Initial Decision Release No. 1385
Administrative Proceeding
File No. 3-17716

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

In the Matter of

Robert L. Baker,
Jacob B. Herrera,
Michael D. Bowen, and
Terrence A. Ballard

Initial Decision on Default as to Terrence A. Ballard
August 26, 2019

Appearances: Jason P. Reinsch, Timothy S. McCole, B. David Fraser, and Scott F. Mascianica for the Division of Enforcement, Securities and Exchange Commission

Before: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission issued an order instituting proceedings (OIP) against four Respondents on December 8, 2016, pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940. Robert L. Baker, Jacob B. Herrera, and Michael D. Bowen have each settled with the Commission, leaving Terrence A. Ballard as the only remaining Respondent.[1]

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[1] *Baker*, Exchange Act Release No. 86459, 2019 SEC LEXIS 1824 (July 24, 2019) (disgorgement settlement as to Baker); *Baker*, Exchange Act Release No. 86461, 2019 SEC LEXIS 1825 (July 24, 2019) (disgorgement settlement as to Herrera); *Baker*, Exchange Act Release No. 86462, 2019 SEC LEXIS 1826 (July 24, 2019) (disgorgement settlement as to Bowen); *Baker*, Exchange Act Release No. 82929, 2018 SEC LEXIS 763 (Mar. 22, 2018) (settlement establishing these three Respondents' liability, imposing industry and investment company bars, and directing payment of civil penalties).

Ballard was personally served with the OIP on January 10, 2017, while the proceeding was assigned to a different administrative law judge, *Baker*, Admin. Proc. Rulings Release No. 6187, 2018 SEC LEXIS 2839 (ALJ Oct. 15, 2018), a finding I later confirmed, *Baker*, Admin. Proc. Rulings Release No. 6611, 2019 SEC LEXIS 1419 (ALJ June 17, 2019). The proceeding was reassigned to a second administrative law judge following the Commission's order dated August 22, 2018. *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 SEC LEXIS 2058, at *2-3; *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (ALJ Sept. 12, 2018). Upon reassignment, that judge ordered Ballard and the Division of Enforcement to submit proposals for the conduct of further proceedings. *Baker*, Admin. Proc. Rulings Release No. 6067, 2018 SEC LEXIS 2552 (ALJ Sept. 21, 2018). After the Division reported that it had been unable to contact Ballard, the prior judge ordered Ballard to show cause why he should not be found in default. *Baker*, 2018 SEC LEXIS 2839.

The proceeding was reassigned to me on March 18, 2019. *Baker*, Admin. Proc. Rulings Release No. 6503, 2019 SEC LEXIS 511 (ALJ). After the other Respondents announced an intent to settle, I ordered the Division to file a motion for default and sanctions and provide details of further efforts to contact Ballard. *Baker*, Admin. Proc. Rulings Release No. 6589, 2019 SEC LEXIS 1257, at *2-3 (ALJ May 30, 2019); *Baker*, Admin. Proc. Rulings Release No. 6611, 2019 SEC LEXIS 1419, at *1-2 (ALJ June 17, 2019). The Division submitted its motion along with supporting exhibits on July 25, 2019.[2] Despite attempting to ascertain Ballard's current address and reaching out to Ballard through his known phone numbers and emails addresses, the Division has not been able to contact him.

To date, Ballard has not filed an answer to the OIP, submitted a proposal for the conduct of the proceeding, or otherwise participated in this matter at any time. Therefore, Ballard is in default. 17 C.F.R. §§ 201.155(a)(2), .220(f); *Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at *4. I deem the allegations in the OIP to be true as to Ballard. 17 C.F.R.

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[2] The Division's exhibits, which I admit to the record, consist of four declarations of Division counsel and accountants (Exs. 1, 2, 4, and 9), four declarations of members of Faulkner-related entities (Exs. 3, 6-8), Ballard's investigative testimony (Ex. 5), and Commission attestations regarding the lack of registration statements for three Faulkner companies (Exs. 10-12). Attached to two declarations are sub-exhibits. Ex. 2-A to 2-B; Ex. 4-A to 4-M (documents, transcripts, and emails relating to Ballard's participation in the Faulkner scheme).

