INITIAL DECISION RELEASE NO. 628
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15628

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

In the Matter of	:	INITIAL DECISION
	:	July 7, 2014
DANIEL IMPERATO	:	

APPEARANCES: Timothy S. McCole for the Division of Enforcement, Securities and Exchange Commission

Daniel Imperato, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition and bars Respondent Daniel Imperato (Imperato) from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock (collectively, collateral bar).

Procedural Background

On November 27, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Imperato, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that a federal district court enjoined Imperato from future violations of Sections 5 and 17 of the Securities Act of 1933 (Securities Act); Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 15(a), and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, 13b2-2, and 13a-14 thereunder; and Section 34(b) of the Investment Company Act of 1940 (Investment Company Act) (collectively, federal securities laws), in SEC v. Imperiali, Inc., No. 9:12-cv-80021 (S.D. Fla. Nov. 8, 2013) (Imperiali). OIP at 1-2.

At a prehearing conference held on January 2, 2014, I deemed service of the OIP to have occurred on December 18, 2013; directed Imperato to file an Answer by January 22, 2014; and granted the parties leave to file motions for summary disposition pursuant to Commission Rule of Practice (Rule) 250. See Daniel Imperato, Admin. Proc. Rulings Release No. 1142, 2014 SEC

LEXIS 6 (Jan. 3, 2014); Tr. 6-7, 16-17.[1] Imperato filed his Answer six days late, on January 28, 2014, but I found good cause for the delayed filing and accepted the Answer as part of the record. See Daniel Imperato, Admin. Proc. Rulings Release No. 1231, 2014 SEC LEXIS 510 (Feb. 10, 2014).

On February 19, 2014, the Division filed its Motion for Summary Disposition (Division's Motion) and Appendix in support.[2] Also on February 19, 2014, Imperato filed his Motion for Summary Disposition (Respondent's Motion) and supporting exhibits.[3] On March 6, 2014, Imperato filed his Opposition to the Division's Motion (Respondent's Opposition) and supporting exhibits.[4] On March 7, 2014, the Division filed its Response in Opposition to Respondent's Motion (Division's Opposition) with no attached exhibits. On March 20, 2014, Imperato filed a document titled as his "response" to the Division's "false claims" and Motion, which I construe as his Reply to the Division's Opposition.

[1] Citation ("Tr.") is to the prehearing conference transcript.

[2] In support of its Motion, the Division included the following exhibits: the magistrate judge's report and recommendation (report) on the Commission's motion for summary judgment filed in Imperiali (Div. Ex. 1); the district court's order adopting the report (Div. Ex. 2); the district court's final judgment as to Imperato (Div. Ex. 3); Imperato's September 27, 2013, motion filed in the district court (Div. Ex. 4); Imperato's November 30, 2013, letter to the Secretary of the Commission (Secretary) (Div. Ex. 5); and an excerpt from the Form 10-KSB for the fiscal year ended August 31, 2007, of Imperiali, Inc. (Div. Ex. 6).

[3] In support of Respondent's Motion, Imperato included the following exhibits: a collection of documents, including a December 7, 2013, letter addressed to the Secretary, and exhibits to the letter consisting of documents that appear to have been filed by Imperato in the district court (Resp. Ex. A); and a collection of documents, including a December 11, 2013, letter addressed to the Secretary, and various Imperiali, Inc. (Imperiali) business documents that appear to have been filed in the district court, including Imperiali communications with the Commission, letters and subscription agreements with various Imperiali investors, claims from Imperiali investors, and a news article regarding Eric Skys' mismanagement and fraud involving Imperiali (Resp. Ex. AB).

[4] In support of Respondent's Opposition, Imperato included an exhibit consisting of a collection of documents, including portions of Imperato's supplemental brief to the district court's order adopting the magistrate judge's report, filed in the district court on October 17, 2013, and later stricken on October 18, 2013, because it exceeded the court-ordered ten-page limit. Order Striking Def.'s Imperato's Supplemental Br. (Resp.), Imperiali (Oct. 18, 2013), ECF No. 180; 17 C.F.R. § 201.323 (Official Notice). Imperato refiled a shortened supplemental brief on October 25, 2013. Def.'s Second Resp. Br., Imperiali (Oct. 25, 2013), ECF No. 184. Other documents in the exhibit include what appear to be portions of various filings in the district court, the district court docket, Imperiali insurance documents, Imperiali legal bills, portions of a June 7, 2006, Imperiali private placement memorandum, and portions of various Imperiali filings with the Commission.

