INITIAL DECISION RELEASE NO. 867
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16379

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

In the Matter of LAWRENCE FOSTER	INITIAL DECISION August 19, 2015

APPEARANCES: Andrew O. Schiff and Casey P. Cohen, for the Division of Enforcement, Securities and Exchange Commission

Lawrence Foster, *pro se*

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) on February 6, 2015, alleging that Lawrence Foster (Foster) was convicted on October 22, 2014, after a jury trial, of one count of conspiracy to commit wire fraud and seven counts of wire fraud in *United States v. Foster*, No. 1:13-cr-20063 (S.D. Fla.) (*Foster*). Foster was served with the OIP on February 17, 2015. *Lawrence Foster*, Admin. Proc. Rulings Release No. 2475, 2015 SEC LEXIS 1134 (Mar. 27, 2015). The OIP required that Foster file an answer within twenty days after service of the OIP, but he did not do so and has not filed an answer to date. OIP at 3; 17 C.F.R. § 201.220(b). Foster is currently scheduled to be sentenced in the criminal proceeding on August 31, 2015. *Foster*, Order Re-Scheduling Hearing, ECF No. 522.

At a telephonic prehearing conference on March 25, 2015, Foster appeared agreeable to settling this administrative proceeding if a settlement would not impact his appeal of the criminal conviction, and if his appeal is successful, he would be able to seek reversal of any sanction. Tr. 5-7[1]; *see Lawrence Foster*, 2015 SEC LEXIS 1134. I directed the Division of Enforcement to inform my Office whether it had obtained a signed Offer of Settlement from Foster, and informed the parties that if a settlement had not occurred by May 1, 2015, I would issue a procedural schedule for the Division to file a motion for summary disposition. *See id.*; 17 C.F.R. § 201.250. I also warned Foster that if he failed to respond to the Division's motion for summary disposition, I would find him in default. Tr. 10.

On May 1, 2015, the Division filed a Notice of Status of Settlement indicating that it did not expect a settlement. On May 5, 2015, I set a schedule for filing a motion for summary

[1] Citations are to the transcript of the prehearing conference.

disposition, Foster's brief in opposition, and the Division's reply brief. *See Lawrence Foster*, Admin. Proc. Rulings Release No. 2633, 2015 SEC LEXIS 1720.

The Division filed a Motion for Summary Disposition on May 27, 2015 (Motion), requesting imposition of an industry bar and a penny stock bar against Foster pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act). Attached to the Motion were five exhibits: Exhibit 1, the Amended Superseding Indictment in *Foster*, entered on October 3, 2013; Exhibit 2, the Jury Verdict in *Foster*, entered on October 24, 2014; Exhibit 3, the Order Denying Defendants' Rule 29 Motion for Judgment of Acquittal and Defendant Loen's Motion for a New Trial in *Foster*, entered on April 24, 2015 (Order Denying Acquittal); Exhibit 4, the Plea Agreement in *United States v. Jordon McCarty*, No. 13-cr-20063 (S.D. Fla.) (*McCarty*), entered on September 13, 2013; and Exhibit 5, Transcript of Change of Plea in *McCarty*, dated September 13, 2013.

The Division argues that Foster is in default because he has not filed an answer to the OIP and that summary disposition is appropriate because there are no facts in dispute. Motion at 2-3, 7-8. Indeed, as of the date of this Initial Decision, Foster has not filed an opposition to the Division's Motion, due on June 15, 2015. Foster is therefore in default for failing to file an answer, respond to the Division's dispositive motion, or otherwise defend this proceeding. *See* 17 C.F.R. §§ 201.155(a), .220(f). I deem the OIP's allegations to be true. *See* 17 C.F.R. § 201.155(a).

I admit into evidence the exhibits attached to the Division's Motion and take official notice of the official record of related judicial proceedings. 17 C.F.R. §§ 201.111, .323. I applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The findings and conclusions herein are based on the entire record. I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

FINDINGS OF FACT

On October 22, 2014, the *Foster* jury found Foster, also known as Lorenzo Foster, guilty of one count of conspiracy to commit wire fraud and six counts of wire fraud. OIP at 2; Exs. 1, 2. One co-defendant was found guilty of three counts of structuring transactions to avoid reporting requirements, and the other co-defendant pled guilty to conspiracy to commit wire fraud. Exs. 1, 4; *Foster*, Jury Verdict, ECF No. 374. The following facts are from the Order Denying Acquittal. *See* Ex. 3.