§ 201.155(a). In reaching a decision I have relied on a record that consists of the information in the OIP and evidence submitted by the Division in support of its motion for default and sanctions.

Findings of Fact

Ballard's conduct arises out of his participation in a scheme masterminded by Christopher A. Faulkner. OIP ¶¶ 1-2, 7. Faulkner controlled several related companies, including Breitling Oil and Gas Corporation, Breitling Royalties Corporation, Breitling Energy Corporation, Crude Energy, LLC, Crude Royalties, Patriot Energy, Inc., and Patriot Royalties, that sold oil and gas interests as part of unregistered offerings. OIP ¶¶ 1, 7-13, 17. The scheme began around 2011 and defrauded hundreds of investors out of at least $80 million. OIP ¶ 14. Although Faulkner's companies represented to investors that they were legitimate enterprises, in reality, Faulkner diverted millions of dollars of investor money for his personal use. OIP ¶¶ 15-16. In 2018, Faulkner consented to a final judgment in district court enjoining him from violating or aiding and abetting numerous provisions of the federal securities laws and ordering disgorgement of more than $25 million including prejudgment interest. *SEC v. Faulkner*, No. 3-16-cv-1735 (N.D. Tex. Oct. 23, 2018), ECF No. 330.

Ballard, Central Registration Depository (CRD) No. 4226733, previously held a Series 7 license, and was affiliated with several registered broker-dealers between 2000 and 2009. OIP ¶ 6. But his license is currently expired and he is not currently registered with the Commission in any capacity, and was not associated with a registered broker-dealer during his participation in the scheme. *Id.* ¶¶ 2, 6, 22; *see* Ex. 2-B (CRD Report for Ballard attached to declaration of Division counsel). He does not have any disciplinary history. OIP ¶ 6.

Ballard acted as a salesperson for the Faulkner companies, selling working and royalty interests in oil and gas properties from at least the beginning of 2011 until early 2016. OIP ¶¶ 1, 6, 17; Ex. 3 (2019 declaration of Beth C. Handkins, former employee of Faulkner companies); Ex. 4 ¶ 7 (declaration of Commission accountant tracking disbursements from the Faulkner companies to Ballard's accounts over more than five years); Ex. 4-C at 10 (agreement between Breitling Energy Companies and company controlled by Ballard providing that Ballard's company would provide "[s]ales, marketing, [and] recruitment of new customers . . . as assigned by Breitling"). Michael Bowen would provide Ballard a list of about fifty names once or twice a week; Ballard cold called the individuals and told them some basics about the investments being offered. Ex. 5 at 12-13, 62-63 (Ballard investigative testimony); OIP ¶¶ 2, 19. Ballard provided more details in

subsequent calls and email exchanges, including discussing the offering materials. *See* Exs. 4-E–4-G; OIP ¶ 19. He could call around one thousand people per week. Ex. 5 at 63-64. The offering materials provided to investors were replete with material misrepresentations and omissions. OIP ¶¶ 15-16. And Ballard, as a primary salesperson, was instrumental in convincing prospective investors to invest. *Id.* ¶ 19. Although Ballard claimed in his investigative testimony that his role was limited to determining whether potential investors were accredited and conveying what type of investments were available, the record reflects that he also provided investors with information about the profits they could expect to receive, which goes to the merits of the investments. *Compare* Ex. 5 at 12-16 *with* Ex. 4-G at 4-5 *and* Ex. 9 ¶ 6.

