INITIAL DECISION RELEASE NO. 824
ADMINISTRATIVE PROCEEDING
File No. 3-16374

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

In the Matter of DAVID R. WULF	INITIAL DECISION June 25, 2015

APPEARANCES: Ana Petrovic and Jonathan S. Polish for the Division of Enforcement, Securities and Exchange Commission

David R. Wulf, *pro se*

BEFORE: James E. Grimes, Administrative Law Judge

Summary

In this Initial Decision, I grant the Division of Enforcement's motion for summary disposition. Respondent David R. Wulf is barred 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.

Procedural Background

The Commission initiated this proceeding in February 2015, by issuing an Order Instituting Proceedings (OIP). As authority, the OIP cites Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. OIP at 1; *see* 15 U.S.C. §§ 78*o*(b), 80b-3(f). In the OIP, the Division alleges that Wulf was convicted in the United States District Court for the Eastern District of Missouri of multiple counts of mail fraud, wire fraud, conspiracy to commit mail fraud affecting a financial institution, and conspiracy to commit wire fraud affecting a financial institution. OIP at 2. The Division further alleges that the district court entered judgment in November 2013, and sentenced Wulf to 120 months' imprisonment and restitution of $435,515,234. *Id.* at 3.

In the OIP, the Division alleges that Wulf was associated with broker-dealers from January to November 1978 and April 1979 to August 2013 and with investment advisers from February 1986 to August 2013. OIP at 2. According to the allegations in the OIP, Wulf's convictions related to "his role as an investment adviser for National Prearranged Services, Inc.," which sold "contracts for prearranged funeral services." *Id.* The Division alleges that Wulf set

up trusts for prearranged funeral services and possessed a degree of control "over the assets . . . in the[] trusts." *Id.* According the OIP, the trustees were financial institutions or insurance companies. *Id.*

Continuing, the Division alleges that Wulf engaged in a conspiracy "to defraud purchasers and trustees of National Prearranged's contracts and trusts." OIP at 2. According to the OIP, Wulf assisted National Prearranged Services (NPS) and others in gaining control of the trusts' assets for their own benefit and "knowingly allowed" others to divert $600,000,000 for their own benefit. *Id.* at 3.

Following service of the OIP, Wulf filed a letter generally denying the allegations in the OIP.[1] I construe Wulf's letter as his Answer.

I held a prehearing conference on March 10, 2015. Counsel for the Division of Enforcement attended the conference. Appearing *pro se*, Wulf also attended. During the conference, I granted the Division leave to move for summary disposition. Prehearing Conference Transcript at 10; *see David R. Wulf*, Admin. Proc. Rulings Release No. 2396, 2015 SEC LEXIS 893 (Mar. 10, 2015).

The Division subsequently moved for summary disposition. In support of its motion, "the Division relie[d] extensively on the allegations listed in Mr. Wulf's second superseding indictment." *David R. Wulf*, Admin. Proc. Rulings Release No. 2590, 2015 SEC LEXIS 1586, at *1-2 (Apr. 27, 2015). Because a jury verdict does not establish the facts alleged in an indictment, I denied the Division's motion without prejudice to renewal supported by evidence sufficient to carry the Division's burden. *Id.* at *2-3 (citing *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 569 (1951) and *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *3 (Apr. 23, 2015)).

The Division renewed its motion on May 26, 2015. The Division's motion is supported by eighteen exhibits, designated as exhibits A through R.[2] Wulf has not filed an opposition to the Division's motion. He has, however, submitted a pleading he filed in district court in relation to a petition he has filed under 28 U.S.C. § 2255.

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed under Rule 323. *See* 17 C.F.R. § 201.323. I have applied preponderance of the

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[1] The Division submitted a declaration establishing that Wulf was served with the OIP on February 10, 2015.

[2] Among the Division's exhibits are Wulf's second superseding indictment (Ex. A), the district court's judgment (Ex. B), Wulf's investment adviser representative public disclosure report, (Ex. G), Wulf's BrokerCheck report (Ex. H), the jury instructions from Wulf's trial (Ex. I), the transcript of Wulf's sentencing hearing (Ex. J), the jury's verdict forms (Ex. M), the transcript of Wulf's direct examination during his trial (Ex. N), and the transcript of Wulf's cross-examination (Ex. O).

evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All evidence inconsistent with my findings and conclusions has been considered and rejected.

