INITIAL DECISION RELEASE NO. 903
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16483

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

In the Matter of	:	INITIAL DECISION OF DEFAULT
	:	October 20, 2015
CRAIG DANZIG	:	

APPEARANCES: Sarah L. Allgeier and Richard Hong for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Jason S. Patil, Administrative Law Judge

Summary

In March 2015, a district court permanently enjoined Respondent Craig Danzig from future violations of the registration and antifraud provisions of the federal securities laws, having found that Danzig illegally acted as an unregistered broker, illegally offered and sold unregistered securities, and violated and/or aided and abetted violations of the antifraud provisions as a result of misconduct related to materially false and misleading statements. Under these circumstances, Section 15(b) of the Securities Exchange Act of 1934 permits barring Danzig from association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent (collectively, industry bar) if it is in the public interest. Doing so is in the public interest here, and I therefore grant the Division of Enforcement's motion for sanctions and impose a permanent industry bar against Danzig.

Procedural Background

On April 9, 2015, the Securities and Exchange Commission issued an Order Instituting Administrative Proceedings (OIP) against Danzig pursuant to Section 15(b) of the Exchange Act. The OIP alleges that on March 26, 2015, an amended final judgment was entered against Danzig in *SEC v. StratoComm Corp.*, No. 1:11-cv-1188 (N.D.N.Y.), permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 as well as Sections 15(a)(1) and 10(b) of the Exchange Act and Rule 10b-5 thereunder (collectively, registration and antifraud provisions). OIP at 1. Service of the OIP occurred on April 16, 2015,

and Danzig's Answer was due by May 6.[1] *See Craig Danzig*, Admin. Proc. Rulings Release No. 2653, 2015 SEC LEXIS 1792 (May 8, 2015). I warned Danzig that he may be deemed in default for failure to timely file an Answer or otherwise defend this proceeding. *Id.*

On June 23, I found Danzig in default for failure to file an Answer or otherwise defend this proceeding, and directed the Division to file a motion for sanctions. *Craig Danzig*, Admin. Proc. Rulings Release No. 2848, 2015 SEC LEXIS 2564. I notified Danzig that he may move to set aside the default, *see id.*, which he has not done. On July 8, the Division moved for sanctions, seeking a permanent industry bar against Danzig.

Findings of Fact

Danzig is in default for failing to file an Answer or otherwise defend this proceeding. *See* OIP at 2-3; 17 C.F.R. §§ 201.155(a), .220(f). Thus, I deem the OIP's allegations true and base my findings and conclusions on the record and facts officially noticed. *See* 17 C.F.R. §§ 201.155(a), .323. In pertinent part, the record contains the Division's motion for sanctions, plus a declaration with five exhibits relating to the *StratoComm* civil action: the docket report (Ex. 1); the Commission's statement of material facts in support of its motion for partial summary judgment (Ex. 2); the district court's summary judgment decision (Ex. 3); the district court's decision and order concerning the Commission's motion for remedies (Ex. 4); and the amended final judgment (Ex. 5). I take official notice of these exhibits and the record in the civil action.

Background

StratoComm Corporation is a Delaware corporation that describes itself as in the business of designing, manufacturing, and selling telecommunications equipment. Ex. 3 at 2. Danzig worked at StratoComm from at least 2007 until November 2010, initially as director of investor and institutional relations and later as executive director of institutional relations. *Id.* at 3. In those roles, Danzig's primary responsibility was to market StratoComm's stock to investors; he was StratoComm's designated point of contact for investors, relayed the terms of stock sales, handled paperwork for those sales, and facilitated the issuance of shares. *Id.* at 13. StratoComm paid Danzig a salary plus a discretionary bonus based on his performance in selling the company's securities. *Id.* While marketing and selling StratoComm stock to investors, Danzig was not licensed to sell securities, as he was not a registered broker nor associated with one. *Id.* at 3-4, 13. Before joining StratoComm, Danzig was a registered representative associated with several broker-dealers and held a license to sell securities from 1991 until 2000, when it lapsed. *Id.* at 3.

[1] After Division staff notified this Office that Danzig had called them and claimed he was not personally served, I ordered the Division to file: (i) an updated declaration of service and (ii) an affidavit memorializing the contents of Danzig's phone call with the Division. *Craig Danzig*, Admin. Proc. Rulings Release No. 3150, 2015 SEC LEXIS 3840 (Sept. 22, 2015). The Division did so on September 29, confirming with additional evidence that Danzig was personally served on April 16. Danzig has not responded to this updated declaration. I therefore adhere to the April 16, 2015, service date.