The recordkeeping of the Faulkner companies did not allow for the Division to determine how many investors Ballard successfully solicited, but the Division's investigator interviewed five investors for whom Ballard was the primary salesperson. Ex. 4 ¶¶ 14-23. Those five invested more than $2 million with Faulkner companies but received only $135,841.60 in return, resulting in a loss of approximately 93.5% on their investments. *Id.* ¶¶ 22-23. No registration statement was in effect or filed with the Commission as to any of the working interests Ballard sold. OIP ¶ 23; Exs. 10-12.

For his role in the scheme, Ballard received both salary and commission. He received about $800 every two weeks as salary. Ex. 5 at 28; Ex. 3 ¶ 4. But he also received a lot of other money. Ex. 5 at 28. During the investigation, Ballard testified that the money he received above the biweekly $800 was a "bonus" for "coming in, being punctual . . . , not calling in sick . . . , being here on time, being professional, things like that." *Id.* at 31; *cf.* Ex. 9 ¶ 6 (Ballard told a potential investor that he did not receive a commission on sales). However, three other members of the Faulkner scheme have provided affidavits stating that members of the sales staff, like Ballard, received between six and ten percent commission on sales. Ex. 6 ¶ 11; Ex. 7 ¶ 18; Ex. 8 ¶ 9. Ballard received this transaction-based compensation despite statements in the offering memoranda that the "units" will be sold by employees "who will not receive transaction-based compensation" for the sale. Ex. 4-B at 6. He created six entities to receive payment from the Faulkner companies. Ex. 4 ¶ 6; Ex. 5 at 41; *see* Exs. 4-L & 4-M; *see* OIP ¶ 20 (commissions were received in a manner designed to evade regulatory detection). Ballard and his related entities received more than $1 million from Faulkner companies between 2010 and 2016—$1,193,428.64 of which he received within five years of the OIP; and, subtracting the approximately $87,200 in salary that Ballard received aside from commissions,

$1,106,228.64 represents his transaction-based compensation. Ex. 4 ¶¶ 7-11; *see* OIP ¶¶ 20-21.

Conclusions of Law

Exchange Act Section 15(a)

Exchange Act Section 15(a)(1) makes it unlawful for any broker to effect transactions in securities[3] using interstate commerce without being registered as a broker or associated with a registered broker. 15 U.S.C. § 78*o*(a)(1). Scienter is not required to establish a violation of Section 15(a)(1). *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 SEC LEXIS 662, at *73 (Feb. 20, 2015).

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), and "connote[s] a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Servs., Inc. v. Secs. Inv'r Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976). Factors considered in determining whether someone is a broker include: (1) actively soliciting or recruiting investors; (2) advising investors as to the merits of an investment, or opining on its merits; (3) receiving commissions, transaction-based compensation, or payment other than a salary for selling the investments; (4) whether the person was an employee of the issuer of the securities; (5) selling, or having previously sold, the securities of other issuers; and (6) involvement in negotiations between the issuer and the investor. *SEC v. Hansen*, No. 83-cv-3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984). Receiving "transaction-based compensation" is "one of the hallmarks of being a broker-dealer." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011) (internal citations and quotation marks omitted).

Ballard received more than one million dollars in transaction-based compensation for participation in the Faulkner scheme. Through his cold-calling and follow-up activity, he actively solicited investors and, although he testified otherwise, he advised those investors on the merits of the investments. Because he did all this without being registered as a broker or

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[3] "Security" is defined under the Exchange Act to include any "certificate of interest or participation in . . . any oil, gas, or other mineral royalty or lease." 15 U.S.C. § 78c(a)(10). Hence, Ballard was involved in selling securities.

associated with a registered broker, he willfully violated Exchange Act Section 15(a). *See* OIP ¶¶ 2, 22, 24.

Securities Act Section 5

Securities Act Section 5(a) makes it unlawful, unless a registration statement is in effect as to a security,[4] for any person, directly or indirectly, (1) to make use of any means or instruments in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale. 15 U.S.C. § 77e(a). Securities Act Section 5(c) makes it unlawful for any person, directly or indirectly, to make use of any means or instruments in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security. 15 U.S.C. § 77e(c).