Summary Disposition Standard

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Gary M. Kornman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14262-63, pet. denied, 592 F.3d 173 (D.C. Cir. 2010); Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 & nn.21-24 (collecting cases), pet. denied, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), pet. denied, 66 F. App'x 687 (9th Cir. 2003).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323.[5] See 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

Findings of Fact

A. Background

Imperato controlled Florida corporation Imperiali, Inc. (Imperiali), and acted as a broker in securities transactions between Imperiali and investors, resulting in the sale of over two million shares of stock to investors and approximately $2.5 million in profits. Div. Ex. 1 at 2, 5-6, 10; Div. Ex. 2 at 1; Div. Ex. 3 at 8; Answer at 5.

B. Civil Proceeding: SEC v. Imperiali

In 2012, the Commission filed a civil complaint against Imperato, Imperiali, and two other defendants, alleging that Imperato used his company, Imperiali, to carry out a securities fraud scheme targeting Imperiali investors by representing that the company was a "thriving, multinational corporation that owned multiple, valuable subsidiaries," while in reality it was only a shell corporation. Compl. at 1, Imperiali (Jan. 9, 2012), ECF No. 1. As a result of this behavior, Imperato allegedly violated the registration provisions, antifraud statutes, and other requirements of the federal securities laws. Id. at 19-28, 30-31.

[5] Pursuant to Rule 323, I take official notice of the proceedings, docket sheet, and record in Imperiali.

Thereafter, the Commission moved for summary judgment, seeking a permanent injunction against Imperato for future violations of the federal securities laws, disgorgement plus prejudgment interest, a civil penalty, and an officer-and-director bar. See Pl.'s Mot. for Summ. J., Imperiali (May 6, 2013), ECF No. 105. On September 25, 2013, the magistrate judge issued his report, recommending that the district court grant the Commission's summary judgment motion. Div. Ex. 1. On October 8, 2013, the district court granted summary judgment against Imperato, and adopted the magistrate judge's report and findings that:

- Imperato sold unregistered securities in violation of Securities Act Sections 5(a) and (c) by directly soliciting investors and hiring a sales team to "cold call" potential investors, resulting in the sale of more than 2,362,500 shares of common stock to at least twenty-six investors in at least eighteen states;

- Imperato violated the antifraud statutes of the federal securities laws by "knowingly making blatantly false and deceptive material statements" in press releases, private placement memoranda (PPMs), and Imperiali's filings with the Commission;

- Imperato violated Exchange Act Section 15(a) because he acted as an unregistered broker in that he "personally solicited investors . . . [and] served as the 'closer' for the sales staff he hired, speaking directly with their sales leads to negotiate the stock price and complete the sale," and received the majority of the proceeds from the stock sales;

- Imperato was liable as a controlling person and/or aider and abettor in violating Exchange Act Section 13(a) as he participated in the drafting and editing of Imperiali's materially misleading reports that were filed with the Commission, and Imperiali violated Exchange Act Section 13(b) by failing to keep "even the most rudimentary records" and failing to have any "controls in place to prevent Imperato from arbitrarily booking non-existent assets on its financial statements and assigning those assets multi-million-dollar values without the slightest basis";

- Imperato violated Exchange Act Rules 13b2-2 and 13a-14 by making materially false statements to Imperiali's accountant and signing false certification statements attesting to the accuracy of reports filed with the Commission; and

- Imperato violated Investment Company Act Section 34(b) by materially overstating the value of Imperiali's portfolio companies and failing to maintain required company documents.

Div. Ex. 1 at 6-13; Div. Ex. 2.

On November 8, 2013, the district court entered final judgment against Imperato, permanently enjoining him from future violations of the federal securities laws. Div. Ex. 3 at 1-8. Imperato was also given an officer-and-director bar and ordered to disgorge $2,493,785 plus

$640,703 in prejudgment interest.[6] Id. at 8. Imperato's appeal of this judgment remains pending as of the date of this Initial Decision. See SEC v. Imperato, No. 13-14809 (11th Cir. appeal filed Oct. 21, 2013).

Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose a collateral bar on Imperato if: (1) at the time of the alleged misconduct, he was associated with a broker or dealer; (2) he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (b)(6)(A)(iii). During the time of his misconduct, Imperato was not associated with a registered broker or dealer, however, the district court found that he acted as a broker in the securities transactions between Imperiali and investors. Div. Ex. 1 at 10; Div. Ex. 2; see Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627 (barring unregistered associated person of an unregistered broker-dealer from association with a broker or dealer), recons. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584. The district court enjoined Imperato from future violations of the federal securities laws, i.e., "conduct . . . in connection with the purchase or sale of any security," within the meaning of Exchange Act Section 15(b)(4)(C). 15 U.S.C. § 78*o*(b)(4)(C); see Div. Ex. 3.

Imperato disputes that the statutory basis for a sanction has been satisfied. Imperato's main arguments that there is a genuine issue of material fact are as follows: (1) contrary to the district court's finding, he did not act as a broker in the securities transactions between Imperiali and investors; (2) the final judgment in the underlying civil proceeding is repugnant to the U.S. Constitution and defective in other respects, and should therefore be overturned; and (3) the Division has not proven that Imperato should be sanctioned under Exchange Act Section 15(b) because evidence from the district court proceeding is inadmissible in this proceeding.[7] See Resp. Mot. at 1, 4; Resp. Opp'n at 1-2; Answer at 2, 7, 12-13; Tr. 15. These arguments lack merit.

First, the doctrine of collateral estoppel precludes Imperato from challenging the district court's finding that he acted as an unregistered broker in the securities transactions between Imperiali and investors. The Commission has consistently applied the doctrine of collateral estoppel to prevent respondents from relitigating in a follow-on administrative proceeding the factual findings or the legal conclusions of an underlying district-court action. See Michael Batterman, 57 S.E.C. 1031, 1039 & n.18 (2004) (collecting cases), aff'd, No. 05-404 (2d Cir. Apr. 28, 2005) (unpublished). Under this doctrine, a party is collaterally estopped from relitigating an issue if a four-part test is met: (1) the issue at stake is identical to the one involved

[6] The district court entered an amended judgment in January 2014, clarifying that Imperato is jointly and severally liable for this amount with Imperiali. See Am. Final J. at 6, Imperiali (Jan. 28, 2014), ECF No. 209.

[7] Imperato also argues that the Exchange Act Section 15(b) charge is a new false charge because it was not included in the original case. Resp. Mot. at 1. I previously addressed this issue. See Daniel Imperato, Admin. Proc. Rulings Release No. 1270, 2014 SEC LEXIS 660 (Feb. 25, 2014).

in the earlier proceeding; (2) the issue was actually litigated in the earlier proceeding; (3) the determination of the issue must have been a critical and necessary part of the earlier judgment; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue. Tampa Bay Water v. HDR Eng'g, Inc., 731 F.3d 1171, 1180 (11th Cir. 2013). This four-part test is met here. The OIP alleges that Imperato was an unregistered broker in the securities transactions between Imperiali and investors, which is identical to the issue determined by the district court. Compare OIP at 1-2 with Div. Ex. 1 at 9-10; see Dailide v. U.S. Attorney Gen., 387 F.3d 1335, 1342 (11th Cir. 2004) (finding that the factual issues at stake in removal proceeding, as set forth in the notice to appear, were the same issues that were the subject of prior denaturalization proceedings). The issue whether Imperato was an unregistered broker was actually litigated in the district court proceeding, as it was squarely presented by the Commission's motion for summary judgment. Pl.'s Mot. for Summ. J. and Mem. of Law in Supp. at 4-5, Imperiali (May 6, 2013), ECF No. 105; see Restatement (Second) of Judgments § 27 cmt. d (1982) ("When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated . . . ."), quoted in Pleming v. Universal-Rundle Corp., 142 F.3d 1354, 1359 (11th Cir. 1998). Further, Imperato had a full and fair opportunity to litigate this issue before the district court, and filed numerous responses to the Commission's summary judgment motion and objections to the magistrate judge's report. See Def.'s Resp. to Commission's Mot. for Summ. J., Imperiali (May 7, 2013), ECF No. 109; Def.'s Objections to Report and Recommendations, Imperiali (Oct. 1, 2013), ECF No. 148.[8] The district court ruled on this issue when it adopted the magistrate judge's report and granted the Commission's motion for summary judgment; under the Federal Rules of Civil Procedure, such a motion shall be granted only when the court finds that "there is no genuine dispute as to any material fact" and "the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); see Div. Exs. 1, 2, 3. The district court's finding that Imperato was an unregistered broker was critical and necessary to its judgment that Imperato violated Exchange Act Section 15(a) by acting as an unregistered broker in the sale of Imperiali stock. Div. Ex. 1 at 9-10; Div. Ex. 2.

