INITIAL DECISION RELEASE NO. 660
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15830

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

In the Matter of	:	INITIAL DECISION OF DEFAULT
	:	August 29, 2014
HERBERT STEVEN FOUKE	:	

APPEARANCE: Robert K. Levenson for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision of Default grants the Division of Enforcement's (Division) Amended Motion for Sanctions (Amended Motion) and permanently bars Respondent Herbert Steven Fouke (Fouke) 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 April 8, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Fouke, 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). The OIP alleges that Fouke pled guilty in federal district court to one count of conspiracy in violation of 18 U.S.C. § 371, in *United States v. Buswell*, No. 6:11-cr-198 (W.D. La. Sept. 6, 2013) (*United States v. Buswell*). OIP at 2. At the time of the OIP's issuance, Fouke was not yet sentenced. *See id.*

On April 21, 2014, I ordered that a telephonic prehearing conference be held on May 8, 2014. *Herbert Steven Fouke*, Admin. Proc. Rulings Release No. 1393, 2014 SEC LEXIS 1379. I warned Fouke that if he failed to participate in the prehearing conference or failed to timely file an answer to the OIP's allegations, he may be deemed in default and the proceeding may be determined against him. *Id.* At the prehearing conference held on May 8, 2014, the Division attended, but Fouke failed to appear. Tr. 3.[1] I deemed service of the OIP to have occurred on April 12, 2014, and Fouke's answer due by May 5, 2014. I also deemed Fouke in default

[1] Citation is to the prehearing transcript.

because he failed file an answer, participate in the prehearing conference, or otherwise defend this proceeding; and I directed the Division to file a motion for sanctions, providing legal authority and evidentiary support relating to the OIP's allegations and the Division's requested sanctions.[2] *Herbert Steven Fouke*, Admin. Proc. Rulings Release No. 1425, 2014 SEC LEXIS 1593 (May 8, 2014); Tr. 3-5. On May 23, 2014, the Division filed its Motion for Sanctions, as well as its Amended Motion, with supporting exhibits.[3] To date, Fouke has not responded to the Division's filings, has not filed an answer, and has not otherwise defended the proceeding.

The Amended Motion is granted. The facts alleged in the OIP are deemed true. *See* 17 C.F.R. § 201.155(a). This proceeding will be determined upon consideration of the record, including the OIP and the Division's exhibits, as well as on facts officially noticed pursuant to Commission Rule of Practice (Rule) 323.[4] *See* 17 C.F.R. §§ 201.155(a), .323.

Findings of Fact

A. Background

At the time of the relevant conduct and from September 2008 to April 2009, Fouke was a registered representative at, and a person associated with, Brookstone Securities, Inc., also d/b/a Brookstone Investment Advisory Services (Brookstone), a firm that was located in Florida. OIP at 1. At the time of Fouke's misconduct, Brookstone was a registered broker-dealer and investment adviser. *Id.*; Div. Ex. 2, Doc. 168-2 at 1; Div. Ex. 3, Doc. 163-2 at 1; Div. Ex. 4 at 7; Div. Ex. 5 at Registration/Reporting Status & Form ADV at 1-4, 10.

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[2] Fouke was notified that he may move to set aside the default pursuant to Commission Rule of Practice 155(b), 17 C.F.R. § 201.155(b). *Herbert Steven Fouke*, Admin. Proc. Rulings Release No. 1425, 2014 SEC LEXIS 1593, at *2 n.2 (May 8, 2014).

[3] The Division's exhibits consist of the OIP (Div. Ex. 1); Fouke's plea agreement (Div. Ex. 2, Doc. 168); Fouke's affidavit of understanding of maximum penalty and constitutional rights (Div. Ex. 2, Doc. 168-1); Fouke's stipulated factual basis for guilty plea (Div. Ex. 2, Doc. 168-2); Fouke's stipulation to the elements of the conspiracy offense and underlying securities fraud, investment adviser fraud, wire fraud, and mail fraud offenses (Div. Ex. 2, Doc. 168-3); Richard J. Buswell's (Buswell) plea agreement (Div. Ex. 3, Doc. 163); Buswell's affidavit of understanding of maximum penalty and constitutional rights (Div. Ex. 3, Doc. 163-1); Buswell's stipulated factual basis for guilty plea (Div. Ex. 3, Doc. 163-2); Buswell's stipulation to the elements of wire fraud (Div. Ex. 3, Doc. 163-3); FINRA Brokerage Firm Summary and BrokerCheck Report of Brookstone Securities, Inc. (Brookstone) (Div. Ex. 4); Brookstone's Registration/Reporting Status and Form ADV (Div. Ex. 5); and the district court's September 2013 minute entry reflecting Fouke's guilty plea (Div. Ex. 6).