To establish a prima facie violation of Securities Act Section 5(a) and (c), the Division must show that: (1) Ballard, directly or indirectly, sold or offered to sell securities; (2) through the use of interstate facilities or the mails; (3) when no registration statement was in effect or filed as to those securities. 15 U.S.C. § 77e(a), (c); *see Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 SEC LEXIS 698, at *22 (Feb. 27, 2014) (citing *SEC v. Cavanagh*, 445 F.3d 105, 111 n.13 (2d Cir. 2006); *SEC v. Calvo*, 378 F.3d 1211, 1214-15 (11th Cir. 2004)), *pet. denied*, 649 F. App'x 546 (9th Cir. 2016). The second element is "broadly construed to include tangential mailings or intrastate telephone calls." *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 861 (S.D.N.Y. 1997). A showing of scienter is not required to establish a violation. *Bloomfield*, 2014 SEC LEXIS 698, at *22 (citing *Calvo*, 378 F.3d at 1215; *SEC v. Universal Major Indus. Corp.*, 546 F.2d 1044, 1047 (2d Cir. 1976)).

Based on the record and the OIP, the Division has carried its burden that the working interests Ballard sold by telephone and other means were unregistered securities. OIP ¶¶ 19, 23. Ballard has not appeared to argue

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[4] "Security" is defined under the Securities Act to include any "fractional undivided interest in oil, gas, or other mineral rights." 15 U.S.C. § 77b(a)(1).

for an exemption,[5] and I conclude that he willfully violated Securities Act Section 5(a) and (c). *See* OIP ¶ 25.

Sanctions

The Division seeks an array of sanctions against Ballard: (1) a cease-and-desist order; (2) disgorgement and prejudgment interest; (3) civil monetary penalties; and (4) industry and penny stock bars and an investment company prohibition.

Cease-and-Desist Order

Securities Act Section 8A and Exchange Act Section 21C authorize issuance of a cease-and-desist order against any person who has violated the Securities Act, Exchange Act, or a rule or regulation promulgated under either. 15 U.S.C. §§ 77h-1(a), 78u-3(a). To issue such an order, there must be some likelihood of future violations, but the required showing is "significantly less than that required for an injunction." *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101, *114, *116 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). Absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. *Id.* at *102-03, *114-15 & n.147.

Along with the risk of future violations, the Commission considers the *Steadman* factors in determining whether to issue a cease-and-desist order: 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.* at *116; *see Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). In addition, the Commission considers "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *KPMG Peat Marwick*, 2001 SEC LEXIS 98, at *116. The Commission weighs these factors in light of the

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[5] Were Ballard participating, the burden would shift to him to prove the applicability of an exemption from registration. *Bloomfield*, 2014 SEC LEXIS 698, at *23 & n.31 (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1086 (9th Cir. 2010); *Cavanagh*, 445 F.3d at 111 n.13).

entire record, and no one factor is dispositive. *Id.*; *Montford & Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 SEC LEXIS 1529, at *88 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

The factors weigh heavily in favor of imposing a cease-and-desist order. Ballard's conduct was certainly egregious and involved violations of core requirements of the securities laws. "Section 5's registration requirements 'are a keystone of the entire system of securities regulation, and set forth basic requirements for the protection of investors.'" *Allen M. Perres*, Securities Act Release No. 10287, 2017 SEC LEXIS 212, at *11 (Jan. 23, 2017) (quoting *Sirianni v. SEC*, 677 F.2d 1284, 1289 (9th Cir. 1982)), *pet. denied*, 695 F. App'x 980 (7th Cir. 2017). "Similarly, Section 15(a)'s registration requirement is 'of the utmost importance in effecting the purposes of the [Exchange] Act because it enables the SEC to exercise discipline over those who may engage in the securities business and it establishes necessary standards with respect to training, experience, and records.'" *Id.* (quoting *SEC v. Benger*, 697 F. Supp. 2d 932, 944 (N.D. Ill. 2010)) (alteration in original).

