INITIAL DECISION RELEASE NO. 907
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16141

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

In the Matter of	:	
	:	INITIAL DECISION OF DEFAULT
SEIJIN KI	:	October 28, 2015

APPEARANCE: Martin F. Healey for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Jason S. Patil, Administrative Law Judge

SUMMARY

In August 2013, Respondent Seijin Ki pleaded guilty in federal district court to two counts of wire fraud and two counts of mail fraud based on his involvement in a scheme to pay kickbacks to an FBI agent posing as a corrupt hedge fund manager. I must decide whether the conduct underlying Ki's guilty plea necessitates an order that he cease and desist from committing future securities law violations and be barred from acting as an officer and director or participating in an offering of penny stock. Because his conduct violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) thereunder and demonstrates a risk to the investing public were he permitted to return to his past occupation, I grant in part the Division of Enforcement's motion for sanctions and impose permanent penny stock and officer-and-director bars on Ki. Because these sanctions adequately protect the public interest, I decline to impose a cease-and-desist order.

PROCEDURAL BACKGROUND

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on September 22, 2014, pursuant to Sections 15(b) and 21C of the Exchange Act. The OIP alleges that Ki pleaded guilty to two counts of wire fraud and two counts of mail fraud on August 8, 2013, in *United States v. Seijin Ki*, No. 12-cr-10366 (D. Mass.) (the Criminal Case); on December 4, 2013, Ki was ordered to forfeit $33,000; and on December 11, 2013, Ki was sentenced to fifteen months of imprisonment, to be followed by one year of supervised release, and ordered to pay a $4,000 fine. OIP at 1. It further alleges that the facts underlying Ki's criminal plea and prison sentence constitute fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5(a). *Id.* at 4.

Ki was personally served with the OIP on February 23, 2015. *Seijin Ki*, Admin. Proc. Rulings Release No. 2441, 2015 SEC LEXIS 1013 (Mar. 18, 2015). When he failed to file an Answer, I ordered him to show cause why this proceeding should not be determined against him due to this failure. *Id.* I also warned him that if he failed to respond to the show cause order, he would be deemed in default. *Id.*

Ki did not respond to my show cause order, and on April 7, 2015, I found him in default and ordered the Division of Enforcement to file a motion providing legal and evidentiary support for the sanctions it seeks against Ki. *Seijin Ki*, Admin. Proc. Rulings Release No. 2507, 2015 SEC LEXIS 1275. I also informed Ki that he could move to set aside the default in accordance with Commission Rule of Practice 155(b), 17 C.F.R. § 201.155(b). *Id.*

The Division filed its motion for sanctions on July 7, 2015. To date, Ki has not filed an Answer, responded to my show cause order, or opposed the Division's motion.

FINDINGS OF FACT

Ki is in default for failing to file an Answer or otherwise defend this proceeding. *See* 17 C.F.R. §§ 201.155(a), .220(f). Thus, I deem the OIP's allegations to be true and determine this proceeding upon consideration of the record. *See* 17 C.F.R. § 201.155(a).

In 2011, Ki was the chief financial officer of Lightlake Therapeutics, Inc., a Nevada corporation purportedly engaged in drug development. OIP at 1-2; Mot. Ex. 2[1] at 16. Lightlake's common stock is registered with the Commission under Exchange Act Section 12(g) and is quoted on OTC Markets.[2] OIP at 2; Mot. Ex. 2 at 16. Ki was also the president and chief executive officer of Church & Crawford, Inc., a Nevada corporation purportedly engaged in the business of voice response technology. OIP at 1-2; Mot. Ex. 2 at 16. Its common stock is also quoted on OTC Markets and, until 2002, was registered with the Commission under Exchange Act Section 12(g). OIP at 2; Mot. Ex. 2 at 16.

At some time prior to January 13, 2011, two individuals who were in the business of assisting publicly traded companies obtain funding arranged for Ki to meet with a purported hedge fund manager (Fund Manager) so that Ki could solicit the Fund Manager's purchase of shares of Lightlake. OIP at 2; Mot. Ex. 2 at 16-17. The Fund Manager was in fact an undercover agent with the Federal Bureau of Investigation, and the hedge fund he supposedly represented did not exist. OIP at 2; Mot. Ex. 2 at 16-17. On or about January 13, 2011, Ki met with the Fund Manager to discuss a potential investment of the fund's money in Lightlake stock.

