INITIAL DECISION RELEASE NO. 1411
ADMINISTRATIVE PROCEEDING
FILE NO. 3-20136

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

In the Matter of	:	
	:	INITIAL DECISION
NORMAN T. REYNOLDS, ESQ.	:	September 21, 2021

APPEARANCES: Thomas J. Karr and Philip J. Holmes for the Office of the General Counsel, Securities and Exchange Commission

Norman T. Reynolds, Esq., *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision disqualifies Norman T. Reynolds, Esq., for four years from appearing or practicing before the Securities and Exchange Commission as an attorney. Reynolds was previously found to have violated, and was enjoined from violating, the antifraud and registration provisions of the federal securities laws.

I. BACKGROUND

A. Procedural Background

The Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on October 22, 2020, pursuant to 17 C.F.R. § 201.102(e)(3)(i)(A) and (B) (Rule 102(e)(3)(i)(A) and (B)). The proceeding is a follow-on proceeding based on *SEC v. Sayid*, No. 17-cv-2630 (S.D.N.Y.), in which Reynolds was enjoined from violating, and found to have violated, the antifraud and registration provisions of the federal securities laws. The OIP temporarily suspended him from appearing or practicing before the Commission as an attorney. On November 23, 2020, Reynolds filed a petition to lift the temporary suspension and to set the matter down for a hearing. On December 23, 2020, pursuant to Rule 102(e)(3)(iii), the Commission denied Reynolds's request that his temporary suspension be lifted and ordered a hearing before an administrative law judge.[1] Subsequently, the Office of the General Counsel (OGC) and

[1] *Norman T. Reynolds, Esq.*, Securities Exchange Act of 1934 Release No. 90801, 2020 SEC LEXIS 5269.

Respondent jointly moved for a stay pursuant to 17 C.F.R. § 201.161(c)(2), stating that they had reached an agreement in principle to a settlement, and the proceeding was stayed on February 1, 2021.[2] Respondent submitted a signed Offer of Settlement to OGC in compliance with 17 C.F.R. § 201.161(c)(2), but withdrew it on March 19, 2021, after OGC notified him that OGC would not be submitting it to the Commission. Thereafter, as agreed to by the parties, OGC filed a motion for summary disposition, pursuant to Rule 250.[3] OGC's motion for summary disposition, Reynolds's opposition, and OGC's reply were filed on April 22, May 19, and June 7, 2021, respectively.

This Initial Decision is based on the motion for summary disposition, opposition, and reply. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts were decided in the civil case against Reynolds on which this proceeding is based. All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Reynolds was adjudged to have violated, and was enjoined from violating, the antifraud and registration provisions of the Securities Act of 1933 and Securities Exchange Act of 1934, based on his conduct in providing opinion letters opining that unregistered stock qualified for an exemption from registration and removal of the restrictive legend on the stock certificate. OGC urges that he be disqualified for four years from appearing or practicing before the Commission as an attorney. Reynolds generally disputes the basis for the court's decision. He also argues that his practice no longer focuses on corporate or securities law matters, that he sincerely believed that his opinion letters were accurate but had unfortunately relied on the word of a fellow attorney who had lied to him, and that he has an otherwise spotless disciplinary record. He asks that the suspension be lifted and that he be awarded costs and maintains that he is entitled to a hearing *de novo* in this proceeding (or, alternatively, since the meaning of his wording is not entirely clear, on the evidence introduced and admitted in *SEC v. Sayid*.)[4]

C. Procedural Issues

1. Official Notice

[2] *Norman T. Reynolds, Esq.*, Admin. Proc. Rulings Release No. 6812, 2021 SEC LEXIS 261 (ALJ).

[3] *Norman T. Reynolds, Esq.*, Admin. Proc. Rulings Release No. 6821, 2021 SEC LEXIS 700 (ALJ, Mar. 22, 2021) (lifting stay and setting briefing schedule).

[4] Specifically, Reynolds "demands that upon trial hereof the Commission be required to prove each allegation by the greater weight and preponderance of the credible evidence introduced and admitted at the trial of the cause." Opp. at 1.