Despite being previously licensed as a securities salesperson and affiliated with multiple brokers—thus making him aware of the basics of what is and is not allowed—Ballard cold-called thousands of investors and offered to sell unregistered securities, while acting as an unregistered broker. For his work he received more than one million dollars in commissions, and the overall scheme raised at least eighty million dollars, of which very little was returned to investors, indicating widespread harm. His conduct was far from isolated, as it entailed solicitations of thousands of prospective investors over a period of more than five years.

In terms of scienter, his industry experience and past licensure would have made him plainly aware of the registration requirements, yet he still offered and sold unregistered securities to numerous investors for years while operating as an unregistered broker. He thus acted with recklessness. *See Abraham & Sons Capital, Inc.*, Exchange Act Release No. 44624, 2001 SEC LEXIS 2773, at *27 (July 31, 2001) ("Securities professionals are required to be knowledgeable about, and to comply with, the regulatory requirements to which they are subject. Failure to meet this requirement constitutes an extreme departure from the standards of ordinary care and establishes recklessness." (internal quotation marks and ellipsis omitted)).

By failing to participate in this proceeding, Ballard has forfeited the opportunity to recognize his wrongdoing or provide assurances against future violations. Without such assurances, and given his conduct and prior licensure, there is a likelihood of future violations. Although the violations

are not very recent, they are not remote. Moreover, a cease-and-desist order will serve an important remedial function to deter Ballard from future violations and warn others of his misconduct.

A cease-and-desist order against Ballard will serve the public interest.

Disgorgement

Securities Act Section 8A(e) and Exchange Act Section 21C(e) authorize disgorgement in cease-and-desist proceedings, and Exchange Act Section 21B(e) authorizes disgorgement in proceedings where civil monetary penalties may be imposed. 15 U.S.C. §§ 77h-1(e), 78u-2(e), 78u-3(e). Disgorgement is an equitable remedy designed to deprive the wrongdoer of unjust enrichment and thereby deter violations of the securities laws. *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998); *see also SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d. Cir. 1997); *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996) ("The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits."). Disgorgement need only be a reasonable approximation of profits causally connected to the securities law violation, but the Commission must distinguish between legally and illegally obtained profits. *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989). Rule 600 of the Commission's Rules of Practice provides that prejudgment interest "shall be due" on any sum ordered to be disgorged. 17 C.F.R. § 201.600(a).

Based on an analysis of Ballard and his companies' accounts, as well as testimony and other evidence concerning the amount of Ballard's salary and commissions, the Division requests $1,106,228.64 in disgorgement—representing Ballard's commissions in the five years preceding the OIP. Mot. at 17-18; Ex. 4 ¶¶ 7-11. I find this to be a reasonable approximation of Ballard's ill-gotten gains, which are causally connected to his unlawful sales of oil and gas interests.

Civil Money Penalties

Securities Act Section 8A(g) and Exchange Act Section 21B(a)(2) authorize civil penalties in cease-and-desist proceedings against any person who has violated those acts. 15 U.S.C. §§ 77h-1(g), 78u-2(a)(2)(A). Both provisions set out a three-tiered system for determining the maximum civil penalty for each act or omission. First-tier penalties are available based on the fact of the violation alone. Second-tier penalties may be imposed if the misconduct involved fraud, deceit, or deliberate or reckless disregard of a regulatory requirement. Third-tier penalties require the additional finding that the misconduct, directly or indirectly, resulted in "substantial losses or

created a significant risk of substantial losses to other persons" or resulted in "substantial pecuniary gain" to the respondent. 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3). Ballard's conduct qualifies for third-tier penalties because (1) at the very least, he recklessly disregarded the registration requirements of Securities Act Section 5(a) and Exchange Act Section 15(a)—requirements of which he would have been aware based on his industry experience and past licensure; and (2) his misconduct resulted in substantial gain to himself because of the more than one million dollars in commissions he received, and, at the very least, indirectly resulted in substantial losses to others.

