INITIAL DECISION RELEASE NO. 1000
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16876

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

In the Matter of EFIM AKSANOV	INITIAL DECISION April 12, 2016

APPEARANCES: Paul G. Gizzi and Rhonda L. Jung for the Division of Enforcement, Securities and Exchange Commission

Efim Aksanov, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

Respondent Efim Aksanov participated in an unsuccessful "pump-and-dump" scheme, and consequently pled guilty to conspiracy to commit securities fraud. I find that it is in the public interest to permanently bar him from participating in an offering of penny stock.

Procedural Background

On September 30, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Aksanov, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that from about 2012 through at least March 2013, Aksanov was a principal of Stock News Info LLC, an entity that purportedly introduced issuers to individuals and entities that provided internet and other electronic promotions, and during that time, Aksanov participated in a penny stock offering of Face Up Entertainment Group, Inc. OIP at 1. The OIP also alleges that on October 21, 2014, Aksanov pled guilty to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371, in *United States v. Aksanov*, No. 13-cr-410 (S.D.N.Y.), and that Aksanov was sentenced to a prison term of twenty-one months followed by three years of supervised release, and ordered to forfeit $21,750.[1] *Id.* at 2.

[1] Aksanov was one of seven defendants in the criminal proceeding, along with Yitz Grossman and Steve Koifman. Ex. A at 1.

Aksanov was served with the OIP on October 5, 2015, in accordance with Rule 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i), and his answer was due by October 28, 2015. *Efim Aksanov*, Admin. Proc. Rulings Release No. 3248, 2015 SEC LEXIS 4318 (ALJ Oct. 21, 2015). At the prehearing conference on November 3, 2015, Aksanov stated that he sent an answer by certified mail, and that in his answer, he admitted to most of the allegations, but that he did not want a permanent bar. Tr. 4, 8. As of today, the Commission's Office of the Secretary has no record of having received an answer from Aksanov in this proceeding; additionally, the Division represented that it had not received an answer either. Motion at 1.

Also at the prehearing conference, I set a briefing schedule for the parties to file motions for summary disposition. *Efim Aksanov*, Admin. Proc. Rulings Release No. 3291, 2015 SEC LEXIS 4527 (ALJ Nov. 3, 2015). The Division filed its motion on December 11, 2015, Aksanov did not file an opposition, and the Division filed a reply on January 12, 2016, in which it simply noted that Aksanov had failed to oppose the motion. Reply at 1.

The Division submitted the declaration of Rhonda L. Jung in support of the motion, attaching: the criminal complaint against Aksanov and his co-defendants (Ex. A); the superseding indictment against Aksanov and his co-defendants (Ex. B); the transcript from Aksanov's plea hearing (Ex. C); the transcript from Aksanov's sentencing hearing (Ex. D); the judgment as to Aksanov (Ex. E); documents filed with the Commission by Face Up (Ex. F); and the Bloomberg price volume chart for Face Up common stock from May 4, 2012, to April 3, 2013 (Ex. G). Pursuant to Rule 323, I take official notice of the proceedings, docket sheets, and records in *Aksanov*, and of Face Up's filings with the Commission.[2] *See* 17 C.F.R. § 201.323. I also take official notice of stock prices published by Bloomberg. *See S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *31 & n.43 (Dec. 5, 2014) (taking official notice of information published on a Bloomberg terminal).

Summary Disposition Standard

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. 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 noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40-41 (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 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving

[2] Parts of Face Up's Forms 10-K refer to the company by its prior name, Game Face Gaming, Inc. Ex. F at 3 (Dec. 31, 2011, Form 10-K).

fraud is not appropriate "will be rare." *John S. Brownson*, 55 S.E.C. 1023, 1028 n.12 (2002), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

The findings and conclusions in this initial decision are based on the record and on facts officially noticed pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this initial decision have been considered and rejected.

Findings of Fact and Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to bar Aksanov from participating in an offering of penny stock because: (1) at the time of the alleged misconduct, he was participating in an offering of penny stock; (2) he was convicted within ten years of the commencement of this proceeding of an offense specified in Section 15(b)(4)(B); and (3) such sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(B), (6)(A)(ii).

First, Aksanov's conduct in the underlying proceeding involved a penny stock, Face Up. Exchange Act Section 3(a)(51) defines "penny stock" as "any equity security" that does not meet certain criteria laid out in the statute and Rule 3a51-1 thereunder. 15 U.S.C. § 78c(a)(51). According to Rule 3a51-1, an equity security is a penny stock if: (1) it has a price of less than $5 per share; (2) net tangible assets less than $2 million, if the issuer has been in continuous operation for at least three years, or $5 million, if the issuer has been in continuous operation for less than three years; or (3) average revenue less than $6 million for the last three years. 17 C.F.R. § 240.3a51-1(d), (g). Face Up traded at less than five dollars per share from May 4, 2012, to April 3, 2013, with its price never rising above $1. Ex. G. Additionally, Face Up's net tangible assets were less than $5 million per year and its average revenue was less than $6 million per year during its operating history. Ex. F at F-3 – F-4 (Dec. 31, 2011, Form 10-K), F-2 – F-3 (December 31, 2012, Form 10-K). The term

> "person participating in an offering of penny stock" includes any person 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.