Foster was the president of Paradise is Mine (Paradise), a company located in Miami Beach, Florida, which purportedly offered investment opportunities in a residential real estate development project located in Rum Cay, Bahamas. Ex. 3 at 3. To generate interest and sales in the project, Paradise issued press releases touting the purchase of Rum Cay land by numerous celebrities, including former NFL players Joe Montana and Ray Lewis. *Id.* The press releases were presented as "articles" and bore the logos of reputable news sources such as USA Today, the Wall Street Journal, and Forbes. *Id.* at 3, 26. In reality, these media companies never wrote or published articles regarding Paradise or the Rum Cay development; instead, Foster manipulated the press releases to include the companies' logos and obscure the fact that the

purported articles were actually created by Paradise. *Id.* at 3-4, 26. The "articles" were featured on Paradise's website, and Foster distributed and caused others to distribute sales brochures featuring the fake articles. *Id.* at 3-4. Furthermore, the information in the articles was false – the celebrities named in the releases had not purchased land in Rum Cay but had instead signed a professional services agreement with Paradise, in essence bartering the use of their name in exchange for a land option[2] to a lot in Rum Cay. *Id.* at 27-28. No celebrity received absolute title to any land in Rum Cay. *Id.* at 28.

From at least December 2009 to January 31, 2013, Foster directly or indirectly solicited investors in Paradise. Ex. 3 at 4. Representatives of Paradise contacted potential investors by phone, targeting those who had previously invested in, and lost money with, companies through other transactions brokered by the representatives before they began working at Paradise. *Id.* As an inducement to invest additional money with Paradise, the individuals were offered a credit for their previous investment losses. *Id.* Foster provided the Paradise sales staff with training and the script used to pitch the investment opportunity, and the staff repeated the contents of the purported news articles distributed by Foster when making calls to potential investors. *Id.* at 5. Paradise representatives also emailed the fake articles to potential investors. *Id.*

In the calls, emails, and brochures, investors were led to believe that Paradise was a successful real estate company which was in the process of developing a residential community in Rum Cay. Ex. 3 at 5. Investors were offered two opportunities to invest in Paradise: investors could make loans to Paradise collateralized by options to the real estate lots in Rum Cay, or investors could directly purchase options in the lots. *Id.* In reality, Paradise did not have title to any land in the Bahamas. *Id.* at 29. A separate company, Sunward Holdings, owned the land. *Id.* This fact was not disclosed to potential investors either in Paradise's marketing materials or during the initial Paradise sales pitch. *Id.*

Through the above misrepresentations, Paradise collected approximately $8.3 million from investors. Ex. 3 at 30. Of this amount, only $280,000 was paid out to investors. *Id.* Bank records show that Paradise withdrew the remaining funds for items including cash withdrawals, payments to unknown individuals and entities, payments to sales staff, office-related expenses, and payments for rare coins and jewelry. *Id.* At the time of Foster's arrest, $1.1 million remained in Paradise's bank accounts. *Id.*

LEGAL CONCLUSIONS

Summary Disposition

Summary disposition is permissible here pursuant to the Commission's Rules of Practice. 17 C.F.R. § 201.250(a). The application of summary disposition often occurs where an administrative proceeding is based on the fact of a criminal conviction or a civil injunction. The

[2] An option to land is an ownership interest in land which precludes others from purchasing the land. Ex. 3 at 7. The owner of the land option does not have absolute title to the land and must pay a Bahamian stamp tax equivalent to ten percent of the purchase price to the government before absolute title to the land may be transferred. *Id.* at 7-8.

courts have upheld the Commission's application of summary disposition in follow-on proceedings like this one. *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & n.21-24 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). Neither party objected to resolving the allegations through summary disposition at the prehearing conference on March 25, 2015. Tr. 8-10.

Commission Rule of Practice 250(b) specifies that 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.[3] 17 C.F.R. § 201.250(b). I GRANT the Division's Motion because these criteria and the statutory basis for a sanction have been satisfied.

Statutory Criteria

Section 15(b)(6) of the Exchange Act permits the Commission to impose sanctions against Foster if: (1) within ten years of the commencement of this proceeding, he was convicted of any offense specified in Exchange Act Section 15(b)(4)(B); (2) at the time of the alleged misconduct, he was associated or seeking to become associated with a broker or dealer; and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(6)(A). Foster was convicted in 2014 of multiple counts of wire fraud, one of the enumerated offenses in Exchange Act Section 15(b)(4)(B). 15 U.S.C. § 78*o*(b)(4)(B); Exs. 1, 2. The Exchange Act defines broker as one who has "engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). The Paradise interests Foster sold to investors purported to be investment contracts, and were therefore securities. *See* Ex. 3 at 3-5; 15 U.S.C. § 78c(a)(10) (investment contracts fall within the definition of a security under the Exchange Act); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99, 301 (1946) (defining an investment contract as a contract, transaction, or scheme involving: 1) an investment of money; 2) in a common enterprise; 3) with a reasonable expectation of profits to be derived solely from the efforts of others); *Johnny Clifton*, Securities Act of 1933 Release No. 9417, 2013 SEC LEXIS 2022, at *32 & n.55 (July 12, 2013).