In deciding whether penalties are in the public interest, the Commission considers six factors listed in the securities statutes.[6] *See* 15 U.S.C. § 78u-2(c). The first three overlap with the findings required to impose third-tier penalties—which I have already found cut against Ballard—and the other three factors are whether the respondent has any prior violations, the need for deterrence, and "such other matters as justice may require." *Id.* Ballard does not have a disciplinary history, but there is a need to deter him and others from future misconduct. Even though there is no indication on this record that Ballard committed fraud, it is unquestionable that he played an active role as one of the primary salespersons in Faulkner's fraudulent scheme by soliciting and following-up with investors. Moreover, he misled Commission staff in his investigative testimony regarding his receipt of transaction-based compensation and failed to acknowledge his substantial role in advising prospective investors as to the merits of the investments he solicited. As previously discussed, he violated core requirements of the securities laws. The balance of the factors weighs in favor of imposing a significant civil penalty.

The statutes do not describe how to determine the number of violations that occurred. *See Fields*, 2015 SEC LEXIS 662, at *105 n.162 (noting that penalties may be imposed for violative acts or omissions, but the statutory text left "the precise unit of violation undefined"). The Division suggests fifteen third-tier penalties because Ballard violated three statutory provisions

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[6] The Commission considers the statutory factors when determining whether penalties are in the public interest under any of the statutes. *See Timothy S. Dembski*, Exchange Act Release No. 80306, 2017 SEC LEXIS 959, at *53 (Mar. 24, 2017), *pet. denied*, 726 F. App'x 841 (2d Cir. 2018); *Thomas C. Gonnella*, Securities Act Release No. 10119, 2016 SEC LEXIS 2786, at *54-55 & n.70 (Aug. 10, 2016), *pet. filed*, No. 16-3433 (2d Cir. Oct. 7, 2016); *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 SEC LEXIS 3001, at *22 (Aug. 21, 2014).

as to at least five investors. Mot. at 20-21. The maximum third-tier penalties were adjusted twice during the period of Ballard's misconduct, but even if I were to impose the lowest maximum of $150,000 per violation, the total civil penalty would be more than $2 million under the Division's request.[7]

I will impose a $150,000 third-tier penalty for Ballard's Section 15(a) violation because his acting as an unregistered broker can be regarded as one course of misconduct, rather than discrete acts. Regarding Ballard's offer or sale of unregistered securities in violation of Section 5(a) and (c), the Division has identified five investors who invested in unregistered working interests as a result of Ballard's sale tactics and suffered substantial losses. Ex. 4 ¶¶ 14-23; OIP ¶¶ 8, 11, 13, 17, 23. I will impose five $100,000 third-tier penalties for these violations. This results in a total penalty of $650,000.

Bars and Prohibitions

Exchange Act Section 15(b)(6) authorizes industry and penny stock bars against a person who, while associated with a broker or dealer at the time of the misconduct, willfully violated any provision of the Securities Act or Exchange Act, if the bar is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(D), (6)(A). Because Ballard acted as an unregistered broker at the time of his misconduct, he is deemed to have been associated with one for purposes of the sanctions analysis. *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 SEC LEXIS 481, at *17-18 (Feb. 15, 2017); *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657, at *2 n.2 (Apr. 23, 2015). Section 9(b) of the Investment Company Act authorizes prohibiting a person, either permanently or temporarily, from serving or acting in various roles with respect to a registered investment company, if that person has willfully violated any provision of the Securities Act or the Exchange Act and the sanction is in the public interest. 15 U.S.C. § 80a-9(b).