[4] Pursuant to Rule 323, I have taken official notice of the docket sheet, proceedings, record, and all filings in *United States v. Buswell*, and, specifically, of the following documents and all facts or allegations contained therein: the August 10, 2011, indictment against Fouke and others; the May 2, 2014, stipulation of restitution amounts owed; the May 14, 2014, minute entry regarding Fouke's sentencing; and the May 23, 2014, judgment against Fouke. *Herbert Steven Fouke*, Admin. Proc. Rulings Release No. 1683, 2014 SEC LEXIS 2850 (Aug. 8, 2014).

Bowman Investment Group, LLC (Bowman), was formed by Fouke's co-defendant, Richard J. Buswell (Buswell), in 2006 and operated until 2009. Div. Ex. 2, Doc. 168-2 at 1. Bowman was located in Louisiana. *Id.* Bowman used Brookstone as its broker-dealer in order to conduct trades on the New York Stock Exchange and to conduct other transactions. *Id.*

Fouke became Buswell's client in 2006. Div. Ex. 2, Doc. 168-2 at 2. Subsequently, in early 2008, Fouke invested in Bowman and was named Bowman's president by other members of the board, including Buswell. *Id.* Fouke later became a licensed stockbroker, also known as a registered representative, in September 2008. *Id.* at 1-2; OIP at 1. Fouke recruited some of his friends and business associates to become clients of Buswell and Bowman. Div. Ex. 2, Doc. 168-2 at 2. Fouke was present at meetings between Buswell and the clients, during which Buswell made false statements to the clients regarding his credentials, the commissions he charged, and the rates of returns that he guaranteed the clients would receive. *Id.*; OIP at 2. At the time these meetings took place, Fouke was not aware that Buswell's statements were false, but became aware that such statements were false at a later date. Div. Ex. 2, Doc. 168-2 at 2; OIP at 2.

Fouke also became aware that: Buswell did not explain the high risk nature of various direct private placements that were recommended to clients; information about the clients' net worth and income had been falsified on Bowman's forms, so some of the clients appeared to be accredited investors when, in fact, they were not; and Buswell did not explain the risks of trading on margin to clients. Div. Ex. 2, Doc. 168-2 at 3-4; OIP at 2. Fouke was also aware that the falsified forms were sent to Brookstone so purchases could be made. Div. Ex. 2, Doc. 168-2 at 3.

B. Criminal Proceeding

In September 2013, Fouke pled guilty to one count of conspiring to commit securities fraud, investment adviser fraud, wire fraud, and mail fraud, in violation of 18 U.S.C. § 371. Div. Ex. 2, Docs. 168 at 1, 168-3 at 1; Div. Ex. 6; *cf.* Indictment at 1-8, *United States v. Buswell*, ECF No. 1. In May 2014, the district court sentenced Fouke to a thirty-month prison term and three-year term of supervised release, ordered him to pay $6,380,808 in restitution, and entered judgment. Min. Entry and Judgment, *United States v. Buswell*, ECF Nos. 205, 208. Fouke did not appeal. *See* Docket Sheet, *United States v. Buswell*.

Conclusions of Law

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize the Commission to sanction Fouke if: within ten years of the commencement of this proceeding, he was convicted of any offense specified in Exchange Act Section 15(b)(4)(B) or Advisers Act Section 203(e)(2)-(3); at the time of the misconduct, he was associated with a broker, dealer, or investment adviser; and the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(6)(A)(ii), 80b-3(f). Fouke's conviction involved the purchase or sale of any security, and arose out of the conduct of the business of a broker, dealer, and investment adviser, within the meaning of Exchange Act Section 15(b)(4)(B)

and Advisers Act Section 203(e)(2).[5] 15 U.S.C. §§ 78*o*(b)(4)(B)(i)-(ii), 80b-3(e)(2)(A)-(B). At the time of his misconduct, Fouke was associated with a broker-dealer and investment adviser.

Fouke did not file an answer or oppose the Amended Motion and therefore he has not offered any evidence to refute the conclusion that the statutory basis for a sanction has been satisfied. A sanction will be imposed if it is in the public interest.

