INITIAL DECISION RELEASE NO. 782
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16357

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

In the Matter of STUART E. RAWITT	INITIAL DECISION OF DEFAULT April 28, 2015

APPEARANCES: Peter F. Del Greco and Marc Blau for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Sanctions (Motion) against Respondent Stuart E. Rawitt (Rawitt), and permanently bars Rawitt from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, full associational bar), and from participating in an offering of penny stock.

Procedural Background

On January 23, 2015, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Rawitt, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that on July 15, 2010, Rawitt entered into a consent judgment permanently barring him from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (Securities Act) and Section 15(a) of the Exchange Act as part of *SEC v. Rockwell Energy of Tex., LLC*, No. 09-cv-4080 (S.D. Tex.), and that on October 27, 2010, Rawitt entered into a settlement with the Commission barring him from future association with any broker or dealer. *See Stuart E. Rawitt*, Exchange Act Release No. 63184, 2010 SEC LEXIS 3575; OIP at 1. The OIP alleges further that on November 20, 2014, a default judgment was entered against Rawitt permanently enjoining him from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 15(a)(1) and 15(b)(6)(B)(i) of the Exchange Act in *SEC v. Brauslau*, No. 14-cv-1290 (C.D. Cal.) (civil case), and on October 31, 2014, Rawitt pleaded guilty to one count of mail fraud in violation of 18 U.S.C. § 1341 in *United States v. Braslau*, No. 14-cr-44 (C.D. Cal.) (criminal case). OIP at 2.

Rawitt was personally served with the OIP on January 26, 2015, in accordance with Commission Rule of Practice (Rule) 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i). Rawitt's Answer was due twenty days after service on him. *See* OIP at 3; 17 C.F.R. § 201.220(b). After failing to answer within twenty days, I declared Rawitt in default at a February 25, 2015, prehearing conference, and ordered the Division to submit a motion for sanctions, explaining how Rawitt's actions supported the sanctions the Division seeks. *See* Prehr'g Tr. 5. Rawitt did not appear at the prehearing conference, has not submitted an Answer, and has not otherwise defended himself in this proceeding.

On March 20, 2015, the Division submitted its Motion and the Declaration of Peter Del Greco in support of the Motion, attaching: a court-certified copy of the default judgment against Rawitt in the civil case (Ex. 1); a court-certified copy of the Judgment of Permanent Injunction and Disgorgement, and Prejudgment Interest and Civil Penalty entered against Rawitt in the civil case (Ex. 2); a copy of the complaint in the civil case (Ex. 3); and a court-certified copy of Rawitt's plea agreement in the criminal case (Ex. 4), with an attached declaration from Rawitt (Ex. A).

This proceeding will be determined upon consideration of the record, including the OIP, the facts of which are deemed true, pursuant to Rule 155(a), and the Division's exhibits from the civil case[1] and the criminal case, which are officially noticed pursuant to Rule 323. *See* 17 C.F.R. §§ 201.155(a), .323; *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *12-14 (Feb. 4, 2010); *Robert Bruce Lohmann*, 56 S.E.C. 573, 583 n.20 (2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions").

Findings of Fact and Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose a full associational bar and a penny stock bar against Rawitt, if: (1) at the time of the alleged misconduct, he was associated with or seeking to become associated with a broker-dealer; (2) he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C), which includes any conduct or practice in connection with the purchase or sale of any security, or has been convicted within ten years of the commencement of any offense specified in Exchange Act Section 15(b)(4)(B); and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(B)(iv), (C), (6).

[1] The Division cites in its Motion the default judgment associated with the injunction issued against Rawitt in the civil case in support of the sanctions the Division seeks. *See, e.g.* Motion at 5-7. Although the injunction in the civil case may be considered as part of the statutory basis for an associational bar, the findings underlying the injunction may not be considered in this instance because the injunction was based on a default, and collateral estoppel does not apply to such findings. *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *13 (Jan. 14, 2011) ("'[i]n the case of a judgment entered by . . . default, none of the issues is actually litigated [and] [t]herefore [issue preclusion or collateral estoppel] does not apply with respect to any issue in a subsequent action.'") (quoting *Arizona v. California*, 530 U.S. 392, 414 (2000) (modifications in original)); *see also Gary L. McDuff*, Exchange Act Release No. 74803, at 3-4 (Apr. 23, 2015).