Second, Imperato argues that the civil proceeding in the district court was unfair, violated his constitutional rights, and should be overturned. Resp. Mot. at 1, 4; Answer at 1; Tr. 12, 15. Imperato also argues that I "stated that [he] would have a chance to defend the alleged claims against him concerning the entire federal case since the lower court magistrate erred based on

[8] Imperato filed at least five other documents in response to the Commission's motion and at least four other documents in response to the magistrate judge's report. See Def.'s Settlement Agreement in Resp. to Commision's Mot. for Summ. J., Imperiali (May 5, 2013), ECF No. 111; Def.'s Resp. to Commission's Mot. for Summ. J., Imperiali (May 10, 2013), ECF No. 112; Additional Supplemental Resp. to Commission's Mot. for Summ. J., Imperiali (May 13, 2013), ECF No. 113; Am. Filings Settlement Agreement in Resp. to Commission's Mot. for Summ. J., Imperiali (May 20, 2013), ECF No. 116; Additional Supplemental Affirmative Physical Evidence in Resp. to Commission's Mot. for Summ. J., Imperiali (May 20, 2013), ECF No. 120; Secondary Resp. for Def. Imperato Objecting to Report and Recommendations, Imperiali (Oct. 3, 2013), ECF No. 150; Mot. to Strike Report and Recommendations, Imperiali (Oct. 4, 2013), ECF No. 152; Mot. Objecting to Commission's Mot. for Leave to Appear by Telephone and Mot. to Strike Report and Recommendations, Imperiali (Oct. 4, 2013), ECF No. 156; Mot. Objecting to and Striking Report and Recommendations, Imperiali (Oct. 4, 2013), ECF No. 157.

nonconsent and arbitrary recommendations and orders signed by [District Judge] Ryskamp without evidentiary hearings and no trial by jury of peers." Resp. Opp'n at 1 (formatting altered). Regarding Imperato's claims that he would have the opportunity to revisit his federal case, the record does not support this. In fact, I explained the following to Imperato at the January 2, 2014, prehearing conference: "[I]f there are no disputed issues of fact that are material to this case, genuinely disputed, then you will not [be] allowed to essentially relitigate the case before Judge Ryskamp." Tr. 11.

Again, Imperato may not use this administrative proceeding to collaterally attack the district court's judgment or relitigate issues. See Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1108 (D.C. Cir. 1988); James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2713-14, aff'd, 285 F. App'x 761 (D.C. Cir. 2008); Joseph P. Galluzzi, 55 S.E.C. 1110, 1115-16 (2002). Moreover, the underlying injunction is "finalized for the purposes of this administrative proceeding," notwithstanding the pendency of Imperato's appeal in the Eleventh Circuit Court of Appeals. Herbert M. Campbell II, Esq., Initial Decision Release No. 266 (Oct. 27, 2004), 83 SEC Docket 4000, 4008 (citing John Francis D'Acquisto, 53 S.E.C. 440, 444 n.9 (1998)). The Commission has repeatedly held that the pendency of an appeal is not grounds to defer decision in an administrative proceeding. See Jose P. Zollino, Exchange Act Release No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2601 n.4; Joseph P. Galluzzi, 55 S.E.C. at 1116 n.21; Charles Phillip Elliott, 50 S.E.C. 1273, 1277 n.17 (1992), aff'd 36 F.3d 86 (11th Cir. 1994). If the underlying civil judgment is vacated and a statutory basis for the bar is no longer present, the remedy is to petition the Commission for reconsideration of this action. See Jon Edelman, 52 S.E.C. 789, 790 (1996); Charles Phillip Elliott, 50 S.E.C. at 1277 n.17.