[1] Official notice of this document and of the docket and other records in the Criminal Case is taken pursuant to 17 C.F.R. § 201.323. I note that Motion Exhibit 2, the transcript of the change of plea hearing in the Criminal Case, reflects Ki's acknowledgment that the factual summary provided by the prosecutor was accurate. *See* Mot. Ex. 2 at 20.

[2] OTC Markets is a financial marketplace providing price and liquidity information for over-the-counter securities. *See* Mot. Ex. 2 at 16.

OIP at 2; Mot. Ex. 2 at 17. At the meeting, Ki was told that the Fund Manager would only buy shares of Ki's companies in exchange for a secret fifty percent kickback; the Fund Manager would purchase the shares at an artificially inflated price, thereby enabling him to keep half of the money he was supposedly investing on behalf of the fund. OIP at 2; Mot. Ex. 2 at 17. Ki was instructed to send the kickbacks to one or more companies controlled by the Fund Manager, disguised as payments for non-existent "consulting" services performed by the Fund Manager. OIP at 3; Mot. Ex. 2 at 17-18. The Fund Manager told Ki that he would begin by purchasing small amounts of Lightlake stock, with plans to increase the size of the funding installments in the future. OIP at 3; Mot. Ex. 2 at 17. He warned Ki that the kickback had to be kept confidential and hidden from the fund. OIP at 3; Mot. Ex. 2 at 17-18. Ki agreed to this arrangement. OIP at 3; Mot. Ex. 2 at 17.

On various dates between January and March 2011, Ki sent the Fund Manager documents related to the kickback transaction with Lightlake, including stock purchase agreements for Lightlake stock, consulting agreements between Lightlake and the Fund Manager's consulting company, and phony invoices in the name of the consulting company. OIP at 3; Mot. Ex. 2 at 18. On or about January 24, 2011, the Fund Manager made his first purchase of Lightlake stock, wiring Ki $21,000 from a bank account purportedly belonging to the fund. OIP at 3; *see* Mot. Ex. 2 at 18. Approximately two days later, Ki caused the kickback amount of $10,482 to be wired to a bank account in the name of the Fund Manager's consulting company. OIP at 3; Mot. Ex. 2 at 19. He later sent the Fund Manager a stock certificate representing the fund's purchase of Lightlake shares. OIP at 3; Mot. Ex. 2 at 19. The Fund Manager made a second purchase of Lightlake stock on February 9, 2011, wiring Ki $30,000, and Ki again wired back the $15,000 kickback to the consulting company's bank account and sent the Fund Manager a stock certificate representing the purchase. OIP at 3-4; Mot. Ex. 2 at 18-19.

Ki also asked the Fund Manager to purchase shares of Church & Crawford, which the Fund Manager agreed to do in exchange for the same fifty percent kickback. OIP at 4. On February 18, 2011, $15,000 was wired to Ki's bank account, purportedly from the fund. OIP at 4; Mot. Ex. 2 at 18. Ki wired the $7,500 kickback to one of the Fund Manager's consulting companies on February 22, 2011, and sent him a stock certificate representing the purchase of Church & Crawford shares the following day. OIP at 4; Mot. Ex. 2 at 18-19.

For the above conduct, Ki was sentenced to fifteen months in prison and one year of supervised release, and he was ordered to pay a fine of $4,000. OIP at 1; Criminal Case, ECF No. 75, at 17. He also agreed to forfeit $33,000, an amount which he admitted either constituted or was derived from the proceeds of his offense. OIP at 1; Criminal Case, ECF No. 54, at 7; Criminal Case, ECF No. 75, at 11, 17. At his sentencing hearing, Ki admitted that he committed the crimes "knowing they were unlawful and wrong," expressed remorse for his actions, and apologized to the boards of directors and shareholders of Lightlake and Church & Crawford. Criminal Case, ECF No. 75, at 15. According to the Federal Bureau of Prisons' website, Ki was released from prison on July 31, 2014. *See* Federal Bureau of Prisons Inmate Locator, *available at* http://www.bop.gov/inmateloc/ (last visited Oct. 21, 2015). Ki was served with the OIP in Toronto, Canada; the Division has not submitted any other information about his current location or occupation. *See Seijin Ki*, Admin. Proc. Rulings Release No. 2441, 2015 SEC LEXIS 1013 (Mar. 18, 2015).