Civil Action

On March 26, 2015, an amended final judgment was entered against Danzig in the civil action, permanently enjoining him from future violations of the registration and antifraud provisions. Ex. 5 at 1-4. The court also imposed a penny stock bar on Danzig and ordered him to pay a civil penalty of $25,000. *Id.* at 4, 6. Danzig has not appealed the judgment. *See* Ex. 1 at 12-14; Docket Sheet, *SEC v. StratoComm Corp.* (last accessed Oct. 15, 2015).

The court based its judgment on findings that:

1. Danzig aided and abetted StratoComm's violations of Exchange Act Section 10(b) and Rule 10b-5 because he used a StratoComm document—the "Executive Informational Overview" (executive overview)—to sell the company's securities to investors, knowing it contained materially false and misleading statements about a StratoComm product called Transitional Telecommunications System (TTS). Ex. 3 at 4, 18-20, 30-31.

2. Danzig violated Section 17(a) of the Securities Act because he employed a fraudulent device (i.e., the executive overview) to sell StratoComm securities to investors, obtained money or property (a discretionary bonus for himself and funds for StratoComm) as a result of using executive overview to solicit sales, and engaged in securities transactions and courses of business that operated as a fraud on those investors. *Id.* at 32-33.

3. Danzig violated Section 15(a) of the Exchange Act because he acted as an unregistered broker, regularly soliciting investors to purchase StratoComm securities and receiving transaction-based compensation from the company via a discretionary bonus that hinged on how well he sold those securities. *Id.* at 32.

4. Danzig violated Sections 5(a) and (c) of the Securities Act because he was a necessary participant in StratoComm's offer and sale of its unregistered securities through interstate commerce in non-exempt transactions. *Id.* at 33-36.

The district court's findings are further detailed below in the public interest analysis.

Conclusions of Law

Industry Bar Is Authorized

The Division seeks a permanent industry bar against Danzig. Mot. for Sanctions at 1. Exchange Act Section 15(b) authorizes imposition of such a bar against Danzig if: (1) at the time of the alleged misconduct, he was associated with a broker or dealer; (2) he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii).

As to the first requirement, "[a]lthough [Danzig] was not registered as a broker or dealer or associated with a registered broker or dealer, [the Commission has] authority to sanction persons, such as [Danzig], who act as unregistered brokers." *Daniel Imperato*, Exchange Act

Release No. 74596, 2015 SEC LEXIS 1377, at *13 (March 27, 2015); *see, e.g.*, *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) (the Commission is "authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding"). Therefore, the first requirement is met because Danzig acted as an unregistered broker during the time of his misconduct. *See* Ex. 3 at 32.

The second requirement is met because the district court enjoined Danzig from violating the registration and antifraud provisions. *See* 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii); Ex. 5 at 1-4. Therefore, I will impose a sanction if it is in the public interest.

The Public Interest Supports an Industry Bar

The criteria to determine whether a sanction is in the public interest are the *Steadman* factors: (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 of future violations. *Steadman v. SEC*, 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 flexible, 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.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003).

After analyzing the public interest factors in light of the protective interests served, I have determined that a permanent industry bar against Danzig is appropriate in the public interest.[2]

[2] Danzig is in default, so my conclusions are based on the OIP's allegations—deemed true—and the uncontested record. *See* 17 C.F.R. § 201.155(a). Even had Danzig appeared in this proceeding and contested the district court's findings, he would have been collaterally estopped from doing so. *See, e.g.*, *Daniel Imperato*, 2015 SEC LEXIS 1377, at *15. Although Danzig did not oppose the Commission's motion for summary judgment in the civil action, the issues were actually litigated and he had a full and fair opportunity to present a defense. Danzig appeared in the action, was initially represented by counsel, filed an answer raising affirmative defenses, and upon counsel's withdrawal, was informed that he must represent himself unless and until new counsel appeared for him. Ex. 1 at 4-6; *see In re Bush*, 62 F.3d 1319, 1324 (11th Cir. 1995) (issue deemed actually litigated despite default judgment because party, among other things, participated for a time, was represented by counsel, and filed answer before refusing to further participate); *In re Daily*, 47 F.3d 365, 368 (9th Cir. 1995) ("[T]he 'actual litigation' requirement may be satisfied by substantial participation in an adversary contest in which the party is afforded a reasonable opportunity to defend himself on the merits but chooses not to do so." (internal footnote omitted)). Moreover, at summary judgment, Danzig's co-defendants contested issues pertinent to him that the Commission

See Ross Mandell, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014).