Third, Imperato argues that the Division is barred from presenting evidence from the district court proceeding in this administrative proceeding because the district court case is under appeal, and that I have no jurisdiction over the district court case. Resp. Opp'n at 1-2. Under Exchange Act Section 15(b)(6), the question presented in this proceeding is whether Imperato has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C), and whether, based on that injunction, he should be sanctioned. As I explained to Imperato at the January 2, 2014, prehearing conference:

> [T]he only question that's being presented to me in this administrative proceeding is whether or not to bar you from working in the securities industry. . . . All I have the authority to do is issue an initial decision that either dismisses the case or bars you from the securities industry or [censures] you . . . .

Tr. 9. "[T]he mere existence of an injunction may support . . . a bar from participation in the securities industry where the nature of the acts enjoined and the circumstances indicate that it is in the public interest." Marshall E. Melton, 56 S.E.C. 695, 700 (2003). And in assessing whether a bar is in the public interest, "follow-on proceedings have long considered district court findings . . . . Courts have repeatedly approved this practice."[9] Gregory Bartko, Exchange Act

[9] Further, Rule 250 allows me to consider facts officially noticed pursuant to Rule 323, which includes "any material fact which might be judicially noticed by a district court of the United States . . . ." 17 C.F.R. §§ 201.250, .323. Thus, as noted above, I took official notice of the

Release No. 71666, 2014 SEC LEXIS 841, at *43-44 & nn.69-70 (Mar. 7, 2014) (collecting cases).

Imperato's submissions attached to his Answer, Motion, and Opposition, the majority of which appear to have been submitted to the district court, suggest an attempt by Imperato to shift blame to Charles Fiscina (one of his co-defendants in Imperiali) and others. See, e.g., Resp. Ex. AB at 26-39, 41-42, 53-63. Imperato's argument

> betrays a misunderstanding of the basis for, and purpose of, this proceeding. The basis for this proceeding is the action of the district court – in . . . enjoining him – and its purpose is not to revisit the factual basis for that action but, rather, to determine what remedial sanctions, if any, should be imposed in the public interest.

Jose P. Zollino, 89 SEC Docket at 2605 (internal footnote omitted).

Imperato also raises a statute of limitations issue, arguing that the conduct alleged by the Commission occurred more than five years ago. Resp. Mot. at 3-5; Resp. Opp'n at 2; Answer at 2-3. Under 28 U.S.C. § 2462, the five-year statute of limitations, begins to run from the date of the conviction or injunction on which the action is based, not the date of the underlying conduct. See Joseph Contorinis, Exchange Act Release No. 72031, 2014 SEC LEXIS 1443, at *11 & n.17 (Apr. 25, 2014). This proceeding was instituted less than one month after the final judgment was entered in the district court, well within the limitations period of § 2462.

Accordingly, there is no genuine issue with regard to any material fact and summary disposition is appropriate. See 17 C.F.R. § 201.250(b). A sanction will be imposed if it is in the public interest.

Sanctions

The Division seeks a collateral bar against Imperato.[10] Div. Mot. at 5. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC, namely: 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 factors). 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see Gary M. Kornman, 95 SEC Docket at 14255. The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Gary M. Kornman, 95 SEC Docket at 14255. The

---

proceedings, docket sheet, and record in Imperiali, which are adjudicative facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2); see supra note 5.

[10] Collateral bars are applicable here regardless of the date of Imperato's violations. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

Commission has also considered the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46; Marshall E. Melton, 56 S.E.C. at 698. Industry bars have long been considered effective deterrence. See Guy P. Riordan, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478 & n.107 (collecting cases).

In Ross Mandell, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and that the law judge's decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). After engaging in such an analysis, I have determined that it is appropriate and in the public interest to collaterally bar Imperato from participation in the securities industry to the fullest extent possible.