Sanctions

The Division seeks a collateral bar against Fouke.[6] Amended Motion at 7-9. 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*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). 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*, 2009 SEC LEXIS 367, at *22. The Commission also considers 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.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). Industry bars have long been considered effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

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 analysis "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 Fouke from participation in the securities industry to the fullest extent possible.

Fouke's conduct was egregious. Fouke recruited his friends and business associates to become clients of Buswell and Bowman, and attended meetings at which Buswell lied to them about his credentials, the commissions he charged, and the rates of returns that he guaranteed the clients would receive. Div. Ex. 2, Doc. 168-2 at 2. Fouke became aware that such statements

[5] As set forth in the OIP, Fouke's conviction for purposes of this follow-on proceeding is his September 2013 guilty plea. *See* 15 U.S.C. § 80b-2(a)(6); *Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *28-29 (Mar. 7, 2014); OIP at 2.

[6] Collateral bars are applicable here regardless of the date of Fouke's violations. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *38 (Dec. 13, 2012).

were false. *Id.* Fouke also became aware that: Buswell did not explain the high risk nature of various direct private placements that were recommended to clients; information about the clients' net worth and income had been falsified on Bowman's forms, so some of the clients appeared to be accredited investors when, in fact, they were not; and Buswell did not explain the risks of trading on margin to clients. *Id.* at 3-4. Fouke was also aware that the falsified forms were sent to Brookstone so purchases could be made. *Id.* at 3. Despite Fouke's awareness of Buswell's misrepresentations, omissions, and fraudulent conduct, Fouke did nothing to notify the clients and participated in the conspiracy to defraud them. Fouke's conduct "demonstrates his inability to observe investor protections and market integrity principles that apply throughout the securities industry." *Ross Mandell*, 2014 SEC LEXIS 849, at *9-10.

Although the exact period of misconduct is not clear from the OIP or Fouke's plea agreement, it can be inferred that Fouke's participation in the conspiracy began in 2008 and was recurrent, as the conspiracy took place over the course of several investor meetings. Div. Ex. 2, Doc. 168-2 at 2. In addition, the egregious and recurrent nature of Fouke's misconduct is underscored by the number of victims and amount of losses. In the criminal proceeding, Fouke stipulated that his criminal conduct caused losses to twenty-eight groups of victims, totaling forty-seven individuals, in the amount of $6,380,808; and the district court ordered Fouke to pay restitution of that amount.[7] *See* Stipulation of Restitution Amounts Owed and Judgment, *United States v. Buswell*, ECF Nos. 195, 208. Thus, the degree of harm to investors and the marketplace, measured by the over $6 million in losses, is substantial. *See Marshall E. Melton*, 56 S.E.C. at 698. Given Fouke's conduct and role in the conspiracy, his violations cannot be categorized as isolated or merely technical. *Cf. John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42 (Dec. 13, 2012); Div. Ex. 2, Doc. 168-2 at 2.

The indictment's allegations also reflect that Fouke's conduct was egregious and recurrent.[8] According to the indictment, the conspiracy began in 2007 and continued through

[7] In assessing sanctions, I may consider matters outside the OIP. *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *16-17 & n.21 (Jan. 14, 2011) (citing *Robert Bruce Lohmann*, 56 S.E.C. 573, 583 n.20 (2003)).

[8] In a follow-on administrative proceeding after a criminal conviction, I may "draw[] from the allegations in the . . . indictment underlying [the respondent's] criminal conviction," without reference to whether such allegations were necessarily put in issue and determined in the criminal case. *Ross Mandell*, 2014 SEC LEXIS 849, at *10 n.13. Thus, in adopting the allegations from an indictment pursuant to *Ross Mandell*, I need not engage in a particularized collateral-estoppel analysis, as might be required in other contexts. *See, e.g.*, *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 307 (2d Cir. 1999) ("[E]stoppel does not apply to a finding that was not legally necessary to the final sentence."); *SEC v. Bilzerian*, 29 F.3d 689, 694 (D.C. Cir. 1994) ("Our review of the record indicates that Bilzerian's criminal convictions conclusively established all of the facts the [Commission] was required to prove with respect to the specified claims."); *Demitrios Julius Shiva*, 52 S.E.C. 1247, 1249 (1997) ("factual issues that were actually litigated and necessary to the Court's decision to issue [an] injunction" may not be relitigated). When, as here, the underlying criminal proceeding is resolved by the respondent's guilty plea, reliance on the charging document is similar to the Commission's reliance "on the factual allegations of the injunctive complaint in a civil action settled on consent in determining

