the public interest. The OIP included extensive findings of fact concerning Fox's conduct and specified, at ¶ V. that Respondent "will be precluded from arguing that he did not violate the federal securities laws as described in this [OIP]; . . . may not challenge the validity of this [OIP]; . . . [and] the findings of this [OIP] shall be accepted as and deemed true by the hearing officer." The Commission stated, at ¶ V.(d), that the outstanding issues may be determined on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

Following an April 25, 2016, Initial Decision by ALJ Cameron Elliot, the Commission imposed associational bars on Respondent, with the right to re-apply after five years. *See Joseph J. Fox*, Initial Decision Release No. 1004, 2016 SEC LEXIS 1515 (Apr. 25, 2016), *opinion of the Commission*, Securities Act Release No. 10328, 2017 SEC LEXIS 969 (Mar. 24, 2017), *petition for reconsideration filed.* 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 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 administrative law judge. *Pending Admin. Proc.*, Securities Act 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).

The undersigned ordered previously that the proceeding was to be be resolved through motion[s] for summary disposition and responsive pleadings supplemented by a video or in-person hearing in Washington, D.C.; a schedule was adopted with the agreement of the parties. *Joseph J. Fox*, Admin. Proc. Rulings Release Nos. 6496, 2019 SEC LEXIS 478 (A.L.J. Mar. 14, 2019); 6584, 2019 SEC LEXIS 1216 (A.L.J. May 23, 2019). In accordance with the schedule, the Division of Enforcement filed a motion for summary disposition on April 18, 2019, and Respondent's opposition was due on June 3, 2019. On June 4, 2019, he submitted a filing titled "Request for a Hearing to Discuss the Uncovering of Prosecutorial Misconduct by the Division of Enforcement and Improper Communication Between the Former ALJ in this Matter, ALJ Cameron Elliott, and Certain Non-Parties" (June 4 filing).[1] In the June 4 filing, Respondent stated that he "will not be responding to the Divisions Motion for Summary Disposition." June 4 filing at 2. Since he had failed "to respond to a dispositive motion within the time provided" within the meaning of 17 C.F.R. § 201.155(a)(2), he was ordered: (1) to show cause by July 19, 2019, why he should not be deemed to be in default and 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; provided, however, that he may apply to become so associated with registrants and to participate in an offering of penny stock after five years; and (2) that any response to the order to show cause must include a response to the Division's motion for summary disposition. *Joseph J. Fox*, Admin. Proc. Rulings Release No. 6621, 2019 SEC LEXIS 1695, at *3-4 (A.L.J. July 9, 2019). His only response was a July 24, 2019, emailed letter, addressed to the undersigned, stating "I am in receipt of your Order denying my request for a hearing to discuss the blatant prosecutorial misconduct" and advising of his intent to appeal. In light of Respondent's affirmative statement that he will not respond to the motion for summary disposition, and his continuing failure to do so even after receiving the order to show cause, the proceeding will be resolved through consideration of pleadings filed to date without scheduling a further hearing.

II. FINDINGS OF FACT

A. Facts Found in the OIP

The following facts were found in the OIP:

Joseph J. Fox, also known as Yosef Yehuda Fox, is a resident of Los Angeles, California. He is the current Chief Executive Officer of Ditto Holdings, Inc., and was the Chief Executive

[1] The issues that Respondent raised in the June 4 filing have been addressed previously. *See Joseph J. Fox*, Admin. Proc. Rulings Release No. 6601, 2019 SEC LEXIS 1384 (A.L.J. June 13, 2019).