Here, the Steadman factors weigh in favor of imposing the full collateral bar. Imperato's conduct was both egregious and recurrent. Imperato acted as a broker on at least twenty-six occasions during the sale of Imperiali shares to investors. Div. Ex. 1 at 6, 10. These twenty-six investors, located across eighteen states, bought more than 2,362,500 shares of Imperiali for almost $2.5 million. Div. Ex. 1 at 6; Div. Ex. 6 at 3;[11] Answer at 5, 10. Additionally, Imperato "knowingly [made] blatantly false and deceptive material statements" in press releases, PPMs, and filings with the Commission. Div. Ex. 1 at 8. As a result of his misconduct, Imperato was enjoined from violating the federal securities laws, including the antifraud provisions. See Div. Ex. 3. The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." Peter Siris, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted); see Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)). Further, "in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions." Marshall E. Melton, 56 S.E.C. at 713.

In committing securities fraud, Imperato acted with scienter, specifically, intent to defraud, an element that was crucial to the district court's finding that Imperato violated Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5; in fact, the district court found that Imperato "knowingly [made] blatantly false and deceptive material statements in press releases and [PPMs] that he himself authored, which were subsequently disseminated to potential investors via the [I]nternet." Div. Ex. 1 at 7-8; see SEC v. Merchant Capital, LLC, 483 F.3d 747, 766 (11th Cir. 2013) (scienter is an element of securities fraud under Exchange Act Section 10(b) and Securities Act Section 17(a)(1)).

[11] Page numbers referenced in Division Exhibit 6 are located at the top of the exhibit.

There is no evidence that Imperato recognizes the wrongful nature of his conduct and he has not offered adequate assurances against future violations. While Imperato maintains the position that he has never sold securities and does not "care to ever sell securities again," the district court found that he controlled Imperiali and acted as a broker. Tr. 10; Div. Ex. 1 at 2, 4-5, 9-10. The mitigating effect, if any, of Imperato's representation that he does not want to sell securities in the future is undermined by his continued denial that he ever sold securities in the first place. Imperato's current profession is somewhat unclear; he has represented that he lacks financial resources and cannot get a job, implying that he is unemployed. Tr. 3, 17.

Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" Tzemach David Netzer Korem, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). Imperato does little to rebut that inference. In his many filings in this proceeding, he has repeatedly attacked the underlying proceeding and places all blame on others.[12] Resp. Mot. at 1, 4; Resp. Opp'n at 1, 3-5; Answer at 2, 5, 7, 13-14; Tr. 15, 22-23, 29. Failure to make assurances against future violations and to recognize wrongdoing demonstrates the threat of future violations. See Christopher A. Lowry, 55 S.E.C. 1133, 1143-44 (2002).

Imperato also asserts that he is handicapped as he is blind in one eye. Tr. 30; Resp. Ex. A at 6. I have taken into account Imperato's financial and personal circumstances, but the balance of the Steadman factors weighs in favor of a full industry bar, given his egregious, recurrent misconduct, the high degree of scienter, and his refusal to recognize his wrongdoing. Moreover, a sanction will further the Commission's interest in deterring others from engaging in similar misconduct.

A penny stock bar is also appropriate because, at the time of the alleged misconduct, Imperato was participating in an offering of penny stock. 15 U.S.C. § 78*o*(b)(6)(A), (C). Based on the evidence submitted by Imperato, Imperiali shares were sold in the range of $1 to $3 per share, and there is no evidence that one of the other exemptions in the penny stock definition would apply. See Resp. Ex. AB at 13, 16-24; 15 U.S.C. § 78c(a)(51)(A); 17 C.F.R. § 240.3a51-1(d) (defining "penny stock" to include "any equity security other than a security . . . that has a price of five dollars or more"). To the extent that other Imperiali officers or employees directly sold Imperiali shares, the district court found that Imperato controlled Imperiali as well as acted as a broker in its securities transactions with investors. Div. Ex. 1 at 2, 4-6, 10.

In conclusion, it is in the public interest to impose a permanent, direct and collateral bar against Imperato.

[12] Although Imperato is appealing the underlying action and thus arguably maintaining a position in this proceeding consistent with that appeal, a pending appeal is not a mitigating factor. See Ross Mandell, 2014 SEC LEXIS 849, at *21 n.28.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition against Respondent Daniel Imperato is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Daniel Imperato is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Daniel Imperato is permanently BARRED from participating in an offering of penny stock, including acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. See 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. See 17 C.F.R. § 201.111. 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 undersigned's order resolving such motion to correct a manifest error of fact.

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 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 occurs, the Initial Decision shall not become final as to that party.

_____

Cameron Elliot
Administrative Law Judge