The definition of broker "connote[s] a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Servs., Inc. v. Sec. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass.), *aff'd*, 545 F.2d 754 (1st Cir. 1976). Relevant factors when determining a person's status as a broker include the dollar amount of securities

[3] Although Rule of Practice 250(a) contemplates summary disposition after a respondent's answer has been filed, the rule does not preclude a law judge from utilizing summary disposition in a matter where a respondent forfeits his right to file an answer and defaults. *See* 17 C.F.R. § 201.250(a); *Alchemy Ventures, Inc.*, Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *9-10 & n.20 (Oct. 17, 2013) (recognizing that the means for reaching an initial decision – namely a default, a hearing, or summary disposition – are "not mutually exclusive," and that "a law judge could conceivably use a combination of these procedures to develop the record and make the necessary findings").

sold, the extent to which advertisement and investor solicitation were used, the active rather than passive finding of investors, and the receipt of transaction-based compensation. *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334-35 (M.D. Fla. 2011); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 29-30 (D.D.C. 1998); *SEC v. Hanson*, No. 83-civ-3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984). Over the course of several years, Foster directly and indirectly solicited investors in Paradise, trained sales representatives and provided a script for their investment pitch, distributed and caused others to distribute promotional materials, and emailed investors the contracts used to make their investments. Ex. 3 at 3-6, 16-19. Paradise ultimately collected approximately $8.3 million from investors. *Id.* at 9, 30. While there is no evidence in the record that Foster received a percentage of the funds collected in any regimented manner, Paradise, of which he was president, misappropriated a large portion of the funds. *Id.*; *see SEC v. George*, 426 F.3d 786, 793 (6th Cir. 2005). I therefore find that he was associated with a broker during the time of his misconduct. Because the other statutory criteria have been met, sanctions will be imposed if in the public interest.

Possible sanctions under Exchange Act Section 15(b)(6) include censure, limiting his activities in the securities industry, suspension for up to twelve months, and a bar from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock (collectively, a collateral bar). 15 U.S.C. § 78*o*(b)(6)(A). A portion of the misconduct underlying Foster's conviction post-dated the July 22, 2010, effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, so that imposition of a full collateral bar is not impermissibly retroactive. *See* Pub. L. No. 111-203, §§ 4, 925(a), 124 Stat. 1376, 1390, 1850-51 (2010); *Koch v. SEC*, --- F.3d ---, 2015 WL 4216988, at *8-10 (D.C. Cir. July 14, 2015) (holding that the Commission cannot apply Dodd-Frank to bar a respondent from associating with municipal advisors and rating organizations based on conduct predating Dodd-Frank, because such an application is impermissibly retroactive).

Public Interest

In making a public interest determination, the Commission considers the *Steadman* factors: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The Commission has determined that an administrative law judge should "review each case on its own facts" to make findings regarding the respondent's fitness to participate in the industry in the barred capacities before imposing an industry-wide bar. *See Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted).

I find that it is in the public interest to impose a collateral bar for the following reasons.

Nature of the violations, their isolated or recurrent nature, and degree of scienter

The violations are egregious because they were sufficient to support a jury verdict of guilty on seven felony counts that involved actions done knowingly and with intent to defraud.[4] Foster was the president of Paradise, which collected $8.3 million from investors and paid back only $280,000, spending investor money on such expenditures as cash withdrawals, payments to unknown individuals, and payments for rare coins and jewelry. The court that reviewed the jury's verdict found the evidence sufficient to support its findings.

The violations were recurrent because they included multiple activities by Foster, including his solicitation of and communications with investors that persisted for over three years. Foster's criminal conviction is evidence that he acted with scienter. Foster acted with a high degree of scienter because he doctored press releases to mislead investors into believing they came from reputable news sources, falsely claimed that celebrities bought or owned land in Rum Cay, and failed to tell investors the true identity of the owner of the Rum Cay land during the sales presentations.

Sincerity of assurances against future violations

Foster did not provide any assurances concerning his future conduct because he did not participate in the proceeding other than appearing at a prehearing conference, during which he made no assurances against future violations. Although "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). Foster has offered no evidence to rebut the inference that he might repeat his illegal behavior if given the opportunity.

Opportunity for future violations and deterrence

The Commission's concern is protecting the public. Foster was very successful in soliciting investors and he has demonstrated no remorse or understanding that his conduct was criminal. These facts indicate a substantial possibility of future violations if Foster is allowed to participate in the securities industry. A collateral bar will also serve as a deterrent to others from engaging in similar misconduct.

Order

I GRANT, pursuant to Commission Rule of Practice 250(b), the Division's Motion for Summary Disposition, and ORDER, pursuant to Section 15(b) of the Securities Exchange Act of

[4] Foster's misconduct predating the Dodd-Frank Act can be considered in assessing the public interest. *See Laurie J. Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, *47 n.54 (Apr. 5, 1999) (matters outside statute-of-limitations period can be considered in assessing sanctions where the respondent's conduct "may be viewed as part of a continuing, interconnected scheme"), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000).

1934, that Lawrence Foster, is BARRED from association 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, 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 of the Commission's Rules of Practice. 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice. 17 C.F.R. § 201.111. 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. 17 C.F.R. § 201.360(b)(1).

Foster may move to set aside the default in this case. Rule of Practice 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.*

_____

Brenda P. Murray
Chief Administrative Law Judge