15 U.S.C. § 78*o*(b)(6)(C). Aksanov participated in the offering of a penny stock through his involvement in a "scheme to manipulate the stock price of [Face Up] to entice people to purchase the stock so that the individuals involved in the scheme would profit from it." Ex. C at 11. Additionally, the OIP alleges that Aksanov participated in an offering of a penny stock, which he did not deny. *See* 17 C.F.R. § 201.220(c) ("Any allegation not denied shall be deemed admitted."); Tr. 8 ("I admitted to most of the allegations.").

Second, Aksanov was convicted within the past ten years of a felony that "involve[d] the purchase or sale of any security." 15 U.S.C. § 78*o*(b)(4)(B)(i), (b)(6)(A)(ii). On October 21,

2014, Aksanov pled guilty to conspiring, in violation of 18 U.S.C. § 371, to commit securities fraud, in violation of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, and the judgment was entered on March 31, 2015. Exs. C, E. Accordingly, Aksanov may be sanctioned if it is in the public interest.

Sanction

The Division seeks a permanent penny stock bar against Aksanov. Motion at 1, 8-10. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission has also considered the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield, Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). 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.

A. Background of Aksanov's Misconduct

As part of his plea, Aksanov admitted that he was involved in a "pump-and-dump" scheme to "manipulate the stock price of [Face Up] to entice people to purchase the stock so that the individuals involved in the scheme would profit from it" and that "[a]long the way, [he] attempted to get back monies that [he] accepted from Yitz Grossman to pay for the marketing" and threatened a co-conspirator with "bodily harm[]." Ex. A at 8; Ex. C at 11-12. The scheme unfolded from about 2012 through March 2013 as follows:

Aksanov and his co-conspirator Koifman ran Stock News, a company that connected large investors in a particular penny stock with a company that markets penny stocks. Ex. D at 12, 33. At his sentencing hearing, Aksanov's counsel described Stock News as a "middleman" hired "to do press releases and things of that nature," but that "they weren't the type of business that was doing the emails themselves or anything like that" and they "would always have to go to a third party." *Id.* at 13. Stock News contacted penny-stock companies that had no trading history to recommend hiring a promoter. *Id.* at 32-33. Stock News often reached out to a penny-stock company's large shareholders "because usually the companies don't want to deal with marketing people." *Id.* According to Aksanov, these shareholders hoped to benefit because "[they] would want to sell [their] stock to recoup [their] [investment] back or make a profit" and in return, Stock News would receive a fee from the investor for making a referral to the promoter. *Id.*

Yitz Grossman, who had a $10,000 per month consulting agreement with Face Up, effectively controlled a significant number of shares of Face Up. Ex. A at 5; Ex. D at 8-9.

Grossman hired several individuals to pump-and-dump Face Up's stock so he could profit off his shares. Ex. D at 7, 15. He then hired Aksanov and Stock News when he felt that the people he originally hired were not performing well, and gave Aksanov about $350,000 to $400,000 to complete the job. *Id.* at 7, 12, 15-16. Aksanov, as the middleman and without Grossman's knowledge, contacted the original individuals hired by Grossman and gave them the money to continue the pump-and-dump scheme. *Id.* at 7, 17.

The conspirators' intent was to entice buyers to purchase Face Up stock by releasing positive, but false, information to the public so that Grossman could sell his shares and make a profit. Ex. D at 14-15. The pump-and-dump scheme was not successful. *Id.* at 7, 18-19. As a result, Grossman pressured Aksanov about where his money had gone and that he wanted it back. *Id.* at 7, 16. Also as a result, Aksanov pressured one of his co-conspirators to return the money by threatening bodily harm, namely, that Aksanov would put "[s]lugs into" the co-conspirator and that Aksanov and Koifman would "call Moscow." *Id.* at 16, 19; *see* Ex. A at 52-53. Although Aksanov was charged with one count of conspiracy to commit extortion, the charge was dropped as part of his plea agreement. Ex. B at 4; Ex. C at 2, 6; Ex. D at 41.

B. A Penny Stock Bar is in the Public Interest

1. Egregiousness and Recurrence

Aksanov's misconduct was egregious. He admitted to engaging in a scheme to manipulate the stock price of Face Up so that unsuspecting individuals would purchase the stock and those involved in the scheme would profit at the investors' expense. Ex. C at 11-12. The district court found that his role was "more active than a passive middle man." Ex. D at 40. Although the scheme was ultimately unsuccessful, there was a substantial risk of harm to investors and the marketplace had the scheme succeeded. *Id.* at 18-19. Additionally, Aksanov was convicted of conspiracy to commit securities fraud, reflecting "an egregious abuse of the trust placed in him as a securities professional." *Eric S. Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *15-16 (Aug. 26, 2011) (citation omitted); *see* Ex. E. In addition to his participation in the stock manipulation scheme, Aksanov threatened a co-conspirator with bodily harm. Ex. D at 16, 19. While Aksanov apologized to this individual about ten minutes later, the district court found that his choice of words – "[s]lugs into" and "call Moscow" – was "harsh." *Id.* at 19, 21.

