INITIAL DECISION RELEASE NO. 520
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15520

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

In the Matter of PHILIP DAVID HORN	INITIAL DECISION ON DEFAULT November 14, 2013

APPEARANCES: Nicholas S. Chung, Spencer E. Bendell, Division of Enforcement, Securities and Exchange Commission

No appearances were made by, or on behalf of, Philip David Horn

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) on September 24, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act), alleging that on September 20, 2012, Philip David Horn (Horn) pled guilty to two counts of wire fraud before the United States District Court for the Central District of California in United States v. Horn, 2:12-cr-678-GAF, and that on March 4, 2013, a judgment was entered against Horn and he was sentenced to a prison term of twenty-four months, followed by three years of supervised release. The OIP sent by certified mail to Horn at the Federal Correctional Institution (FCI) La Tuna, Satellite Camp, P.O. Box 8000, Anthony, TX 88021, was delivered to the institution on September 28, 2013.

On October 21, 2013, I postponed the hearing scheduled to begin on October 28, 2013, and ordered the Division of Enforcement (Division) to contact Horn's case manager at FCI La Tuna to inquire about Horn's availability for a telephonic prehearing conference. The Division filed a Response to Order Postponing Hearing (Response) on October 29, 2013, requesting a telephonic prehearing conference on November 12, 2013. Attached to the Response are two e-mails in which Horn's Unit Manager, Ruben Luna (Luna), states that he spoke with Horn about the October 21, 2013, Order Postponing Hearing, which advised Horn that he would be held in default if he did not answer, participate in the prehearing conference, or otherwise defend the proceeding, and states:

> Okay, Inmate Horn spoke with me today and he stated he was in communication with his attorney and stated under his attorney's advise [sic] he need not to respond. I had given inmate Horn a copy of the Order and he is aware of the judgment that may be entered if he fails to participate.

Response, Exhibit 1.

I find Horn in default because he has not filed an Answer to the OIP or otherwise defended the proceeding, and the evidence is that he would not attend a prehearing conference or a hearing if one were held. See 17 C.F.R. §§ 201.155(a), .220(f), .221(f). Accordingly, I find the allegations in the OIP to be true, and take official notice of the judgment and pleadings in Horn, 2:12-cr-678-GAF. See 17 C.F.R. §§ 201.155(a), .323.

Findings of Fact

On September 20, 2012, Horn, age 52, pled guilty to two counts of wire fraud in violation of Title 18, United States Code, Section 1343, in Horn, 2:12-cr-678-GAF. OIP at 1. At the time of his illegal actions, Horn was associated with Wells Fargo Advisers, LLC, a registered broker-dealer and investment adviser. OIP at 1. The counts of the Criminal Information to which Horn pled guilty alleged, *inter alia*, that Horn knowingly and with intent to defraud, devised, participated in, and carried out a scheme to defraud investors and to obtain money and property from them, by means of materially false and fraudulent pretenses, representations, promises, and the concealment of material facts. OIP at 2. Horn signed a Plea Agreement on September 20, 2012, which states:

> During the years 2006-2011, Horn was a licensed securities broker and managing director at the Westwood Branch of Wells Fargo Advisors, LLC in Los Angeles, California. In his position as a managing director, [Horn] was responsible for overseeing and executing securities trades for several WFA account holders and was also responsible for ensuring WFA's internal procedures be followed in order to account for trades and trade cancellations or corrections. More specifically, [Horn], at all relevant times, knew that whenever he or any other broker at WFA executed a trade correction or rescission, WFA required that a form entitled, "Order Error Approval/Trade Correction," ("the "OEA form") be completed, signed, and maintained in WFA's files. [Horn] knew and understood that completion of the OEA form ensured, among other things, that all trade corrections or rescissions were well documented, properly accounted for, and executed for legitimate and lawful reasons.
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> Beginning in approximately April 2009 and continuing through approximately October 2011, [Horn] executed a scheme to defraud WFA and others of money and property. More specifically, [Horn] caused WFA to execute purchases of securities (the "initial transactions") in accounts of various WFA account holders. Shortly after completing the initial transactions, [Horn] would, in instances where the securities increased in value, cause the initial transactions to be rescinded and fraudulently "corrected" to reflect a purchase of securities in [Horn's] own

> personal accounts. [Horn] caused the rescissions and fraudulent corrections to occur based solely on the fact that the securities purchased in the initial transactions had increased in value, rather than based upon any legitimate need to correct an erroneous error. [Horn] concealed his actions from WFA and others by, among other things, directing others to execute the rescissions and corrections without completing the OEA form and by communicating such directives through personal phones, rather than through WFA's own equipment.
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> [Horn's] scheme caused a total of $732,000 in actual losses, resulting from trades initially executed in the accounts of WFA account holders and subsequently rescinded and fraudulently "corrected" to reflect the purchases of securities in [Horn's] own accounts.
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> The use of interstate wire transmissions was an integral part of the scheme. Each time [Horn] executed one of the initial transactions, as well as each time [Horn] executed a rescission and correction, the action involving the security was completed by an order, sent via wire transmission, from the WFA branch in Los Angeles to WFA headquarters in St. Louis, Missouri.

Horn, 2:12-cr-678-GAF, Plea Agreement, Exhibit A (Sept. 19, 2012).

Judgment was entered against Horn in Horn, 2:12-cr-678-GAF, on March 4, 2013, and he was sentenced to a prison term of twenty-four months followed by three years of supervised release. Horn is currently incarcerated at FCI La Tuna, Anthony, Texas.

Conclusions of Law

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize the Commission, where it is in the public interest, to take action against any person, who was at the time of the misconduct associated with a broker, dealer, or investment adviser, and was convicted of a felony within ten years of the issuance of the OIP that involves, among other things, the purchase or sale of a security or arises out of the conduct of a broker or dealer or a crime punishable by imprisonment for more than one year.

The Commission has found the following factors to be important considerations in assessing the public interest:

> 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.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51

S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005).

Horn's actions were egregious because they caused financial losses of almost three-quarters of a million dollars that resulted in a criminal prosecution and a two-year period of incarceration followed by three years of supervised release. Horn's conduct was recurrent in that it began approximately in April 2009 and continued through October 2011. Horn acted with a high degree of scienter because he was a licensed broker and a managing director who supervised others, and directed them to take steps intended to hide his illegal activities.

Finally, in this administrative proceeding, Horn has not given any assurance that he will not engage in future wrongdoing, or recognition that his conduct was illegal. For these reasons, I find it necessary for the protection of investors to bar Horn from participation in the securities industry to the maximum extent allowed by the statutes.

Order

I ORDER that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Philip David Horn is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization or from participating in an offering of penny stock.

The 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 that Rule, a party may file a petition for review of this Initial Decision within twenty-one 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 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 that party shall have twenty-one days to file a petition for review from the date of the order resolving such motion.

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 timely files a petition for review or motion to correct 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. In addition, a respondent 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. 17 C.F.R. § 201.155(b); see Alchemy Ventures, Inc., Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *5-6 (Oct. 17, 2013).

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Brenda P. Murray
Chief Administrative Law Judge