

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

Administrative Proceedings Rulings  
Release No. 6588 / May 30, 2019

Administrative Proceeding  
File No. 3-18098

In the Matter of  
**Alfred C. Teran**

**Order Deferring Decision on  
Summary Disposition Motion  
and Directing Supplemental  
Filings**

*Background*

The Securities and Exchange Commission issued an order instituting proceedings (OIP) on August 3, 2017, alleging that Respondent Alfred C. Teran willfully violated Section 15(a) of the Securities Exchange Act of 1934 by selling or participating in the unregistered offer and sale of securities to numerous investors while he was not registered as or associated with a registered broker or dealer. OIP at 1-3.

On December 11, 2018, the Commission accepted Teran's offer of settlement. *Teran*, Exchange Act Release No. 84794, 2018 SEC LEXIS 3476, at \*1. In the consent order, the Commission found that Teran willfully violated Exchange Act Section 15(a) and imposed a cease-and-desist order, a civil monetary penalty, associational bars, and an investment company bar.<sup>1</sup> *Id.* at \*6, \*8-10. The Commission found that, from 2011 to 2015, Teran sold royalty-interest securities in unregistered oil and gas offerings by cold-calling potential investors, providing detailed information about the offerings, and

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<sup>1</sup> An associational bar is a bar from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. 15 U.S.C. § 78o(b)(6)(A). An investment company bar is a prohibition 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. 15 U.S.C. § 80a-9(b).

answering questions about the offerings and tax consequences. *Id.* at \*5-6. It noted that the unregistered offerings were organized by Christopher A. Faulkner, who, along with other individuals and entities, is the subject of a Commission action in federal district court alleging antifraud violations for their role in an \$80 million offering fraud, but that Teran is not a named defendant in that litigation. *Id.* at \*2 & n.2.

The Commission also found that Teran received, in addition to a fixed salary, transaction-based compensation in the form of commissions based on a specific percentage of the dollar amount invested (typically ten percent); and that he was not registered as a broker or associated with a registered broker-dealer while facilitating the transactions. *Id.* at \*6.

The Commission ordered additional proceedings before an administrative law judge to determine what, if any, disgorgement and prejudgment interest Teran should be ordered to pay, pursuant to Exchange Act Sections 21B(e) and 21C(e). *Id.* at \*7-8, \*13. The assigned administrative law judge set a motions schedule.<sup>2</sup> *Teran*, Admin. Proc. Rulings Release No. 6451, 2019 SEC LEXIS 154 (ALJ Feb. 11, 2019).

On March 18, 2018, the Division of Enforcement moved for summary disposition seeking disgorgement of \$920,103.16 and prejudgment interest of \$137,254.12.<sup>3</sup> Mot. at 6. These amounts were based on a stipulation signed by Division counsel and Teran agreeing on the commissions Teran received from the sales constituting his misconduct between August 3, 2012, and October 21, 2015, and a report generated by the Division about the interest accrued on those commissions through February 28, 2019.<sup>4</sup> See Mot. Exs. A and B.

On March 29, 2019, in lieu of a brief in opposition, Teran filed a sworn Form D-A (model disclosure of assets and financial information form), itemizing his assets and liabilities. I construe his filing as an argument

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<sup>2</sup> On March 18, 2019, this proceeding was reassigned to me. *Teran*, Admin. Proc. Rulings Release No. 6504, 2019 SEC LEXIS 520 (ALJ).

<sup>3</sup> Attached to the motion are a stipulation signed by the parties on March 5, 2019 (Ex. A), and a prejudgment interest report (Ex. B).

<sup>4</sup> To comply with 28 U.S.C. § 2462's statute of limitations, the Division noted that it seeks disgorgement of the commissions Teran received only in the five-year period preceding the OIP. Mot. at 5 n.11.

under Rule 630(a) that he lacks the ability to pay the requested disgorgement amount. *See* 17 C.F.R. § 201.630(a).

In its reply filed April 13, 2019, the Division argues that Teran did not present adequate evidence of inability to pay as he only included financial information for 2017, and that even if Teran demonstrates inability to pay, Teran's misconduct was sufficiently egregious to order disgorgement anyway.<sup>5</sup> Reply at 1. The Division argues that the public interest factors as set forth in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), weigh in favor of ordering disgorgement and prejudgment interest notwithstanding Teran's financial condition. *Id.* at 1-6. In support of its argument that Teran's misconduct was egregious, the Division references motions and court rulings in the federal litigation involving Faulkner and others, in which the fraudulent nature of Faulkner's scheme was established. *Id.* at 2-3. On the *Steadman* factor regarding the likelihood that Respondent's occupation will present future opportunities for violations, the Division notes that a November 2, 2015, Form D, Notice of Exempt Offering of Securities, filing by Royal Mesa Minerals, LLC, shows that \$1 million of that offering's proceeds will be used for a payment to Teran who signed the Form D. *Id.* at 5 and Ex. C.

#### *Discussion*

A summary disposition motion may be granted only if there is no genuine issue with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(c). In assessing the record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. *Joseph P. Doxey*, Exchange Act Release No. 77773, 2016 WL 2593988, at \*2 (May 5, 2016).