Rawitt acted as an unregistered broker while conducting the activities that led to the civil and criminal cases, satisfying the first element. Exchange Act Section 3(a)(4) defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). Broker activity can be evidenced by several things, including regular participation in securities transactions, receipt of transaction-based income or commissions, a history of selling the securities of other issuers, and involvement in advice to investors and active recruitment of investors. *See, e.g.*, *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998). Of these, receipt of transaction-based income has been referred to as one of the "hallmarks of being a broker[]." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334-35 (M.D. Fla. 2011) (citing *Cornhusker Energy Lexington, LLC v. Prospect St. Ventures*, No. 04-cv-586, 2006 U.S. Dist. Ct. LEXIS 68959, at *20 (D. Neb. Sept. 12, 2006). As discussed *infra*, Rawitt admitted to soliciting investors for a venture run by his co-defendants in the criminal case; he was recruited to solicit investors based upon previous experience selling securities; he made representations to potential investors about the venture, encouraging them to invest; and he was compensated with a percentage of the funds he raised, *i.e.*, commissions. Because he was acting as a broker he was also associated with a broker-dealer, within the meaning of the statute. *See Anthony J. Benincasa*, Investment Company Act of 1940 Release No. 24854, 2001 SEC LEXIS 2783, at *6 (Feb. 7, 2001).

Rawitt's civil injunction and criminal conviction each satisfy the second element. Rawitt was enjoined from violations of Section 17(a) of the Securities Act, under which misconduct must be made "in the offer or sale of any securities," and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which require that misconduct occur "in connection with the purchase or sale of any security." *See* 15 U.S.C. §§ 77q, 78j; 17 C.F.R. § 240.10b-5; *see also Seghers v. SEC*, 548 F.3d 129, 132 (D.C. Cir. 2008). Rawitt was also convicted of mail fraud pursuant to 18 U.S.C. § 1341, one of the statutes enumerated in Exchange Act Section 15(b)(4)(B). Accordingly, a sanction will be imposed on Rawitt if it is in the public interest.

Sanctions

The Division seeks a full associational bar and a penny stock bar against Rawitt. Motion at 8. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) 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). 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 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, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003).

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 the analysis mandated by *Ross Mandell*, I have determined that it is appropriate and in the public interest to bar Rawitt from participation in the securities industry to the fullest extent possible.

A. Background of Rawitt's Misconduct

Rawitt's co-defendants in the civil and criminal cases engaged in a scheme to raise money purportedly to finance the production of a motion picture. Ex. A at 1. One of the co-defendants hired Rawitt to solicit investors for the motion picture venture using telemarketing, for which Rawitt was compensated with a percentage of the funds he raised. *Id.* at 2-3. Rawitt was convicted of one count of mail fraud after he admitted making statements to potential investors based on the private placement memorandum (PPM) prepared by Rawitt's co-defendants, which he briefly looked through; a brochure prepared by one of the co-defendants; and representations by his co-defendants, all of which he "chose not to know" were fraudulent misrepresentations. *Id.* at 3 (emphasis in original). Rawitt admitted to recklessly repeating selling points from the PPM and from his co-defendants without questioning the basis of the statements. *Id.* at 3-4. He admitted he was aware that there was a high probability that the statements were not true. *Id.* at 4.

B. An Industry-Wide Bar Is in the Public Interest

1. Rawitt's misconduct was egregious and recurrent

Rawitt's misconduct was recurrent. The indictment in the criminal case alleges eighteen instances, over a sixteen-month period, of Rawitt causing items to be mailed through the United States Postal Service in furtherance of the fraudulent scheme that Rawitt's co-defendants were alleged to have perpetrated. Indictment, criminal case (Jan. 23, 2014), ECF No. 1, at 8-10. Rawitt admitted to making "many, if not most, of the[] [misrepresentations]" discussed in the indictment. Ex. A at 3. Rawitt also admitted to making "many, if not most" of the multiple misrepresentations charged in the complaint in the civil case. Ex. A at 3; *see* Ex. 3 at 14-15. His misconduct was also egregious. To entice potential investors, Rawitt misrepresented, or failed to verify statements he represented, that the movie venture his co-defendants were funding would, among other things: star well-known celebrities, be distributed in partnership with a major movie studio, produce back-end revenues tied to licensing and merchandising, and provide between a 300% and 1000% return on investment. *See* Ex. 3 at 14-15; Ex. A at 3.

By acting as a broker through sales of shares in the motion picture venture, Rawitt violated the outstanding broker-dealer bar entered against him in 2010. *See Stuart E. Rawitt*, 2010 SEC LEXIS 3575. Having been barred from associating with a broker-dealer, and unable to register as a broker-dealer himself, Rawitt's conduct as a broker also violated the court's

injunction imposed against him in *SEC v. Rockwell*, enjoining him from future violations of Exchange Act Section 15(a), specifically, from "using any means or instrumentality of interstate commerce . . . to effect transactions in, or to induce or attempts to induce the purchase or sale of, any security . . . unless . . . registered with the Commission as a broker or dealer." Permanent Inj., *SEC v. Rockwell*, (July 15, 2010), ECF No. 27, at 2-3.