Official notice pursuant to 17 C.F.R. §§ 201.250(b), .323, is taken of the docket report and the court's orders in *SEC v. Sayid*, and other public official records.[5]

2. Collateral Estoppel

The Commission does not permit issues that were addressed in a previous civil proceeding against a respondent to be relitigated in an administrative proceeding against the same respondent. *See James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *10 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *John Francis D'Acquisto*, Investment Advisers Act of 1940 Release No. 1696, 1998 SEC LEXIS 91, at *1-2 & n.1, *7 (Jan. 21, 1998) (injunction entered by summary judgment); *Demitrios Julius Shiva*, Exchange Act Release No. 38389, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997); *see also Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003). Nor does the pendency of an appeal preclude the Commission from action based on the court's finding that he violated the securities laws. *See Franklin*, 2007 SEC LEXIS 2420, at *11 n.15; *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992). If a Court of Appeals vacates the judgment on which a proceeding is based, the Commission will entertain an application to reconsider any sanction or dismiss the proceeding if it is still pending. *Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328, at *3-4 (July 25, 2012); *C. R. Richmond & Co.*, Exchange Act Release No. 12535, 1976 SEC LEXIS 1468, at *6 n.11 (June 10, 1976).

3. Rule 102(e)(3)

This proceeding was instituted pursuant to Rule 102(e)(3)(i), which provides procedures that may lead to sanctions – censure or temporary or permanent disqualification from appearing or practicing before the Commission – of an attorney who has been:

> (A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating . . . any provision of the Federal securities laws or of the rules and regulations thereunder; or
>
> (B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) . . . any provision of the Federal securities laws or of the rules and regulations thereunder.

17 C.F.R. § 201.102(e)(3)(i).

[5] OGC also included documents from the *SEC v. Sayid* docket in its motion. *See* Mot. for Summ. Disp., at Attachments 1-3.

As noted above, pursuant to Rule 102(e)(3)(ii), Reynolds petitioned the Commission to lift the temporary suspension imposed under Rule 102(e)(3)(i), and the Commission denied the petition and set the matter for a hearing pursuant to Rule 102(e)(3)(iii). Accordingly, the provisions of Rule 102(e)(3)(iv) apply:

> In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii) of this section, the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) of this section or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) of this section and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner may not contest any finding made against him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated.

17 C.F.R. § 201.102(e)(3)(iv).

II. FINDINGS OF FACT

Reynolds was found to have violated, and was enjoined against violating, by a court of competent jurisdiction, Sections 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The court also imposed a penny stock bar; ordered that he not participate in the preparation or issuance of any opinion letter in connection with the offer or sale of securities pursuant to, or claiming an exemption under, Securities Act Section 4(1) and Rule 144;[6] and ordered him to disgorge $700 of ill-gotten gains plus prejudgment interest of $193

[6] Section 5 of the Securities Act prohibits the sale and the offer for sale of securities through jurisdictional means unless a registration statement has been filed. Securities Act Section 4(1) exempts from the registration requirements "transactions by any person other than an issuer, underwriter, or dealer." 15 U.S.C. § 77d(a)(1). The intent of Section 4(1) is "to exempt routine trading transactions between members of the investing public and not distributions by issuers or the acts of others who engage in steps necessary to those distributions." *Owen V. Kane*, Exchange Act Release No. 23827, 1986 SEC LEXIS 326, at *5 (Nov. 20, 1986), *aff'd*, 842 F.2d 194 (8th Cir. 1988). Securities Act Section 2(11) defines "underwriter," and 17 C.F.R. § 230.144 (Rule 144) elucidates this for Sections 2(11) and 4(1), noting:

> If any person sells a . . . security to any other person, the sale must be registered unless an exemption can be found for the transaction. . . . Section 4 (1) . . . provides [an] exemption for a transaction "by a person other than an issuer, underwriter, or dealer." . . . "[U]nderwriter" is broadly defined in Section 2(a)(11). . . . Rule 144 creates a safe harbor from the Section 2(a)(11) definition of "underwriter."