Findings of Fact

At the outset, I note that I have taken official notice of (1) the docket sheet, proceedings, record, and all filings in *United States v. Sutton*, No. 4:09-cr-509 (E.D. Mo.), the case that resulted in Wulf's conviction that is the basis for this proceeding; (2) a consent judgment regarding NPS entered on February 1, 1994, in the Circuit Court of Boone County, Missouri (the Consent Judgment); and (3) an Order Appointing Liquidator, Order Approving Liquidation Plan and Permanent Injunction, entered September 22, 2008, in the district court of Travis County, Texas (the Liquidation Order). *David R. Wulf*, Admin. Proc. Rulings Release No. 2409, 2015 SEC LEXIS 2409 (June 16, 2015). The Liquidation Order covered the liquidation of NPS, Lincoln Memorial Life Insurance Company (Lincoln), and Memorial Service Life Insurance Company (Memorial). The order appointed the Commissioner of Insurance for the state of Texas as the receiver for these three entities.

Wulf's underlying conviction concerned prearranged funeral contracts. Because of the potential for abuse presented by such contracts, *see* Anne Tergesen, *When Prepaid Funeral Plans Are Wealth Killers*, Wall St. J., May 22, 2010, *available at* http://on.wsj.com/1zDb9H8 (last visited June 23, 2014), their sale is subject to varying degrees of regulation by the states, *see* Judith A. Frank, *Preneed Funeral Plans: The Case For Uniformity*, 4 Elder L.J. 1, 2-4 (1996). Typically, "states expressly require the creation of a trust account in connection with the sale of a preneed funeral contract." *Id.* at 7. Because "[t]he trustee has a fiduciary duty to the beneficiary of the trust," it is thought that use of a trust will "protect the funds from abuse." *Id.* at 8.

Enter Wulf and his co-conspirators. As is discussed below, their scheme involved the sale of prearranged funeral contracts through NPS. Funds received in exchange for funeral contracts were placed in a trust. The trust would then purchase whole life insurance policies from entities closely related to NPS. These transactions likely generated commissions for the related entities. Wulf would then authorize or permit loans against the whole life policies' cash surrender value and then surrender the policies for cash minus the amount of the loans against the policies. Once the policies were surrendered, he would purchase term life policies that were funded by later contract purchases. As with many fraudulent schemes, this one ultimately collapsed. The term policies were eventually cancelled due to non-payment of premiums and NPS was placed in receivership. Wulf, who is currently imprisoned, is on the hook for over $435 million in losses.

The evidence shows that Wulf was a principal in the investment firm Wulf, Bates & Murphy. Ex. N at 8033, 8035, 8039.[3] Wulf was thus associated with an investment adviser from

[3] Citations to page numbers for Exhibits I, N, and O are to the ECF PageID# located in the upper right of the page.

1986 to August 2013. Ex. G at 261, 264; *see* Ex. O at 8202.[4] He was associated with a broker-dealer from 1978 to August 2013. Ex. H at 236, 239. As is relevant to this matter, Wulf managed nineteen portfolios for insurance companies. Ex. N at 8041, 8078. "[T]he portfolios [contained] hundreds of millions of dollars." *Id.* at 8049.

Since the 1980s, NPS has been one of Wulf's investment advisory clients. *See* Ex. N at 8038-40; *see* Ex. O at 8219; *see also Jo Ann Howard & Assocs., P.C. v. Cassity*, - - F. Supp. 3d - -, 2015 WL 144903, at *2 (E.D. Mo. Jan. 12, 2015), *recons. granted in part and denied in part*, No. 4:09-cv-1252 ERW, 2015 WL 410711 (E.D. Mo. Jan. 29, 2015).[5] NPS sold prearranged funeral contracts. Ex. N. at 8045-46; Ex. O at 8107; *Jo Ann Howard*, 2015 WL 144903, at *1. In 1994, NPS entered into a consent judgment with the state of Missouri. *See* Consent Judgment. The consent judgment obligated NPS to place all funds received in excess of the first twenty percent of the face value of prearranged funeral contracts into a trust. Consent Judgment at 4. It required that property in the trust "be invested and reinvested by the trustee or investment advisor, wholly independent of NPS, exercising . . . ordinary prudence, discretion, and intelligence." *Id.* at 5. NPS was also required to immediately place $1 million into its existing trust accounts and $1 million every year thereafter into a separate trust account. *Id.* at 6. It also placed NPS under the supervision of a monitor and required it to pay $500,000 to the state of Missouri to cover its attorneys' fees associated with its investigation of and suit against NPS. *Id.* at 10-11. The consent judgment additionally resulted in the creation of NPS Trust IV. *See* Ex. N at 8059.

