

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

Administrative Proceedings Rulings  
Release No. 5564 / February 2, 2018

Administrative Proceeding  
File No. 3-16795

In the Matter of  
**Joseph J. Fox**

**Order Ratifying Actions**

On September 8, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondent, directing the determination of what, if any, nonfinancial remedial sanctions under Section 15(b)(6) of the Securities Exchange Act of 1934 were in the public interest based on Respondent's admitted violations of Section 5(a) and (c) of the Securities Act of 1933. Following the issuance of an initial decision and the denial of Respondent's motion to correct manifest errors of fact, Respondent filed a petition for review, and the Commission issued an opinion imposing industry and penny stock bars with a right to reapply after five years. *See Joseph J. Fox*, Securities Act Release No. 10328, 2017 SEC LEXIS 969 (Mar. 24, 2017). On April 18, 2017, Respondent filed a motion for reconsideration of the Commission's opinion. The Commission then remanded this case to me on November 30, 2017, without ruling on Respondent's motion. *See Pending Admin. Proc.*, Securities Act Release No. 10440, 2017 SEC LEXIS 3724. Consistent with the Commission's remand order and my order dated December 5, 2017, the Division of Enforcement and Respondent Joseph J. Fox each submitted a letter regarding the issues raised in the November 30 order, and the Division also submitted a responsive brief. *See Joseph J. Fox*, Admin. Proc. Rulings Release No. 5264, 2017 SEC LEXIS 3831.

The Division urges me to ratify all prior actions. Respondent urges me to substitute my March 16, 2016, order denying the Division's motion for summary disposition without prejudice in place of the initial decision. Letter from Joseph J. Fox to Brent J. Fields, Office of the Secretary, SEC, at 6 (Jan. 5, 2018) ("Fox Letter"); *see Joseph J. Fox*, Admin. Proc. Rulings Release No. 3711, 2016 SEC LEXIS 998. He suggests that I "consider the facts and

evidence laid out in the Motions that [he] ha[s] submitted after the issuance of the Initial Decision.” Fox Letter at 1-2 (listing seven filings). And he highlights several points drawn from those post-initial-decision filings, including his May 6, 2016, motion to correct manifest errors of fact, his August 1, 2016, brief in support of his petition for review, and his May 8, 2017, motion for reconsideration. *See id.* at 2-6. The Division, in turn, incorporates its prior filings in its reply to Respondent.

The parties’ submissions contain no new evidence. And although he argues that I should reconsider some of my prior actions, Respondent does not advance any arguments that he has not raised before.

The only issue that has not been directly addressed by me or the Commission is Respondent’s contention—which was first raised in his motion for reconsideration of the Commission’s March 24, 2017, opinion—that an amendment to Regulation D that became effective on January 20, 2017, should mitigate his sanction. *See id.* at 5-6. I interpret the November 30 remand order as granting me authority to reconsider my actions de novo, including in light of intervening changes in Commission regulations, and even as to matters still pending before the Commission. *See Pending Admin. Proc.*, 2017 SEC LEXIS 3724, at \*3 (permitting me to “revise in any respect all prior actions”). Nevertheless, the amendment does not alter my view that it is appropriate to impose a collateral bar with the right to reapply after five years. *See Joseph J. Fox*, Initial Decision Release No. 1004, 2016 SEC LEXIS 1515, at \*21-22 (ALJ Apr. 25, 2016).

The amendment to Rule 504 of Regulation D increased the maximum annual allowance for the small issue exemption from \$1 million to \$5 million. Exemptions to Facilitate Intrastate and Regional Securities Offerings, 81 Fed. Reg. 83,494, 83,496, 83,553 (Nov. 21, 2016). Because the largest offering of unregistered securities of Ditto Holdings, Inc., to which Respondent admitted was approximately \$3.8 million, he argues that he should not be barred from the industry where “none of the acts . . . would be a violation today.” Fox Letter at 5-6; *see* OIP at 2-3. But as the Commission noted, the rule change occurred “well after the events at issue here.” *Joseph J. Fox*, 2017 SEC LEXIS 969, at \*14 n.18. At the time of the offerings, Fox made the choice to avail himself of the Rule 506 exemption *because* it was not limited by dollar amount. *See Joseph J. Fox*, 2016 SEC LEXIS 1515, at \*6, \*17-18 (finding that Ditto Holdings claimed to take advantage of Rule 506 on its Forms D after Fox “ascertained that [the Rule 504] exemption was not available”). Having selected Rule 506, Fox was reckless to have not satisfied its requirements, even if he may have selected Rule 504 had the offerings taken place five years later. *Accord Joseph J. Fox*, 2017 SEC LEXIS 969, at

\*11-15. It is that reckless disregard for the securities laws that supports the collateral bar.

Having considered the parties' arguments and scrutinized the record in accordance with the November 30 order, I therefore determine that no actions of mine or of any other administrative law judge in connection with this proceeding need to be revised.<sup>1</sup>

I RATIFY all prior actions taken by an administrative law judge in this proceeding. The process contemplated by the Commission's November 30 order is complete.

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Cameron Elliot  
Administrative Law Judge

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<sup>1</sup> My designation as the presiding administrative law judge in this proceeding has already been ratified. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5247, 2017 SEC LEXIS 3780 (ALJ Dec. 4, 2017).