Officer of Ditto Trade, Inc., from its inception until December 2014. Fox held various Financial Industry Regulatory Authority, Inc. (FINRA), licenses between 1993 and 2003, and from 2010 until at least the date of the OIP in September 2015 he held the following FINRA licenses: Series 7 (General Securities Representative), Series 24 (General Securities Principal), Series 28 (Introducing Broker/Dealer Financial and Operations Principal) and Series 63 (Uniform Securities Agent State Law Examination). He was a registered representative with Ditto Trade from 2010 to December 2014. Fox voluntarily withdrew his broker's license in December 2014.[2]

Ditto Holdings, Inc. (previously known as FB Financial Group, Inc., and now known as SoVes Tech., Inc.), (Ditto Holdings), is a Delaware corporation with offices in Los Angeles, California, and Chicago, Illinois. It is not registered with the Commission in any capacity. Ditto Holdings owns 100% of Ditto Trade, Inc. (Ditto Trade), an Illinois corporation with headquarters in Chicago, Illinois. Ditto Trade's website says that it is a "first-of-its-kind social brokerage firm." Ditto Trade was registered with the Commission as a broker-dealer pursuant to Section 15 of the Exchange Act from July 2010 until at least the date of the OIP in September 2015.[3]

As Chief Executive Officer and a member of the Board of Directors of Ditto Holdings, Fox played an integral role in its efforts to raise capital. Among other things, Fox was involved in determining when Ditto Holdings would offer to sell securities, what types of securities it would offer to sell, the terms of the securities offerings, and the manner in which the securities offerings would be communicated to potential investors.

From April 2009 to September 2013, Ditto Holdings raised approximately $10 million from more than two hundred investors located throughout the United States through a series of common and preferred stock offerings as follows:

a. Ditto Holdings raised approximately $2.1 million from the sale of common stock to at least 68 individual investors, including at least 13 non-accredited investors, from April 2009 to March 2012.

b. Ditto Holdings raised approximately $1.7 million from the sale of Series A preferred stock to at least 36 accredited investors from April 2011 to June 2012.

c. Ditto Holdings raised approximately $2.6 million from the sale of Series B preferred stock to at least 39 individual investors, including at least 10 non-accredited investors, from June 2012 to January 2013.

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[2] Fox was also barred by FINRA, as of August 22, 2016, from acting as a broker or otherwise associating with a broker-dealer. *See* Yosef Yehuda Fox BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited July 30, 2019), of which official notice pursuant to 17 C.F.R. § 201.323 is taken. *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).

[3] FINRA expelled Ditto Trade from membership as of March 3, 2016. *See* Ditto Trade BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited July 30, 2019), of which official notice pursuant to 17 C.F.R. § 201.323 is taken.

d. Ditto Holdings raised approximately $3.8 million from the sale of common stock to at least 104 individual investors, including at least 31 non-accredited investors, from December 2012 to September 2013.

Ditto Holdings did not maintain a complete and accurate set of financial records from its inception through at least September 2013. Ditto Holdings did not regularly prepare financial statements during that time period and has never had an audit performed on any of its financial statements. [4]

Ditto Holdings prepared offering documents for several of its securities offerings, but it did not provide the offering documents to everyone who was offered the opportunity to purchase its securities. Further, the offering documents did not include financial statements or certain other required financial information about Ditto Holdings, and Ditto Holdings did not otherwise provide this information to any investors.

Beginning in August 2012, Ditto Holdings entered into a series of agreements with Marc Mandel. Under the agreements, Mandel agreed to co-develop with Ditto Holdings an internet-based radio show covering the stock markets and provided a number of services to Ditto Holdings, including, among other things, advice on marketing, product offerings, industry trends, and investor offerings. Mandel also hosted a radio program, on which Ditto Trade advertised, and distributed an investing newsletter. Mandel introduced his newsletter subscribers to Ditto Holdings' securities offerings and also to Ditto Trade's features and services. From September 2012 to September 2013, Ditto Holdings paid Mandel at least $265,000 and granted him warrants to purchase more than 800,000 shares of Ditto Holdings' common stock at a favorable exercise price.

Mandel sent numerous emails to his roughly 350 newsletter subscribers about Ditto Holdings and hosted a series of online webinars and in-person meetings for investors with Fox.

From late 2012 to September 2013, more than seventy of Mandel's subscribers purchased securities from Ditto Holdings at a total cost of approximately $3.7 million.

No registration statement was filed in connection with any of Ditto Holdings' securities offerings, and an exemption from registration was not available to all of the transactions.