In 2008, NPS and affiliated insurance companies, Lincoln and Memorial, were placed in receivership by the district court of Travis County, Texas. *See* Liquidation Order. In the Liquidation Order, the Travis County court found that NPS, Lincoln, and Memorial each had more liabilities than assets. *Id.* at 2. The court enjoined NPS, Lincoln, and Memorial, together with their "affiliates and agents" from taking certain actions. *Id.* at 7-9. Among others, the order identified Forever Enterprises as an owner of the three entities and Forever Network as an affiliate. *Id.* at 7.

Wulf managed investments for eleven NPS accounts, Ex. N. at 8040, including NPS Trust IV, *see id.* at 8042, 8049-52; Ex. O at 8099-8100. Trust IV was the largest NPS-related trust. Ex. O at 8199. Wulf testified during his trial that he was Trust IV's independent investment adviser and that he owed it a fiduciary duty. *Id.* at 8113, 8202-04, 8208; *see id.* at 8219. Funds in Trust IV were supposed to be used to pay insurance premiums or for funerals. Ex. N. at 8052-53, 8059; *see* Ex. O at 8198-99 (explaining that Wulf decided to stop buying

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[4] Citations to page numbers for Exhibits A, B, G, and H are to the Bates numbers, with the prefix "SEC-Wulf" and any preceding zeros omitted.

[5] *Jo Ann Howard & Associates, P.C. v. Cassity* is a civil suit that grew out of the events that led to Wulf's conviction. Jo Ann Howard & Associates, P.C., is the Special Deputy Receiver appointed as a result of the liquidation of NPS, Lincoln, and Memorial. *See* 2015 WL 144903, at *1. Before the plaintiffs moved for his dismissal, Wulf was a defendant in the civil suit. *See Jo Ann Howard & Assocs., P.C. v. Cassity*, No. 4:09-1252 ERW, 2015 WL 332953 (E.D. Mo. Jan. 23, 2015) (order).

stocks and bonds and to instead "buy life insurance" to "fund[] . . . the trust's obligations"). According to Wulf, through Trust IV, NPS paid for several thousand funerals per year. Ex. N at 8053.

Trust IV's primary investment was whole life insurance policies. Ex. O at 8134. During Wulf's tenure as Trust IV's investment adviser, he authorized the surrender of *all* of the whole life policies in the trust. *Id.* at 8116-17, 8121-22. He conceded that a series of "mass surrenders" of policies occurred during his tenure, "[s]ometimes within months of" purchase. *Id.* at 8119-21.

Despite conceding that he owed a fiduciary obligation to NPS Trust IV, Wulf admitted that he authorized the taking of loans against the cash value of the whole life policies in Trust IV. Ex. O at 8123, 8129, 8134. The loans were given to affiliated companies and to NPS itself. *See* Ex. O at 8149, 8151, 8154, 8235-36, 8239-41. If a loan against a policy reduced a death benefit below the amount needed to cover a funeral, NPS was forced to make up the shortage. *Id.* at 8126-27, 8130, 8133, 8136-37. Wulf repaid some of the loans by surrendering policies for their cash value and then replacing whole life policies with term policies.[6] *Id.* at 8138-39, 8205-06; *see id.* at 8147-48.

The government showed that as to one of the "mass surrenders," the face value of the policies in the trust was over $27 million. Ex. O at 8140. Because of policy loans, that value was actually reduced to less than $4 million. *Id.* at 8140-41. As to another surrender, $60.7 million worth of whole life insurance was reduced to $3 million. *Id.* at 8147-48. In both instances, Wulf used the remaining money to purchase term life policies. *Id.* at 8141, 8147. By their nature, of course, term life policies cost less than whole life policies. They also expire unless premiums are paid. *See id.* at 8173.

Wulf conceded that in general, the sale of a whole life policy generates a commission. Ex. O at 8117-18. He denied knowing whether commissions were generated as a result of the purchase of the policies in Trust IV. *Id.* at 8118-19. The policies, however, were purchased from Lincoln and Memorial, both of which were affiliated with NPS and at least one of which was located at the same address as NPS. *Id.* at 8117-18; *see id.* at 8172 (referring to the insurance companies being "related" to NPS). Not coincidently, Wulf managed investments for Lincoln and Memorial. *Id.* at 8118, 8168, 8192.