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[7] For violations occurring between March 4, 2009, and March 5, 2013, the maximum third-tier penalty for a natural person for each violation was $150,000. 17 C.F.R. § 201.1001, tbl. I. The amount was raised to $160,000 for violations occurring between March 6, 2013, and November 2, 2015. *Id.* Ballard's conduct spanned these two periods of time, and in fact, he continued to receive payments from the Faulkner companies after November 2, 2015, when penalties increased again. *See* Adjustments to Civil Monetary Penalty Amounts, 84 Fed. Reg. 5122, 5123-24 (Feb. 20, 2019); https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm. Nonetheless, I will exercise my discretion to impose the penalties available when Ballard's conduct began, in 2011.

To determine whether these sanctions are in the public interest, the Commission considers the *Steadman* factors discussed in the cease-and-desist section above. *See David R. Wulf*, Exchange Act Release No. 77411, 2016 SEC LEXIS 1074, at *13-14 (Mar. 21, 2016), *vacated in part on other grounds*, Exchange Act Release No. 86309, 2019 SEC LEXIS 1665 (July 5, 2019); *Brendan E. Murray*, Advisers Act Release No. 2809, 2008 SEC LEXIS 2924, at *34-35 (Nov. 21, 2008). I have already found that those factors weigh against Ballard. Given his past licensure, his long involvement in the industry, and the length of his participation in the Faulkner scheme, I find that these further sanctions of industry and penny stock bars and a permanent investment company prohibition are in the public interest.

Order

Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Terrence A. Ballard is BARRED from association 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.[8]

Pursuant to Section 9(b) of the Investment Company Act of 1940, Terrence A. Ballard is PERMANENTLY PROHIBITED from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Terrence A. Ballard shall CEASE AND DESIST from committing or causing violations, and any future violations, of Sections 5(a) and 5(c) of the Securities Act of 1933 and Section 15 of the Securities Exchange Act of 1934.

Pursuant to Section 8A(e) of the Securities Act of 1933 and Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, Terrence A. Ballard shall DISGORGE $1,106,228.64. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section

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[8] A respondent subject to a penny stock bar is barred from acting as a 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).

6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), shall be compounded quarterly, and shall run from March 1, 2016, through the last day of the month preceding the month in which payment of disgorgement is made.[9] 17 C.F.R. § 201.600.

Pursuant to Section 8A(g) of the Securities Act of 1933 and Section 21B(a) of the Securities Exchange Act of 1934, Terrence A. Ballard shall PAY A CIVIL MONEY PENALTY in the amount of $650,000.

Pursuant to Commission Rule of Practice 1100, any funds recovered by disgorgement, prejudgment interest, or civil penalties shall be placed in a fair fund for the benefit of investors harmed by the violations.

Payment of civil penalties, disgorgement, and prejudgment interest shall be made no later than twenty-one days following the day this initial decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/ofm; or (3) by certified check, bank cashier's check, bank money order, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying Respondent and Administrative Proceeding No. 3-17116: Enterprise Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.[10]

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[9] I deem the last violation as having occurred no later than February 5, 2016—the date of the last disbursement from Faulkner companies to Ballard and his companies. *See* Ex. 4 ¶ 7. Prejudgment interest shall run from the first day of the following month. 17 C.F.R. § 201.600(a).

[10] In settled orders for other respondents involved in the same scheme, the Commission directed payment to the court-appointed receiver in the *Faulkner* litigation, with funds to be distributed by the receiver. The Division has not requested this specific relief in this proceeding. It appears that the district court in the *Faulkner* litigation recently stayed the receiver's proposed plan of distribution upon the receiver's motion, pending resolution of objections to the plan. *SEC v. Faulkner*, No. 3-16-cv-1735 (N.D. Tex. June 7 & 10, 2019), ECF Nos. 442, 444. At this juncture, it would be more

(continued...)

A party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. 17 C.F.R. § 201.360(b). A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule of Practice 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 order resolving such motion to correct a manifest error of fact. This 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 occur, the initial decision shall not become final as to that party.

Ballard has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. *Id.*

Brenda P. Murray
Chief Administrative Law Judge

appropriate for the Commission to determine whether to direct Ballard to remit payment to the receiver.