Danzig's misconduct

Between late 2007 and April 2010, Danzig and another individual led the offer and sale of more than 62 million shares of StratoComm's stock to over 100 investors, raising $4 million for the company. Ex. 3 at 2-3, 24, 34. StratoComm never registered the securities with the Commission but, through Danzig, offered and sold them to unaccredited, inexperienced investors without offering memoranda or audited financial statements. *Id.* at 34, 36.

From 2007 to 2009, StratoComm made and disseminated certain statements concerning its TTS product—a purported system for providing subscribers with broadband internet, wireless voice, and broadcast services, and consisting of, among other things, an antenna suspended from a tethered blimp called an aerostat. *Id.* at 4, 9, 14-21. The statements were false and misleading, material, made with scienter, and made in connection with the interstate offer, purchase, or sale of securities. *Id.* at 21-28. Therefore, as the district court found, the Commission established its claims against StratoComm under Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. *See id.* at 28.

A number of those statements appeared in StratoComm's September 2, 2008, executive overview. *See id.* at 18. The executive overview included pictures and present-tense descriptions of TTS that were false and misleading because they left the "unmistakable impression" that StratoComm had an operational aerostat and that TTS actually existed, was "presently available," and had been "installed." *Id.* at 18-19. Yet, StratoComm did not possess an aerostat, lacked the funding to purchase one, and had never installed or built any operational TTS units. *Id.* at 18-19. Moreover, the executive overview repeatedly referred to "sales" of TTS units, stating, for example, that units had been sold "for $60 million to date," and that StratoComm's goal was to obtain "up to an additional $75 million in sales" by the end of 2008 (implying such sales were possible in just a few months). *See id.* at 19. But when the executive overview issued in September 2008, "StratoComm had no TTS[units] to sell and no resources to build one." *Id.* The executive overview, therefore, was an "absolute and unequivocal falsehood," painting "a clear picture that the TTS existed and multiple units had been sold for millions," when in fact, "[t]his was not true." *Id.* at 19-20. Danzig reviewed the executive overview before it was finalized and placed on StratoComm's website. *Id.* at 11.

Danzig then used the fraudulent executive overview to market and sell StratoComm's stock throughout the country by telephone, e-mail, and in face-to-face meetings with investors. *Id.* at 13. He did so by: (i) using it as a "selling tool" to market StratoComm's stock and to convince investors of StratoComm's "legitimacy"; (ii) routinely directing potential investors to a

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raised and the court squarely addressed when making its findings. *See Christo v. Padgett*, 223 F.3d 1324, 1339 (11th Cir. 2000) ("When an issue is properly raised . . . and is submitted for determination, and is determined, the issue is actually litigated." (internal quotation marks and alteration omitted)). Finally, the court's findings here were detailed in a thirty-seven page opinion, providing "an ample basis for the assessment of sanctions." *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *12 (Feb. 4, 2010); *see* Ex. 3.

website containing the executive overview and arranging for copies of the document to be sent to potential investors; (iii) instructing a stock broker to use the executive overview with a client considering an investment in StratoComm; and (iv) directing potential providers of both public relations and investment banking services to the executive overview. *Id.* When taking these actions, Danzig knew StratoComm did not have a TTS despite the executive overview's statements to the contrary. *Id.* In an email on October 30, 2009, over a year after the document issued, Danzig complained to the company's CEO that StratoComm had "no money, and no product." *Id.* Meanwhile, StratoComm paid Danzig a salary plus a discretionary bonus based on his performance in selling the company's stock. *Id.*

As a result of such misconduct, the district court found that Danzig aided and abetted StratoComm's violations of Exchange Act Section 10(b) and Rule 10b-5, and that Danzig violated Section 17(a) of the Securities Act. *Id.* at 30-33. Further, the court found that Danzig violated Section 15(a) of the Exchange Act because he acted as an unregistered broker, and violated Sections 5(a) and (c) of the Securities Act with regards to StratoComm's offer and sale of its unregistered securities. *Id.* at 32-36.