2. Scienter

Rawitt's misconduct evinces scienter, i.e., an "intent to deceive manipulate, or defraud." *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (internal quotation marks omitted). A finding of scienter can be made with a showing of extreme recklessness. *See id*.; *see also John P. Flannery*, Securities Act Release No. 9689, 2014 WL 7145625, at *10 n.24 (Dec. 15, 2014) (defining "extreme recklessness" in the context of securities fraud as including highly unreasonable conduct where the danger of a violation was so obvious that the respondent must have known of it). To violate the mail fraud statute, as Rawitt did, the defendant must have had the "intent to defraud." *See United States v. Peters*, 962 F.2d 1410, 1414 (9th Cir. 1992); *United States v. Kent*, 608 F.2d 542, 545 n.3 (5th Cir. 1979). Rawitt also admitted to making misrepresentations with at least recklessness, stating he "did not question [his co-defendants] as to the basis for [the misrepresentations]. I agree that at the very minimum my lack of knowledge, therefore, was 'reckless' . . . I would certainly agree that at least as to some, if not most, of the representations I made to investors in order to induce them into investing I was 'aware of a high probability that they were not true' and I did indeed 'deliberately avoid learning the truth.'" Ex. A at 4 (internal alteration brackets omitted).

3. Lack of assurances against future violations and recognition of the wrongful nature of his conduct

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). Not only has Rawitt made no assurances against future misconduct or offered any recognition of the wrongful nature of his conduct beyond his guilty plea, he has already shown an inclination toward recidivism by violating his 2010 broker-dealer bar and engaging in fraudulent activity even after being enjoined for securities violations in *SEC v. Rockwell*. Any assurances he could offer, had he participated in this proceeding, would likely not be credible.

4. Opportunities for future violations

The final *Steadman* factor is the "likelihood that the [respondent]'s occupation will present opportunities for future violations." *Steadman*, 603 F.2d at 1140; *see also Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *13; *Johnny Clifton*, Securities Act Release No. 9417, 2013 SEC LEXIS 2022, at *53 (July 12, 2013); *Alfred Clay Ludlum, III*, Investment Advisers Act of 1940 (Advisers Act) Release No. 3628, 2013 SEC LEXIS 2024, at *16-17 (July 11, 2013). Rawitt was not employed in a traditional securities-based occupation when he

committed the violations in the civil and criminal cases, but his telemarketing skills, his ability to raise private investment funds, and his familiarity with securities sales and PPMs were reasons his co-defendants sought him out for assistance in selling the securities. Ex. A at 3. If Rawitt were not barred from associating with others in the securities industry, his occupation and skillset would present opportunities for future wrongdoing.

5. Other considerations

Industry bars have long been considered effective deterrence. *See Guy P. Riordan*, Securities Act Release No. 9085, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases). The previous broker-dealer bar entered against Rawitt was not enough of a deterrent against his engaging in misconduct related to securities. A full associational bar will act as a stronger deterrent against Rawitt, and be a deterrent against others in the industry from engaging in the sort of conduct that Rawitt did.

In addition, I have considered Rawitt's current competence and the degree of risk he poses to public investors and the securities markets in each of the industry segments covered by a full associational bar. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *9 (Mar. 7, 2014) (citing *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *7 n.34 (Dec. 13, 2012)). Rawitt's failure to demonstrate in this proceeding that he recognizes the wrongful nature of his misconduct, notwithstanding his guilty plea in the criminal case, indicates a risk of future misconduct, if given the opportunity to commit it. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *6 (Oct. 29, 2014). The egregiousness of Rawitt's misconduct also indicates a significant risk of future misconduct. A full associational bar, as opposed to a more limited direct bar, "will prevent [Rawitt] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford and Co.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *20 (May 2, 2014). This is because

> [t]he proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors . . . . We have long held that a history of egregious fraudulent conduct demonstrates unfitness for future participation in the securities industry even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. The industry relies on the fairness and integrity of all persons associated with each of the professions covered by the [associational] bar to forgo opportunities to defraud and abuse other market participants.

John W. Lawton, 2012 WL 6208750, at *11.

On balance, the public interest factors clearly weigh in favor of a permanent and full associational bar against Rawitt.

Order

It is ORDERED that the Division of Enforcement's Motion for Sanctions against Respondent Stuart E. Rawitt is GRANTED.

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

It is FURTHER ORDERED that Stuart E. Rawitt is permanently BARRED from participating in an offering of penny stock, including acting as a 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 a 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.

Rawitt 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