The evidence presented tended to show that Wulf and his firm did not maintain independence from NPS and its related entities. During a portion of the time NPS was in

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[6] Trust funds were loaned to entities that were affiliated with NPS, *see* Ex. O at 8149-50 (discussing $9.8 million in loans to Lincoln Memorial Services, Forever Enterprises, and Texas Forever), and to NPS, *see id.* at 8151-58, 8174-75. By early 2008, Trust IV had nearly run out of money. *Id.* at 8172-73. The following transfers from Trust IV to NPS nonetheless occurred between late November 2007 and January 2008: $175,000 in late November 2007, *id.* at 8151, $100,000 in late November 2007, *id.*, $150,000 on December 3, 2007, *id.* at 8154, $100,000 on December 10, 2007, *id.* at 8155, $100,000 on December 31, 2007, *id.* at 8157, $130,000 on January 3, 2008, *id.* at 8175.

operation, Wulf's firm's offices were located in the building NPS leased. Ex. N at 8088; Ex. O at 8101. Additionally, Wulf's health insurance was provided through NPS's health insurance plan. Ex. N at 8089, 8093. At one point, Wulf owned 20,000 shares of Forever Enterprises, Ex. O at 8193, which is an NPS-related entity, *see* Liquidation Order at 7. He characterized shares in Forever Enterprises as "very illiquid." Ex. O at 8193-94. Nonetheless, at his direction, Trust IV bought stock in Forever Enterprises. *Id.* at 8194. Indeed, in August 2007, NPS wired $670,000 from Trust IV to Forever Enterprises. *Id.* at 8239-40. Wulf also caused Trust IV to directly purchase in six transactions from Forever Enterprises the shares it owned in four other companies.[7] Ex. O at 8230-34. And the e-mail address used by Kathy Bates, a part-time Wulf, Bates employee and the wife of Wulf Bates principal Tripp Bates, was at forevernetwork.com. *See id.* at 8236-39.

As noted, by early 2008, NPS was placed into receivership. Ex. O at 8172; *see* Liquidation Order. At that point, NPS and its related trusts had "very little cash." Ex. O at 8172-73. As a result, the term life policies in the trusts lapsed due to non-payment of premiums. *Id.* Wulf blamed the lapse of term policies on the receiver who took over NPS, Lincoln, and Memorial. *Id.* at 8172-73, 8176-77.

In November 2010, Wulf was charged in a second superseding indictment with multiple counts of mail fraud, wire fraud, and conspiracy in relation to his involvement with NPS. *See* Ex. A at 37-144. In November 2013, a jury convicted Wulf of one count of conspiracy to commit (1) mail fraud affecting a financial institution; (2) wire fraud affecting a financial institution; (3) mail fraud; (4) wire fraud; and (5) bank fraud, in violation of 18 U.S.C. § 1349. *See* Exs. A at 37-38, B at 224. The jury also convicted Wulf of six counts of wire fraud affecting a financial institution, in violation of 18 U.S.C. § 1343, three counts of wire fraud, in violation of 18 U.S.C. § 1343, and eight counts of bank fraud, in violation of 18 U.S.C. § 1344. Ex. B at 224, 226. According to the district court's judgment, Wulf's offenses occurred over a period that lasted at least from 1992 to 2008. *See id.* at 224, 226.

The district court sentenced Wulf to 120 months' imprisonment and to pay restitution in excess of $435 million. Ex. B at 227, 230. The Special Deputy Receiver of NPS, Lincoln, and Memorial is listed as the payee under the restitution order. *Id.* at 0230. The fact that the district court imposed a $435 million restitution award necessarily means that Wulf caused $435 million in losses. *See United States v. Howard*, 759 F.3d 886, 891 (8th Cir. 2014); *see also* 18 U.S.C. § 3663(a).

Conclusions of Law

A. Summary Disposition Standard

Rule of Practice 250 governs motions for summary disposition. *See* 17 C.F.R. § 201.250. An administrative law judge "may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a

[7] Wulf conceded that he caused Trust IV to purchase these securities at prices outside the range of the daily highs and lows of the share prices for each stock on the days the transactions occurred. Ex. O at 8234.

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 that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323." 17 C.F.R. § 201.250(a). In order "to survive a motion for summary disposition, the non-moving party must do more than 'simply show that there is some metaphysical doubt as to the material facts.'" *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *21 n.24 (Feb. 13, 2009) (quoting *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *22 n.26 (Feb. 4, 2008)).