Egregious and recurrent

Danzig's conduct was egregious because—while acting as an unregistered broker—he was directly involved in a successful yet fraudulent effort to market and sell over 62 million shares of StratoComm's stock for $4 million in non-exempt, unregistered offerings to unaccredited, inexperienced investors. *Id.* at 3, 24, 34, 36. Moreover, the primary "selling tool" Danzig used to market and sell these securities contained "absolute and unequivocal falsehood[s]" relating to StratoComm's purported TTS product. *Id.* at 13, 19-20. These falsehoods were themselves egregious, leaving an "unmistakable impression" that StratoComm was presently making TTS available (it did not even exist), had previously installed the system (it had not), sold $60 million of TTS units as of September 2008 (it sold none), and would sell an additional $75 million of the units by the year's end (it had no chance of doing so). *Id.* at 18-19. The Commission considers this sort of fraudulent and dishonest conduct to be particularly serious and subject to severe sanctions. *See, e.g.*, *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (the Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws" (internal quotation marks omitted)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 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)). Where a respondent has been enjoined from violating antifraud provisions of the securities laws, the Commission "typically" imposes a permanent bar. *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *37 (Oct. 29, 2014).

Danzig's conduct was also recurrent; despite lacking a license to sell securities since 2000, he spent over two years, from late 2007 until April 2010, marketing and selling StratoComm stock. Ex. 3 at 3-4, 13. During that time, he acted as StratoComm's designated point of contact for investors, relayed the terms of stock sales, handled paperwork for those sales,

and facilitated the issuance of shares. *Id.* at 13. In marketing StratoComm shares, he also repeatedly directed potential investors to the false and misleading executive overview. *Id.*

Scienter

Danzig carried out the underlying conduct with a high degree of scienter because he knew the executive overview that he used to entice investors into buying StratoComm shares contained materially false and misleading statements. He reviewed the document before it was disseminated, and during the period he was using it to sell StratoComm securities, he internally stated that the company had "no money, and no product." Ex. 3 at 11, 13, 24. Danzig's misconduct, therefore, demonstrates 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).

Assurances against future violations, recognition of wrongful conduct, and likelihood of future violations

Danzig has not offered assurances against future violations or communicated any recognition of his wrongful conduct, having defaulted in this proceeding. Although "[c]ourts have held 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). In this proceeding, Danzig has not appeared and thus has offered nothing to rebut that inference. Further, absent a bar, Danzig would be able to participate in the securities industry again, presenting a risk of future violative conduct harmful to investors.

Remedial Sanctions

It is appropriate and in the public interest to impose a permanent industry bar against Danzig. This does not include a penny stock bar; the Division does not request one because the district court already imposed one. Mot. for Sanctions at 4, n.1. Moreover, because the conduct at issue occurred before the July 22, 2010, effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, I decline to bar Danzig from associating with a municipal advisor or a nationally recognized statistical rating organization, and the Division is no longer pursuing such sanctions. *See* Pub. L. No. 111-203, §§ 4, 925(a), 124 Stat. 1376, 1390, 1850-51 (2010); *Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015); Notice of Non-Pursuit of Certain Sanctions, at 1-2.

I have considered Danzig's "'current competence' and the 'degree of risk' he poses to public investors and the securities markets in each of the areas covered by the remedies." *Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *34 (Mar. 7, 2014) (quoting *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *28 n.34 (Dec. 13, 2012), *called into question on other grounds by Koch*, 793 F.3d 147). "The industry relies on the fairness and integrity of all persons associated with each of the professions covered

by the collateral bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, 2012 SEC LEXIS 3855, at *43.

The extent, nature, and duration of Danzig's misconduct demonstrate that he is incapable of such fairness and integrity in any capacity in the securities industry. An industry bar, as opposed to a more limited bar or suspension, "will prevent [Danzig] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

Order

Accordingly, it is ORDERED that the Division's motion for sanctions against Craig Danzig is GRANTED, and that pursuant to Section 15(b) of the Securities Exchange Act of 1934, Craig Danzig is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent.

This Initial Decision shall become effective in accordance with and subject to the provisions of 17 C.F.R. § 201.360. Pursuant to 17 C.F.R. § 201.360, 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 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.

Danzig is again notified that he may move to set aside the default in this case. Pursuant to 17 C.F.R. § 201.155(b), a default may be set aside for good cause, to prevent injustice, and on such conditions as may be appropriate. 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.

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Jason S. Patil
Administrative Law Judge