17 C.F.R. § 230.144, Preliminary Note. As applicable here, "a minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate

and to pay a civil penalty of $75,000. *SEC v. Sayid*, No. 17-cv-2630 (S.D.N.Y.), ECF Nos. 112 (Order granting Commission's motion for summary judgment) (Nov. 25, 2019); 141 (Final Judgment) (July 23, 2020); 149 (Amended Final Judgment) (Sept. 9, 2020).[7] Reynolds is a currently a licensed attorney in good standing eligible to practice in Texas, according to official records of the State Bar of Texas, of which official notice is taken, pursuant to 17 C.F.R. § 201.323.[8] According to Reynolds's description of his past practice, he has represented clients before the Commission in drafting and making various filings.

Facts Established in SEC v. Sayid

The following facts are established as found to be undisputed in the court's order granting the Commission's motion for summary judgment in *SEC v. Sayid*, ECF No. 112:

Reynolds was a Houston, Texas-based securities attorney, and his co-defendant in *SEC v. Sayid*, Mustafa David Sayid, was a New York City-based securities attorney. In 2012 Sayid negotiated a securities transaction with two other individuals for the sale of $50,000 of a debt owed to Sayid by the issuer Nouveau Holdings, Ltd., to certain Belizean entities that they owned. The terms of the sale pursuant to a "debt settlement agreement" (DSA), finalized on or after September 25, 2012, proposed a three-way transaction: (1) Sayid would assign $50,000 of the debt to the Belizean entities; (2) the Belizean entities would pay Sayid $50,000; and (3) Nouveau would pay off the assigned debt by issuing 50 million shares of Nouveau stock to the Belizean entities. The DSA was to be entered into by Sayid's law firm as the "Assignor Creditor," the Belizean entities as the "Assignee Creditors," and Nouveau as the "Debtor."

Between April 2012 and August 2013, Sayid had conversations with the president of Nouveau concerning the DSA. Sayid did not present the president with a copy of the DSA – dated September 25, 2012, and signed by the other two parties to the three-way transaction – for his signature until August 2, 2013. Earlier in 2013, Sayid had exchanged multiple emails with the owners of the Belizean entities regarding changes to the DSA. In June 2013, for example, the number of Belizean entities changed from five to three. In August 2013, Sayid received a signed signature page from the three Belizean entities and forwarded the partially signed agreement to Nouveau's president on August 2, 2013, copying Reynolds. The signatures of the Belizean entities were dated September 25, 2012, and the date next to Sayid's signature was blank.

Nouveau did not have a registration statement in effect, and thus, its transfer agent would have placed a restrictive legend, indicating that shares are not to be sold to the public, on its stock

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of the issuer, and any resale of such securities." Rule 144(d)(1)(ii). Pursuant to 17 C.F.R. § 239.144, any person who intends to sell securities in reliance on Rule 144 must file a Form 144 with the Commission.

[7] ECF Nos. 112 and 141 are attached to the motion for summary disposition at Attachments 2 and 3, respectively.

[8] *See* Find a Lawyer, https://www.texasbar.com/ (search first name "Norman" and last name "Reynolds") (last visited Aug. 31, 2021).

certificates. The transfer agent would remove the legend on receipt of a letter from an attorney opining that the stock complied with the safe harbor requirements of Rule 144.