CONCLUSIONS OF LAW

The Division alleges that through the conduct described above, Ki willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a). OIP at 4; Mot. at 3-4. Section 10(b) and Rule 10b-5, its implementing rule, generally prohibit fraudulent conduct in the purchase or sale of securities. At issue here is subsection (a) of Rule 10b-5, which proscribes the use of any device, scheme, or artifice to defraud by use of interstate commerce or the mails in connection with the purchase or sale of any security. 17 C.F.R. § 240.10b-5. Liability under Rule 10b-5 requires a showing of scienter, a "mental state embracing intent to deceive, manipulate, or defraud." *Francis V. Lorenzo*, Securities Act of 1933 Release No. 9762, 2015 SEC LEXIS 1650, at *17 & n.17 (Apr. 29, 2015) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976)). For Ki's violation to be willful, he need only have intended to commit the acts constituting the violation. *See Wonsover v. SEC*, 205 F. 3d 408, 414 (D.C. Cir. 2000).

After reviewing the facts underlying Ki's guilty plea in the Criminal Case, I conclude that his conduct violated Rule 10b-5(a). As an initial matter, the Lighthouse and Church & Crawford stock Ki sold to the Fund Manager clearly constituted "securities" as defined by the Exchange Act, and his misconduct was in connection with the purchase or sale of such securities. *See* 15 U.S.C. § 78c(a)(10) (defining "security" to include stock); *SEC v. Zandford*, 535 U.S. 813, 819-20, 825 (2002). And the wire transfers between Ki and the Fund Manager's companies were made across state lines, as were Ki's mailings of the stock certificates, thereby satisfying the mails and interstate commerce requirement. *See* OIP at 3-4; *United States v. Jinian*, 725 F.3d 954, 968 (9th Cir. 2013) ("Wires are channels or instrumentalities of interstate commerce."); *United States v. Brown*, 555 F.2d 336, 340 (2d Cir. 1977) (distributing securities obtained as part of a fraudulent scheme by mail sufficient to support federal jurisdiction).

Ki's engagement in the kickback scheme also constituted a device, scheme, or artifice to defraud. He agreed to conceal the illegal payments he was making to the Fund Manager in order to keep the criminal arrangement hidden from his companies' auditors and the purported hedge fund. *See* OIP at 3; Mot. Ex. 2 at 17-18. He affirmatively contributed to this deception by sending phony "consulting" invoices to the Fund Manager's consulting companies, hoping to create the impression that the kickback payments were for legitimate services. OIP at 3-4; Mot. Ex. 2 at 17-18. He then directed the kickbacks to the consulting companies rather than the Fund Manager, further disguising their true nature. OIP at 3-4; Mot. Ex. 2 at 17-18. This conduct created the false impression that the Fund Manager's purchase of the stock was lawful and legitimate. *See John P. Flannery*, Securities Act Release No. 9689, 2014 SEC LEXIS 4981, at *40 n. 52 (Dec. 15, 2014) ("[T]o employ a 'deceptive' device . . . is to engage in conduct that gives rise to a false appearance of fact."). Ki's scienter is evident through his admission that he knew his conduct was "unlawful and wrong" at the time he committed the crimes. Criminal Case, ECF No. 75, at 16.

For these reasons, I find that Ki willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a).

SANCTIONS

The Division asks that the following sanctions be issued as to Ki: a penny stock bar, an officer-and-director bar, and a cease-and-desist order.

