

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 6489/March 8, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-16795

In the Matter of

JOSEPH J. FOX

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ORDER

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 and 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 facts concerning Respondent Joseph J. 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]" and "the findings of this [OIP] shall be accepted as and deemed true by the hearing officer." Following an April 25, 2016, Initial Decision, 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 pending*.

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 of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at *2-3. 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).

Previously, the parties made separate proposals for the conduct of further proceedings. Respondent proposed that the proceedings "be conducted solely through in-person testimony at public hearings" without further details, and the Division of Enforcement proposed that the matter be resolved by summary disposition.¹

A telephone conference will be held on Thursday, March 14, 2019, at 12:00 noon EDT (9:00 a.m. PDT), a date and time convenient to the parties, consistent with 17 C.F.R. § 201.200(c). The parties should be prepared to address the status of any settlement negotiations. In light of the violations and facts found in the OIP, which the undersigned is required to deem

¹ The dates in the Division's proposal were rendered moot due to the Commission's "lapse in appropriations" and furlough of personnel, which commenced on December 27, 2018. *Pending Admin. Proc.*, Securities Act Release No. 10602, 2019 SEC LEXIS 5, at *1 (Jan. 16, 2019). On January 30, 2019, after funding was restored, the Commission lifted its previously ordered stay of all administrative proceedings. *Pending Admin. Proc.*, Securities Act Release No. 10603, 2019 SEC LEXIS 37, at *1 (Jan. 30, 2019).

true, Respondent should be prepared to address what he plans to prove and how live testimony would help him prove it.

The parties are reminded that the Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 78o(b)(6)(A). 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*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *4-5 (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).

IT IS SO ORDERED.

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