On July 29, 2013, Sayid asked Reynolds to provide Rule 144 opinion letters based on the partially signed DSA dated September 25, 2012. Reynolds responded that it appeared that Sayid had not held the securities for the one-year minimum holding period. Sayid responded that he had several copies of the DSA executed by the parties on various dates on and before September 25, 2012. After receiving only unsigned copies of these, on August 9, 2013, Reynolds provided Sayid with an opinion letter stating that the transaction among Sayid, the three Belizean entities, and Nouveau had occurred on July 17, 2012, and advised Sayid that, after checking that the facts were correct, he could provide the opinion letter to the transfer agent so that the restrictive legend could be removed. Sayid commenced obtaining new signature pages, falsely dated July, 17, 2012, from the parties. Sayid provided the opinion letter to Nouveau's president to send to the transfer agent, and on August 23, 2013, the transfer agent provided three million shares of unrestricted Nouveau stock to the three Belizean entities. Sayid then requested, and Reynolds provided, on September 6, 2013, a second, identical, opinion letter, resulting in the transfer agent's providing an additional five million unrestricted shares to the Belizean entities. Sayid paid Reynolds $350 for each of the two opinion letters.

Reynolds knew that no registration statement was in effect for the offered securities, and thus, his Rule 144 letters were needed for the transfer agent to issue the shares in unrestricted form. Reynolds acted with a reckless degree of scienter by providing an opinion letter without ever seeing a signed July 12, 2012, DSA and failing to conduct any meaningful due diligence into the truthfulness of Sayid's assertions.

Assertions by Reynolds

Reynolds maintains that he previously represented clients before the Commission but no longer does so. Reynolds represents, "For many years immediately preceding the filing of the District Court action [his] practice focused almost exclusively on corporate or securities law matters . . . such as filing . . . registration statements, . . . quarterly and annual financial reports, . . . proxy statements, facilitat[ing] private placements of securities, and draft[ing] legal opinion letters. Since approximately March 2019, the focus of [his] law practice has shifted significantly." Opp. at 3. Further, pointing to his law firm's website, which states that his areas of practice are estate planning and probate, real estate transactions, oil and gas matters, and litigation, he says, "Since the decision in the District Court, [he] has not engaged in any securities law matters, and has devoted his law practice to other matters." Opp. at 4. However, Reynolds's assertions do not appear to be based on "undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323." *See* Rule 250(b) & (c), 17 C.F.R. § 201.250(b) & (c) (specifying evidentiary requirements for motions for summary disposition); *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 SEC LEXIS 481, at *26 (Feb. 15, 2017). Rather, they are conclusory statements.

III. CONCLUSIONS OF LAW

Reynolds has been "enjoined by [a] court of competent jurisdiction, by reason of his . . . misconduct in an action brought by the Commission, from violating . . . provision[s] of the Federal

securities laws [and] of the rules and regulations thereunder" within the meaning of 17 C.F.R. § 201.102(e)(3)(i)(A) and "found by [a] court of competent jurisdiction in an action brought by the Commission to which he . . . is a party to have violated [willfully] . . . provision[s] of the Federal securities laws [and] of the rules and regulations thereunder" within the meaning of 17 C.F.R. § 201.102(e)(3)(i)(B).

Specifically, the court concluded that Reynolds violated Securities Act Section 5 as a necessary and substantial participant in the unlawful sale and resale of restricted stock[9] and violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 by recklessly disregarding obviously false statements and failing to investigate conflicting information he was provided regarding the key legal requirement (one-year holding period) of his Rule 144 letters.[10]

IV. SANCTION

OGC urges that Reynolds be disqualified for four years from appearing or practicing before the Commission as an attorney. Reynolds urges that OGC's motion be denied and the suspension lifted.[11] Since there is no genuine issue with regard to any fact that is material to this proceeding, for the reasons set forth below, Reynolds will be disqualified for four years from appearing or practicing before the Commission as an attorney.

A. Sanction Considerations

The Commission determines sanctions in a proceeding pursuant to 17 C.F.R. § 201.102(e) according to the so-called *Steadman* factors. *Steven Altman, Esq.*, Exchange Act Release No. 63306, 2010 SEC LEXIS 3762, at *68 (Nov. 10, 2010), *pet. denied*, 666 F.3d 1322 (D.C. Cir. 2011). The *Steadman* factors are:

> 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)). The Commission also considers the age of the violation and the degree of

[9] *SEC v. Sayid*, ECF No. 112 at 17-18.

[10] *SEC v. Sayid*, ECF No. 112 at 23-29.