Summary disposition is generally appropriate in "follow-on" proceedings—administrative proceedings instituted following a conviction or entry of an injunction—where the only real issue involves the determination of the appropriate sanction.[8] *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *27 (May 15, 2009); *see Jeffrey L. Gibson*, 2008 SEC LEXIS 236, at *19-20 & nn.21-24. Summary disposition is appropriate here because the only issue is whether Wulf's conduct warrants imposition of the bars the Division seeks.

B. A full collateral bar is warranted as a result of Wulf's misconduct.

As is relevant to this proceeding, Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act give the Commission authority to impose a collateral bar[9] against Wulf if three statutory factors are met: (1) at the time of his misconduct, he was associated with a broker, dealer, or investment adviser; (2) he has been convicted of an offense that (a) involved the purchase of sale of any security; (b) "arises out of the conduct of the business of a broker, dealer," or "investment adviser;" (c) "involves the larceny, theft, . . . fraudulent conversion, or misappropriation of funds;" *or* (d) is a violation of 18 U.S.C. §§ 1341, 1342, or 1343; *and* (3) imposition of the bar is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(B)(i)-(iv), (6)(A)(ii), 80b-3(e)(2)(A)-(D), 80b-3(f).

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[8] The exception to the general rule concerns those "rare circumstances" in which "'a respondent may present genuine issues with respect to facts that could mitigate his or her misconduct.'" *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *27 (May 15, 2009) (quoting *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *17 (Sept. 26, 2007)).

[9] The term "collateral bar" refers to the authority to "exclude[] an associated person of a regulated entity not only from the type of business the person was in when" that person violated federal securities laws, "but also from any aspect of the securities business." *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *1 n.1 (Oct. 29, 2014). Under the authority to issue a collateral bar, the maximum sanctions authorized in this proceeding are barring Wulf from being associated 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. *See* 15 U.S.C. §§ 78*o*(b)(6)(A), 80b-3(f).

As to the first factor, Wulf's investment adviser representative public disclosure report and his BrokerCheck report show that Wulf was associated with both a broker and an investment adviser. *See* Exs. G, H. His testimony lends further support for this determination. Ex. O at 8202.

The second factor is also met. Following his trial, Wulf was found guilty of multiple violations of 18 U.S.C. § 1343. By definition, any single violation of Section 1343 would meet the second factor. *See* 15 U.S.C. §§ 78o(b)(4)(B)(iv), (b)(6)(A)(ii), 80b-3(e)(2)(D), (f).

With respect to the third factor, whether imposition of a collateral bar would be in the public interest, I must consider the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See Toby G. Scammell*, 2014 SEC LEXIS 4193, at *23. The public interest factors include:

> 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, 603 F.2d at 1140 (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). "[T]he . . . inquiry into the appropriate sanction to protect the public interest is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, 2007 SEC LEXIS 2238, at *13. The Commission also considers the degree of harm resulting from the violation, *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *100 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002), and the deterrent effect of administrative sanctions, *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). In this latter regard, industry bars are considered an effective deterrent. *See Guy P. Riordan*, Securities Act of 1933 Release No. 9085, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009).

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." *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). An administrative law judge's decision to impose an industry-wide bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'" *Id.* at *8 (quoting *McCarthy*, 406 F.3d at 189-90); *see John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *34-35 (Dec. 13, 2012).

I have little difficulty concluding that imposing a full collateral bar would serve the public interest. Wulf was convicted of multiple counts of bank and wire fraud and also of conspiracy to commit these offenses. Ex. B. The jury necessarily found that in committing his offenses, Wulf acted with intent to defraud. *See* Ex. I at 3388, 3390, 3393, 3396, 3399. As a

general matter, criminal activity involving fraud "requires a severe sanction." *Daniel Imperato*, Exchange Act Release No. 74596, 2015 SEC LEXIS 1377, at *17 (Mar. 27, 2015). This is so because "the 'securities business is one in which opportunities for dishonesty recur constantly.'" *Id.* (citation omitted). A severe sanction is particularly appropriate here because Wulf's years-long fraud caused at least $435 million in losses. *See KPMG Peat Marwick LLP*, 2001 SEC LEXIS 98, at *100 (recognizing that "the harm caused by the [underlying] violations" and "the seriousness of th[ose] violations" are aggravating factors to be considered).