At the time that Ditto Holdings was formed in 2009, it issued shares of common stock to its founders, including Fox.

Beginning in February 2013, Fox discussed selling some of his shares of Ditto Holdings common stock with Mandel. Fox discussed with Mandel whether any of his newsletter subscribers were interested in purchasing any of the shares. Fox provided Mandel with a stock purchase agreement, which included instructions for how to wire investment funds to Fox, and told Mandel

[4] Ditto Trade, Ditto Holdings' sole operating subsidiary, had had its financial statements audited annually since 2010. Some investors were provided with certain historical and projected financial information about Ditto Trade.

that the stock purchase agreement was the only document interested purchasers would need to complete.

In March 2013, Mandel began sending emails to some of his roughly 350 newsletter subscribers praising Ditto Holdings and telling them about the opportunity to buy shares of Ditto Holdings stock. When individuals indicated an interest in buying shares of Ditto Holdings stock, Mandel provided them with a copy of the stock purchase agreement and told them to contact Fox if they needed more information.

From April 2013 to July 2013, approximately twenty-eight of Mandel's subscribers purchased approximately 1.21 million shares of stock from Fox at a total cost of approximately $1.25 million. Fox did not sell shares to anyone who was not associated with Mandel.

During the same period, Fox paid Mandel at least $124,000 in three installments. The payments Fox made to Mandel corresponded to roughly 10% of the amount of Fox's sales.

Neither Fox nor anyone acting on his behalf took any steps to determine whether any of the individuals who purchased Fox's shares of Ditto Holdings stock were sophisticated investors. At least two of the purchasers had previously identified themselves to Ditto Holdings as non-accredited investors.

The investors did not have access to financial statements or other required information about Ditto Holdings in connection with Fox's sales of Ditto Holdings common stock.

No registration statement was filed in connection with any of Ditto Holdings' securities, and no exemption from registration was applicable to Fox's sales.

B. Fox Has Not Paid Disgorgement and Penalty Sums that He Owes

As noted above, in entering the partial settlement reflected in the OIP, Fox agreed to pay, in installments, a total of $205,636 in disgorgement, prejudgment interest, and a civil penalty, by June 18, 2016. The Division represents that he has paid nothing, and, to date, Fox has not contested this representation. *See* Mot. at 9 & Ex. 7. Therefore, it is found that Fox has paid nothing of the sum that he agreed to pay in partially settling the charges in this proceeding.

III. CONCLUSIONS OF LAW

As concluded in the OIP, Fox willfully violated the registration provisions of the Securities Act - Sections 5(a) and 5(c) of the Securities Act and was associated with a broker-dealer during his misconduct.

IV. SANCTION

The Division requests that Fox be barred from association 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, with

the right to apply for reentry after five years. The sanction that the Division requests will be ordered.[5]

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 78*o*(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. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006).

B. Sanction

As described in the Findings of Fact, Fox's conduct was egregious and recurrent, over a period of several years. While his conduct was willful, scienter is not an element of a violation of Securities Act Sections 5(a) and 5(c). His occupation, which included more than twenty years in the securities industry, if he were allowed to continue it in the future, would present opportunities for future violations. The violations are relatively recent. Fox has agreed that he violated Securities Act Sections 5(a) and 5(c) but has not otherwise recognized the wrongful nature of his conduct or made assurances against future violations. Indeed, he has paid nothing of the disgorgement, prejudgment interest, and civil penalty that he agreed to pay and has not even tried to show inability to pay. This emphasizes his lack of recognition of the wrongful nature of his conduct or assurances against future violations. The millions of dollars raised from investors, including non-accredited investors, in violative sales and the disgorgement of $125,210 that Fox 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

[5] 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. Much of Fox's misconduct 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).

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). The Commission has the obligation to maintain industry-wide honest and transparent securities markets. In light of these factors, the Division's request for an industry bar with the right to reapply in five years is reasonable and appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, JOSEPH J. FOX 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[6]; provided, however, that he may apply to become so associated with registrants and to participate in an offering of penny stock after five years.

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

[6] Thus, Fox 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).