2009. Indictment at 2, *United States v. Buswell*, ECF No. 1. "It was the object of the conspiracy to fraudulently obtain investors' funds through false pretenses, representations, and promises, in order to obtain substantial economic benefit for themselves and others through the payment of commissions and wages." *Id.* at 3. Fouke recruited his business associates and friends to become clients of Bowman. *Id.* During investor meetings, Buswell falsely represented to clients and potential clients that he would not charge any commissions until the accounts were profitable; he had never lost money for a client; he was very successful and generated up to $150,000 per month on his personal investments; he had two college degrees by the time he was twenty in accounting and in applied mathematics; and he had ownership interests in skyscrapers, shopping malls, and other projects in New York City. *Id.* at 4.

In addition, Buswell had clients sign margin agreements without explaining the meaning or risk of the margin agreement to them. Indictment at 4. Buswell engaged in unauthorized trading on the clients' accounts, without their knowledge and without their consent, and engaged in churning his clients' accounts, that is, he engaged in excessive and frequent stock transactions on his clients' accounts for his own benefit and gain without regard for the needs and objectives of his clients. *Id.* at 4-5. Buswell and Fouke did conceal and attempted to conceal their activities by providing false and misleading information to the investors, when investors questioned them about the status of their investments. *Id.* at 5.

Buswell and Fouke solicited and convinced clients to invest in high risk direct private placements of several companies. Indictment at 6. In order to qualify for the risky direct private placements, the clients had to be accredited investors; Buswell falsified and had others falsify income and net worth information on some of the clients' applications, so that the clients would be considered accredited investors and so they would qualify for the risky direct private placements. *Id.*

Buswell and Fouke solicited clients to invest in Advanced Blast Protection "Bridge Loan Financing" prior to Advanced Blast Protection having an anticipated initial public offering. Indictment at 6. Buswell falsely represented to the clients that they were guaranteed to get their money back by a certain date with a ten percent return, which was also guaranteed. *Id.* at 7. The clients received warrants, which is an option to buy stock. *Id.* The clients were told by Buswell and Fouke that Advanced Blast Protection was to have an initial public offering and that the company's stock would "sky rocket" to $30 to $40 per share. *Id.* Buswell falsely represented that he had $4 million of his personal funds invested in Advanced Blast Protection. *Id.*

Buswell solicited clients to invest in a high risk direct private placement issued by Brookstone, falsely represented to the clients that the Brookstone direct private placement was a safe investment, and further falsely represented that the Brookstone direct private placement was like a money market account or a CD and that the investors could get their money back at any time. Indictment at 7. Also, Buswell solicited his clients to invest in a high risk direct private placement issued by Visual Management Systems, and falsely represented to clients that their investment would double within six months. *Id.*

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the appropriate remedial action in the public interest." *Marshall E. Melton*, 56 S.E.C. at 712. However, in this case, I do not adopt the indictment's allegations to the extent such allegations are inconsistent with record evidence.

To be sure, Buswell was the leader of the conspiracy and the more culpable of the two, but Fouke himself pled guilty to conspiring to violate the antifraud provisions of the securities laws, among other federal statutes. Moreover, the criminal conduct for which Fouke was convicted—conspiring to commit securities fraud, investment adviser fraud, wire fraud, and mail fraud—involved scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (internal quotation marks omitted); *see United States v. Feola*, 420 U.S. 671, 686 (1975) (holding that in order to sustain a judgment of conviction on a charge of conspiracy under 18 U.S.C. § 371 to violate a federal statute, the government must prove at least the degree of criminal intent necessary for the substantive offense); *United States v. Vilar*, 729 F.3d 62, 88-89 (2d Cir. 2013) (scienter is a required element of the government's case for securities fraud under Exchange Act Section 10(b)); *United States v. Brooks*, 681 F.3d 678, 700 (5th Cir. 2012) (conspiracy to commit wire fraud requires proof that the defendant joined the conspiracy with the specific intent to defraud); *United States v. Garza*, 429 F.3d 165, 168-69 (5th Cir. 2005) (same as to conspiracy to commit mail fraud); *Steadman v. SEC*, 603 F.2d at 1134 (violation of Advisers Act Section 206(1) requires scienter).[9]

Fouke's guilty plea ostensibly involved acknowledging his misconduct. However, he has not appeared in this proceeding to offer any assurances against future violations, has not expressed remorse for his misconduct, and has not demonstrated that he recognizes his wrongdoing. 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). Fouke has offered no evidence to rebut that inference.