Wulf also violated the fiduciary duty he owed Trust IV. Because clients must be able to put their trust in their investment adviser, *Schield Mgmt Co*., 2006 SEC LEXIS 195, at *44 n.56, the industry depends on investment advisers to maintain "high[] ethical standards," *cf. Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *25-26 (July 26, 2013) (discussing the need for all industry participants to act with integrity). The Commission thus takes a particularly dim view of those who violate their fiduciary obligations. *See James C. Dawson*, Advisers Act Release No. 3057, 2010 SEC LEXIS 2561, at *15-16 (July 23, 2010). Instead of honoring his fiduciary duty, Wulf helped to loot Trust IV, causing massive losses. The fact that Wulf violated his fiduciary duty shows that he is particularly ill-suited to remain in the securities industry and that a full collateral bar is warranted. *See Alfred Clay Ludlum, III*, Advisers Act Release No. 3628, 2013 SEC LEXIS 2024, at *26-28 (July 11, 2013).

By any measure, Wulf's conduct was recurrent. Indeed, saying that Wulf's fraud, which lasted at least sixteen years, was recurrent does not adequately describe what he did. *Cf. Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 839, at *84 (Mar. 7, 2014) (characterizing as "recurrent and long-lasting," misconduct that occurred over an eight month period). The fact that Wulf's fraud continued for so long weighs in favor of a full collateral bar to protect the public interest. The continuing nature of Wulf's misconduct also shows that he is unsuited to remaining in the securities industry. Despite his years of experience and the prior legal actions against NPS and its affiliated entities, he did not desist and instead continued to participate in a fraudulent scheme.

Wulf's actions easily qualify as egregious. Wulf and his co-conspirators soaked up money through NPS and Trust IV and then wrung hundreds of millions of dollars out of Trust IV until there was nothing left. That Wulf and his co-conspirators continued their fraud over a period of so many years only serves to reinforce the notion that Wulf's actions were egregious. Further, Wulf violated his fiduciary duty in a brazen fashion. There is thus no doubt that Wulf's conduct was egregious. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *39 (Mar. 7, 2014) (noting that Bartko was guilty of "orchestrating a conspiracy that defrauded approximately two hundred investors out of hundreds of thousands of dollars over more than a year"); *James C. Dawson*, 2010 SEC LEXIS 2561, at *15-16 (concerning misconduct by a fiduciary).

Wulf acted with a high degree of scienter. In order to convict him, the jury was required to find that he "act[ed] with 'intent to defraud," which the jury was told meant that he "act[ed] knowingly and with the intent to deceive." Ex. I at 3388-91, 3393-94, 3396-97, 3399-4000. The very nature of Wulf's fraud belies any claim that he did not act with a high degree of scienter.

Indeed, Wulf cannot seriously claim that he accidently participated in the looting of $435 million over a period of at least sixteen years.

Wulf has made no assurances against future violations or demonstrated that he recognizes the wrongfulness of his conduct. To the contrary, during his trial, he blamed the lapse of term policies on the Special Deputy Receiver who took over NPS, Lincoln, and Memorial. Ex. O at 8173, 8176-77. Of course, the Special Deputy Receiver's appointment was a direct result of the misconduct of Wulf and his co-conspirators. And, in his answer, he blamed his conviction on his counsel and on prosecutorial misconduct.

Based on Wulf's refusal to accept responsibility and the fact that his fraud lasted at least sixteen years, I infer that if he were given the opportunity, he would likely engage in similar conduct. *Cf. Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *23 n.50 ("'the existence of a violation raises an inference that'" the acts in question will recur) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). Inasmuch as securities professionals "'routinely gain access to sensitive financial and investment information of investors and other market participants,'" *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *29 n.47 (Dec. 12, 2013) (quotation omitted), it is clear that Wulf's "occupation as an investment adviser presents opportunities for future illegal conduct in the securities industry," *John W. Lawton*, 2012 SEC LEXIS 3855, at *43.

Finally, imposing a full collateral bar will serve as a general and specific deterrent. It will deter Wulf and will further the Commission's interest in deterring others from engaging in similar misconduct.[10] Given the foregoing, I find that it is in the public interest to impose a permanent, direct and collateral bar against Wulf.

Order

Under the authority in Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Renewed Motion for Summary Disposition is GRANTED.

It is FURTHER ORDERED that, under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1934, David R. Wulf is 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, under Section 15(b) of the Securities Exchange Act of 1934, David R. Wulf 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.

[10] General deterrence is relevant to, if not determinative of, the question of whether the public interest weighs in favor of imposing an industry bar. *See Peter Siris*, 2013 SEC LEXIS 3924, at *48 n.72; *see also PAZ Secs., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under 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.

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James E. Grimes
Administrative Law Judge