This proceeding's remaining issues are whether Teran should be ordered to pay disgorgement and prejudgment interest and, if so, what amounts should be ordered. The parties stipulated to the amount of commissions Teran received as a result of his misconduct and there is no challenge to the calculated prejudgment interest. Teran asserts an inability-to-pay claim,

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<sup>5</sup> The reply has three attachments: the receiver's motion to place Faulkner-controlled companies into receivership in *SEC v. Faulkner*, No. 3:16-cv-1735 (N.D. Tex.), ECF No. 404 (Ex. A); the court's order granting the motion, ECF No. 417 (Ex. B); and a Form D notice of exempt offering of securities filed by Royal Mesa Minerals, LLC, which Teran signed as "Officer of the Manager" (Ex. C).

which the Division disputes. When deciding to order disgorgement, a respondent's ability to pay "is only one factor that informs [the] determination and is not dispositive." *Edgar R. Page*, Investment Advisers Act of 1940 Release No. 4400, 2016 WL 3030845, at \*14 & n.87 (May 27, 2016) (quoting *Gregory O. Trautman*, Securities Act of 1933 Release No. 9088A, 2009 WL 6761741, at \*24 (Dec. 15, 2009)).

### **Form D-A: Inability to pay**

The respondent bears the burden of demonstrating inability to pay. *Id.* at \*14.

Teran's Form D-A and his federal income tax filing for 2017 are insufficient to determine Teran's inability-to-pay claim. Teran's sworn financial statement represents that he has a negative net worth, a modest annual income, few assets, and a substantial federal tax bill. Most of the responses on the form are either "n/a" or "0". Teran failed to follow Rule 630(b)'s instruction to show the respondent's assets, liabilities, income, or other funds received and expenses or other payments, from the date of the first violation alleged in the OIP to the date of the order requiring the disclosure statement to be filed. *See* 17 C.F.R. § 201.630(b). Also, Teran failed to attach filed federal income tax returns or gift tax returns filed or any financial statements prepared for the year of the first violation and all subsequent years, except for 2017. 17 C.F.R. § 209.1, Form D-A, at § K.

Although, as I explain below, Teran need not follow the instructions in the Form D-A to the letter, *see* 17 C.F.R. § 201.630(b) (allowing the assigned judge to modify the disclosure requirements as necessary to evaluate the claim), additional information is needed to explain why Teran is unable to pay disgorgement and prejudgment interest. For example, he acknowledges receiving \$920,103.16 in ill-gotten gains, and it appears he might have received \$1 million in 2015 from Royal Mesa Minerals LLC's securities offering. Reply at Ex. C.

### **Egregious conduct**

Even if a respondent demonstrates inability to pay, the Commission has the discretion not to waive disgorgement "particularly when the misconduct is sufficiently egregious." *Page*, 2016 WL 3030845, at \*15 & n.94 (quoting *Trautman*, 2009 WL 6761741, at \*24). The instances where disgorgement was ordered despite a demonstrated inability to pay generally involved respondents who committed fraud. *See, e.g., id.* at \*4, \*15; *Trautman*, 2009 WL 6761741, at \*15, \*24.

The Commission's finding that Teran violated Section 15(a) by selling or participating in the offer and sale of securities to hundreds of investors across the country suggests that Teran's misconduct in acting as an unregistered broker-dealer was repetitive and widespread. However, a violation of Section 15(a) does not require scienter. The Commission's consent order did not find that Teran committed fraud, was a conduit to fraud, or committed any offense with scienter. Moreover, the conduct of others involved in the unregistered offerings does not translate into a conclusion that Teran's misconduct was egregious. The Division has provided no authority for the notion that the egregiousness of Teran's misconduct should be determined by reference to motions and court rulings about others like Faulkner. This record does not show misconduct so egregious as to warrant imposing full disgorgement even if Teran demonstrates an inability to pay.

### **Conclusion**

Given Teran's pro se status and lack of any prior regulatory history, and because all reasonable inferences should be drawn in Teran's favor as the non-movant, I believe it is appropriate to allow Teran an opportunity to submit supplemental material related to his Form D-A, as directed below. If Teran fails to provide such supplemental material, I will most likely reject his claim.

### *Order*

I defer decision on the Division's motion for summary disposition.

By June 14, 2019, Teran shall file the following supplemental material related to his Form D-A:

- (1) supporting documentation (such as, for example, bank statements, tax bills, etc.) for all assets, liabilities, income, and expenses he claimed on the form<sup>6</sup>;
- (2) any federal tax returns, including business returns, for 2011 and all subsequent years, except 2017;

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<sup>6</sup> For item number (1), supporting documentation need only relate to the assets, liabilities, income, and expenses claimed in the Form D-A, not for Teran's financial condition going back to 2011. See 17 C.F.R. § 201.630(b) (allowing the hearing officer to specify the period for which disclosure is required). I do not, however, preclude the possibility that Teran may need to disclose additional information if this matter requires a hearing.

(3) recent pay stubs or other documentation that demonstrates his current income;

and, as applicable, (4) a list of businesses he owns or controls or for which he serves as an officer or manager, together with financial records of those businesses showing either actual or potential sources of income that could impact his ability to pay disgorgement.

Concurrent with his filing, Teran may file a motion for a protective order pursuant to Rules 322 and 630(c), 17 C.F.R. §§ 201.322, .630(c).

By June 28, 2019, the Division may file a supplemental response.

Alternatively, if the parties submit a stipulation as to Teran's financial condition by June 14, this schedule need not be followed.

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Brenda P. Murray  
Chief Administrative Law Judge