Penny Stock Bar

Section 15(b)(6) of the Exchange Act authorizes the Commission to issue a penny stock bar against a person who was participating in an offering of penny stock at the time he committed certain types of misconduct if such a bar is in the public interest. 15 U.S.C. § 78*o*(b)(6)(A). Among the types of misconduct covered by this provision are felonies and misdemeanors involving the purchase or sale of securities, and violations of 18 U.S.C. § 1343, the wire fraud statute. *Id.* § 78*o*(b)(4)(B)(i), (iv). The term "person participating in an offering of penny stock" includes any person acting as a promoter, finder, consultant, or agent, who engages in activities with an issuer for purposes of the issuance or trading in any penny stock, or who induces or attempts to induce the purchase or sale of any penny stock. *Id.* § 78*o*(b)(6)(C). Lightlake and Church & Crawford are penny stock issuers, and the kickback scheme involved Ki's sale of their stock to the Fund Manager on multiple occasions. *See* OIP at 1, 3-4. Ki pleaded guilty to violating 18 U.S.C. § 1343, and his misconduct involved the purchase or sale of securities. Because the other requirements of Section 15(b)(6) are met, a penny stock bar will be imposed if it is in the public interest.

The Commission considers the *Steadman* factors to assess the public interest: (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 v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (citing *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Vladlen "Larry" Vindman*, Securities Act Release No. 8679, 2006 WL 985308, at *11 (Apr. 14, 2006).

Egregiousness, Repeated Violations, and Scienter

Ki's conduct was egregious and committed with a high level of scienter. He knowingly engaged in a kickback scheme and took affirmative steps to conceal the illegal arrangement from his companies' auditors and the Fund Manager's (purported) fund. Though it was the Fund Manager who initially proposed the kickback arrangement, Ki played an active role in expanding the scheme's scope, approaching the Fund Manager about also purchasing Church & Crawford stock. There is no evidence that the scheme extended past the end of February 2011, but Ki received multiple illegal payments from the Fund Manager during the two months in question and repeatedly wired kickback payments to the Fund Manager. Ki also acted with a high degree of scienter, admitting during the Criminal Case that he knew the kickback scheme was illegal at the time he entered into it.

Recognition of Wrongful Conduct, Assurances Against Future Violations, and Occupation

In the Criminal Case, Ki acknowledged that he "committed these very serious crimes," and he stated that he did "not blame anyone other than [himself]" and took "full responsibility" for his actions. Criminal Case, ECF No. 75, at 15-16. He also repeatedly expressed remorse for his crimes and apologized to those he may have harmed. *Id.* Though he did not explicitly promise to abstain from future illegal behavior, he stated that he had "learned a lot" while in jail and would "take away . . . hard-earned lessons and start the next chapter of [his] life with [his] family as a better husband, father, and son." *Id.* at 16. Ki did not participate in this proceeding, and thus neither affirmed nor disclaimed these statements. The Division has presented no evidence regarding Ki's employment history prior to serving as an officer of Lightlake and Church & Crawford, and it has provided no information about Ki's occupation since his release from prison.

Though Ki's sincere contrition weighs against the imposition of a bar, he knowingly committed a serious fraud while serving in a position of trust at two publicly traded penny stock companies. Because penny stock is traded in the relatively unregulated over-the-counter market, without a bar Ki could easily re-enter the market at will. I find that it is in the public interest that Ki be permanently barred from participating in an offering of penny stock.

Officer and Director Bar

Exchange Act Section 21C(f) authorizes a bar against a respondent who has violated Exchange Act Section 10(b) from acting as an officer or director of any issuer with a class of securities registered pursuant to Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15(d), "if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer." 15 U.S.C. § 78u-3(f). The so-called *Patel* factors will be considered in addition to the *Steadman* factors in evaluating the appropriateness of this sanction. *Compare SEC v. Alliance Transcription Servs., Inc.*, No. 08-cv-1464, 2010 WL 483792, at *2 (D. Ariz. Feb. 8, 2010); *SEC v. Abellan*, 674 F. Supp. 2d 1213, 1223 (W.D. Wash. 2009); *with SEC v. Bankosky*, 716 F.3d 45, 47-49 (2d Cir. 2013); *SEC v. Metcalf*, No. 11-cv-493, 2012 WL 5519358, at *4 (S.D.N.Y. Nov. 13, 2012); *SEC v. Levine*, 517 F. Supp. 2d 121, 144-46 (D.D.C. 2007), *aff'd*, 279 F. App'x 6 (D.C. Cir. 2008). The *Patel* factors, which significantly overlap with the *Steadman* factors, are: (1) the egregiousness of the underlying securities law violation; (2) recidivism; (3) the defendant's role or position in the fraud; (4) degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood of recurrence. *Bankosky*, 716 F.3d at 48; *SEC v. Patel*, 61 F.3d 137, 141 (2d Cir. 1995).