Absent a collateral bar, Fouke would be permitted in the future to continue activities within the securities industry, which would present opportunities for future violations and the risk that his conduct will be repeated. "Each area of the industry covered by the collateral bar presents continual opportunities for similar dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence." *Ross Mandell*, 2014 SEC LEXIS 849, at *22 (internal quotation marks and alteration brackets 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)). The antifraud provisions and other federal statutes that Fouke conspired to violate apply broadly to the conduct of all participants in the securities industry. *Cf. Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *27.

[9] Although a violation of Advisers Act Section 206, 15 U.S.C. § 80b-6, does not necessarily require proof of scienter, under Fouke's stipulation to the elements of the conspiracy offense and underlying substantive offenses, the underlying investment adviser fraud offense involved violations of Advisers Act Sections 206(1), 206(2), and 206(4), of which Section 206(1) requires scienter. *Compare* Div. Ex. 2, Doc. 168-3 at 4 *with* 15 U.S.C. § 80b-6(1), (2) & (4); *see SEC v. Steadman*, 967 F.2d 636, 641 & n.3, 643 & n.5, 647 (D.C. Cir. 1992); *Steadman v. SEC*, 603 F.2d at 1134.

"As [the Commission] ha[s] long held, '[a]bsent extraordinary mitigating circumstances,' a person convicted of conspiracy to commit securities fraud 'cannot be permitted to remain in the securities industry.'" *Eric S. Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *18 (Aug. 26, 2011) (quoting *John S. Brownson*, 55 S.E.C. 1023, 1027 (2002)) (last alteration in original); *accord David G. Ghysels*, Exchange Act Release No. 62937, 2010 SEC LEXIS 3079 (Sept. 20, 2010), *vacated in part on other grounds*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012). Fouke offers no evidence of such extraordinary mitigating circumstances. The *Steadman* factors weigh in favor of a full collateral bar, particularly given Fouke's egregious conduct, the number of victims and losses caused to investors, his scienter, and his failure to provide assurances against future wrongdoing. In addition, a sanction will further the Commission's interest in deterring others from engaging in similar misconduct.

In conclusion, it is in the public interest to impose a permanent collateral bar against Fouke.[10]

Order

It is ORDERED that the Division of Enforcement's Amended Motion for Sanctions against Respondent Herbert Steven Fouke is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Herbert Steven Fouke is

[10] Under Exchange Act Section 15(b)(6)'s plain language, the Commission is authorized to impose the full range of permanent bars, including the penny-stock bar, against Fouke if, in relevant part, at the time of the alleged misconduct, he was associated with a broker or dealer, *or* was participating in an offering of penny stock. 15 U.S.C. § 78*o*(b)(6)(A); *see Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *19-20 (Dec. 12, 2013) (Commission imposed full range of permanent bars against the respondent based on his participation in an offering of penny stock at the time of the alleged misconduct, without requiring a separate broker-dealer nexus); *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *19-20 (Apr. 20, 2012) (same). Here, the broker-dealer nexus is satisfied. In two opinions, the Commission held that a penny-stock bar was inappropriate under the circumstances of those cases. *See James Harvey Thornton*, 53 S.E.C. 1210, 1217 (1999) (finding imposition of penny-stock bar inappropriate because, among other considerations, the respondent's failure to supervise did not involve penny-stock fraud and it appeared unlikely that he would commit such fraud or enter the penny-stock industry in the future), *aff'd*, 199 F.3d 440 (5th Cir. 1999) (unpublished); *Alan E. Rosenthal*, 53 S.E.C. 767, 770-71 (1998) (analyzing *Steadman* factors, Commission declined to impose penny-stock bar because such bar would not serve a remedial purpose). However, under the circumstances of this proceeding, imposing the full collateral bar best comports with the statute's remedial purpose and is in the public interest for the reasons discussed. *See Peter Siris*, 2013 SEC LEXIS 3924, at *28-29 (full collateral bar warranted where the respondent's misconduct evidences an unfitness to participate in the securities industry beyond just the professional capacity in which he was acting when he engaged in the misconduct underlying the follow-on proceeding).

permanently 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, Herbert Steven Fouke 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.

Fouke is notified that he may move to set aside the default in this case. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

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Cameron Elliot
Administrative Law Judge