Aksanov's conduct was also recurrent. Though this particular pump-and-dump scheme only lasted from about 2012 to March 2013, the district court stated that it was "not persuaded that this was the only penny stock manipulation that Mr. Aksanov participated in" and found that "this was not a one-time, one-off event." Ex. D at 40.

2. Scienter

By pleading guilty to a violation of 18 U.S.C. § 371, with securities fraud in violation of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 as the predicate offense, Aksanov admitted that he knowingly and voluntarily joined a conspiracy to violate the securities laws and regulations of the United States. Ex. B at 1-4; Ex. D at 6; *see United States v. Feola*, 420 U.S. 671, 686 (1975)

(noting that in order to sustain a judgment of conviction on a charge of conspiracy to violate a federal statute, the government must prove at least the degree of criminal intent necessary for the substantive offense); *United States v. Vilar*, 729 F.3d 62, 88-89 (2d Cir. 2013) (scienter is an element of the government's criminal case for securities fraud under Section 10(b) of the Exchange Act). Aksanov's conduct therefore evinced scienter, an "intent to deceive, manipulate, or defraud." *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (internal quotation marks omitted).

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

Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). The fact that Aksanov previously engaged in securities-related misconduct raises an inference that he will do it again.

Aksanov has made some assurances against future violations and has in part recognized the wrongful nature of his conduct. At his sentencing hearing, Aksanov said he was "very sorry for what [he's] done" and apologized to "everyone." Ex. D at 30, 32. He stated that he wants to "move on with [his] life, and hopefully just be a regular normal person and never be in this type of situation again." *Id.* at 32. On the other hand, he also claimed that he did not know at the time that what he was doing was wrong, and placed the blamed largely on his business partner, who "was more of a stock guy" than Aksanov. *Id.* at 30-31. At the prehearing conference in this proceeding, he stated that his "one mistake" was "getting involved with the wrong people." Tr. 8. Aksanov reiterated that at the time he thought he "was just being a consultant . . . [and] doing something that was legal," and explained that he ultimately pled guilty because he did not have the money to go to trial. Tr. 10. On balance, Aksanov has not rebutted the inference that he may commit securities-related misconduct in the future.

4. Opportunities for future violations

The final *Steadman* factor is the "likelihood that the [respondent]'s occupation will present opportunities for future violations." *Steadman*, 603 F.2d at 1140; *see also Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *13; *Johnny Clifton*, Securities Act of 1933 Release No. 9417, 2013 SEC LEXIS 2022, at *53 (July 12, 2013); *Alfred Clay Ludlum, III*, Investment Advisers Act of 1940 Release No. 3628, 2013 SEC LEXIS 2024, at *16-17 (July 11, 2013). Aksanov requests that he only be barred for a period of five years and argues that a permanent bar would be "unfair" because he does not know "what's going to happen in 5, 10 years from now." Tr. 8. Aksanov was sentenced to twenty-one months of incarceration, followed by three years of supervised release, one of the conditions of which is a "bar[] from engaging in any stock promotion or marketing activities for any publicly traded company, or disseminating news or reports on the Internet regarding any publicly traded company." Ex. E at 2-4. The Commission does not consider a criminal sentence as mitigative of the appropriate sanction. *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at

*27 (Jan. 14, 2011). Absent a permanent bar, in approximately March 2020, Aksanov will have the ability (and possible desire) to re-enter the penny-stock industry, which would present opportunities for future wrongdoing.

5. Other considerations

Once he was arrested, Aksanov cooperated with the government in its investigation, though he did not receive a cooperation agreement because the government believed Aksanov may have minimized his role "to some degree." Ex. D at 6-7, 29. Aksanov otherwise provided truthful information that was helpful and relevant to its investigation. *Id.* at 29, 39-40. He timely disclosed to the government the fact that after their arrests, Grossman approached him to discuss their cases, their defenses, and what Grossman wanted Aksanov to say. *Id.* at 10. This information corroborated other information received by the government and led to sentencing enhancements for other defendants. *Id.* at 28-29. Although Aksanov has battled drug abuse and addiction, he has been sober since his arrest. Ex. C at 3; Ex. D at 24-25. This is commendable and I applaud Aksanov for beginning to turn his life around.

At the same time, Aksanov's misconduct was relatively recent, and industry bars have long been considered effective deterrence. *See Guy P. Riordan*, Securities Act Release No. 9085, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases). Aksanov's actions suggest a lack of current competence and a substantial degree of risk to investors and securities markets posed by his continuance in the penny-stock market. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *34 (Mar. 7, 2014). A permanent penny-stock bar will act as a strong deterrent against Aksanov engaging in future misconduct and be a general deterrent against others in the industry from engaging in similar misconduct.

On balance, the public interest factors, although far from one-sided, weigh in favor of a permanent penny-stock bar.

Order

It is ORDERED that the Division of Enforcement's motion for summary disposition against Respondent Efim Aksanov is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Efim Aksanov is permanently BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Pursuant to that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule 111. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for

review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

This 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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Cameron Elliot
Administrative Law Judge