As discussed above, Ki committed a serious violation of Exchange Act Section 10(b) and Rule 10b-5(a) with full awareness of the fraudulent and deceptive nature of his conduct. At the time in question he was working in high-level executive positions in the two penny stock companies, serving as the chief financial officer of Lightlake and the president and chief executive officer of Church & Crawford. And he played a significant role in the scheme by using these officer positions to arrange for and disguise multiple illegal kickbacks. Ki also had an economic stake in the scheme – he was wired approximately $66,000 from the Fund Manager and retained approximately half of that amount, which he was later ordered to forfeit. Finally, Ki

has shown a willingness to deceive the boards of directors and shareholders of publicly traded companies, and without an officer and director bar, would be free to assume officer and director roles in the future. It is therefore appropriate and in the public interest to impose a permanent officer and director bar against Ki. He will be barred from acting as an officer or director of any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

Cease-and-Desist Order

Section 21C(a) of the Exchange Act authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of the Exchange Act or rules thereunder. 15 U.S.C. § 78u-3(a). In determining whether a cease-and-desist order is appropriate, the Commission considers the *Steadman* factors, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the remedial function of a cease-and-desist order given the other sanctions sought. *See WHX Corp. v. SEC*, 362 F.3d 854, 859-61 (D.C. Cir. 2004); *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *116 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). The analysis of these factors is flexible and is intended to guide the exercise of discretion in determining appropriate sanctions. *KPMG Peat Marwick LLP*, 2001 SEC LEXIS 98, at *116. There must be some risk that the respondent will commit future violations, but such a showing is "significantly less than that required for an injunction." *Id.* at *101, *114. Instead, absent evidence to the contrary, the existence of a violation raises an inference that it will be repeated. *Id.* at *102; *see 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)).

As discussed above, Ki's conduct constituted a serious violation of the securities laws and a deliberate abuse of his executive positions at Lightlake and Church & Crawford. But he has expressed heartfelt remorse for his participation in the scheme and accepted full responsibility for his misconduct, which occurred over four years ago. *Cf. Geiger*, 363 F.3d at 489 (holding that a respondent's lack of remorse and failure to recognize his wrongdoing were appropriate considerations in determining that a cease-and-desist order was appropriate). No hedge fund investors were harmed by his crimes because the fund did not actually exist. There is also no evidence that, outside this two-month period in 2011, Ki showed any propensity for violating securities laws. Nor is there any evidence that he was involved in the purchase or sale of securities prior to January 2011, or that he has become so involved since his release from prison.

Agreeing to participate in the kickback scheme was wrong. But the scheme was not contrived by Ki – instead, while seeking funding for his companies, he went along with the Fund Manager's conditions on such an investment. I have already found that this misconduct warrants permanent penny stock and officer-and-director bars. For this reason, Ki is unlikely to find himself in a position to repeat his violation in the future. He cannot again be an officer of a publicly traded company seeking financing, and he cannot again participate in an offering of penny stock. As noted, no evidence suggests that he will participate in the purchase or sale of securities in some other capacity, let alone, given his earnest contrition, that he will do so and again commit fraud. In light of the sanctions already imposed, I do not find that there is any

additional remedial function to be served by imposing a cease-and-desist order on Ki, and I decline to do so.

ORDER

The Division of Enforcement's motion for sanctions is GRANTED IN PART, and it is ORDERED that:

> pursuant to Section 15(b) of the Securities Exchange Act of 1934, SEIJIN KI is permanently BARRED from participating in an offering of penny stock[3]; and
>
> pursuant to Section 21C(f) of the Securities Exchange Act of 1934, SEIJIN KI is permanently BARRED from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to Section 15(d) of the Securities Exchange Act of 1934.

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 a 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 occur, the Initial Decision shall not become final as to that party.

Ki is again notified that he 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.*

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Jason S. Patil
Administrative Law Judge

[3] Thus, he is barred from acting as a promoter, finder, consultant, or agent, from otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, and from inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Section 15(b)(6)(A), (C) of the Securities Exchange Act of 1934.