[11] Reynolds also requests costs. Such a request, which is premature, can only be made under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, and Sections 201.31-.59 of the Commission's Rules, 17 C.F.R. §§ 201.31.-59. EAJA and the cited Commission Rules specify the circumstances under which an award of fees and expenses will be made to a party.

harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *See Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 SEC LEXIS 2973, at *30 (Sept. 20, 2012) (Rule 102(e)(3) proceeding); *Steven Altman, Esq.*, 2010 SEC LEXIS 3762, at *68 (Rule 102(e)(1) proceeding); *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006).

The Commission considers violations of the antifraud provisions to be particularly reprehensible. *See Chris G. Gunderson, Esq.*, Exchange Act Release No. 61234, 2009 SEC LEXIS 4322 at *21, *27-28 (Dec. 23, 2009) (permanently disqualifying, from appearing or practicing before the Commission, attorney who was permanently enjoined from violating the antifraud and registration provisions); *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5.

B. Sanction

Disqualification from appearing or practicing before the Commission is the appropriate sanction consistent with the gravity of Reynolds's misconduct as found by the court and with Commission precedent in Rule 102(e) proceedings against attorneys. *See Steven Altman, Esq.*, 2010 SEC LEXIS 3762, at *68-76; *Chris G. Gunderson, Esq.*, 2009 SEC LEXIS 4322, at *20-28.

As described in the Findings of Fact, Reynolds's conduct was egregious. It involved a reckless degree of scienter, as the court concluded in determining that he violated the antifraud provisions. His occupation, which included representing issuers before the Commission in recent years, if he were allowed to continue it, would present opportunities for future violations. Consistent with a vigorous defense of the charges against him he has not recognized the wrongful nature of his conduct. The $700 in disgorgement and $75,000 civil penalty that he was ordered to pay indicate the degree of direct harm to the marketplace.[12] Disqualification is also necessary for the purpose of deterrence.

Reynolds's lack of a disciplinary history is not mitigative and does not remove the need for sanctions. *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *42 & n.39 (May 15, 2009) ("[T]he absence of disciplinary history is not mitigative as securities professionals should not be rewarded for complying with securities laws.") However, his misconduct was essentially not recurrent – he issued two opinion letters concerning the same issuer's stock in a short time period, and, although his occupation present opportunities to violate the securities laws, he has made assurances against such future violations. Thus, a disqualification for four years, rather than a permanent disqualification, is appropriate in the public interest.

[12] In this connection, beyond the harm caused to particular investors by a respondent's conduct, the Commission considers 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).

V. ORDER

IT IS ORDERED that, pursuant to 17 C.F.R. § 201.102(e), NORMAN T. REYNOLDS, ESQ., IS DENIED TEMPORARILY the PRIVILEGE OF APPEARING OR PRACTICING BEFORE THE COMMISSION AS AN ATTORNEY for a period of FOUR 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 Rules 102(e)(3)(iii) and 540 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.102(e)(3)(iii), .540, a party may file a petition for review of this Initial Decision within ten 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(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). 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.[13] 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

[13] Under Rule 540, "[a]ny person who seeks Commission review of an initial decision as to whether a temporary sanction shall be made permanent shall file a petition for review pursuant to 17 C.F.R. § 201.410, provided, however, that the petition must be filed within 10 days after service of the initial decision." 17 C.F.R. § 201.540(a). Rule 540 does not, however, eliminate the availability of a motion to correct under Rule 111. Also, Rule 410 separately provides that when a party files a motion to correct, "a party shall have 21 days from the date of the hearing officer's order resolving the motion to correct to file a petition for review." 17 C.F.R. § 201.410(b); *see also* Amendments to the Rules of Practice, 69 Fed. Reg. 13166, 13171 (Mar. 19, 2004) ("Rule 410(b) is amended to provide that the time to file a petition for review is stayed until 21 days after resolution of any motion to correct an initial decision filed before the hearing officer. While a motion to correct is pending, a party need not file a petition for review to preserve its appeal rights.").