INITIAL DECISION RELEASE NO. 1117
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17650

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

In the Matter of	:	INITIAL DECISION MAKING FINDINGS
	:	AND IMPOSING SANCTION BY DEFAULT
JOE LAWLER	:	March 21, 2017

APPEARANCES: Polly Atkinson for the Division of Enforcement, Securities and Exchange Commission

Joe Lawler, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Joe Lawler from the securities industry. He was previously enjoined against violations of the registration and antifraud provisions of the securities laws.

I. INTRODUCTION

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on October 28, 2016, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on *SEC v. Projaris Management, LLC*, No. 13-cv-849 (D.N.M. May 17, 2016), in which Respondent Joe Lawler was enjoined against violations of the registration and antifraud provisions of the securities laws.

At a December 15, 2016, prehearing conference at which Lawler appeared, January 27, 2017, was set as the due date for his Answer to the OIP. *Joe Lawler*, Admin. Proc. Rulings Release No. 4464, 2016 SEC LEXIS 4683 (A.L.J. Dec. 19, 2016). Lawler was advised that if he failed to file an Answer within the time provided, he would be deemed to be in default, and the undersigned would enter an order barring him from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[1] *See id.*; OIP at 2; 17

[1] Thus, he would be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging 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, pursuant to Exchange Act Section 15(b)(6)(A), (C).

C.F.R. §§ 201.155(a)(2), .220(f). Lawler did not file an Answer and was ordered to show cause, by March 13, 2017, why he should not be deemed to be in default and barred from associating with any 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. *Joe Lawler*, Admin. Proc. Rulings Release No. 4632, 2017 SEC LEXIS 598 (A.L.J. Feb. 27, 2016). The Division of Enforcement also requested these sanctions in its March 3, 2017, filing.[2] To date, Lawler has not filed an Answer to the OIP, responded to the order to show cause, or submitted any other correspondence in this proceeding. Accordingly, he has failed to answer or otherwise to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Therefore, he is in default, and the undersigned finds that the allegations in the OIP are true as to him. *See* OIP at 2; 17 C.F.R. §§ 201.155(a), .220(f). Official notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in *SEC v. Projaris Management, LLC*, and in *United States v. Lawler*, No. 14-cr-2781 (D.N.M.), and of the public official records of the Commission.

II. FINDINGS OF FACT

Lawler was enjoined, on consent, in *SEC v. Projaris Management, LLC*, from committing violations of Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and of Sections 5 and 17(a) of the Securities Act of 1933 on May 17, 2016; he was also ordered to pay disgorgement of $835,000 plus prejudgment interest of $85,146 and to pay a civil penalty of $150,000. *SEC v. Projaris Mgmt., LLC*, ECF No. 91.[3] Lawler was also convicted, on his plea of guilty in *United States v. Lawler*, of twelve counts of wire fraud in violation of 18 U.S.C. § 1343 on November 16, 2015; he was sentenced to thirty-six months of imprisonment followed by three years of supervised release and ordered to pay $478,511.37 in restitution. *United States v. Lawler*, ECF No. 82.

In his January 5, 2016, Consent in *SEC v. Projaris Management, LLC*, Lawler stated that he "understands and agrees to comply with . . . the Commission's policy 'not to permit a defendant . . . to consent to a judgment . . . that imposes a sanction while denying the allegations . . . in the complaint or [OIP].'" *SEC v. Projaris Mgmt., LLC*, ECF No. 87-1 at 4. Further, he affirmatively acknowledged his guilty plea for related conduct in *United States v. Lawler*. *Id.*, ECF No. 87-1 at 1, 4. Finally, he agreed he "will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis" and "hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint." *Id.*, ECF No. 87-1 at 4.

From May 2008 through August 2012, Lawler offered and sold the securities of a pooled investment vehicle, and received compensation for each transaction in which investors bought the securities. OIP at 1. During that time period, he was neither registered with the Commission nor associated with any person or entity registered with the Commission. *Id.* In connection with the

[2] The filing, titled "Motion for Summary Disposition," has been considered as a motion for default because Lawler did not file an Answer. *See* 17 C.F.R. § 201.250(b).

[3] The court ordered that any restitution that Lawler actually paid in *United States v. Lawler* would be credited toward payment of his disgorgement obligation. *Id.*

aforementioned unregistered sale of interests in a pooled investment vehicle, Lawler misused and misappropriated investor funds, falsely stated to investors that their funds were invested, sent out false account statements, made Ponzi-like payments, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. *Id*. at 1-2.

III. CONCLUSIONS OF LAW

Lawler has been enjoined "from engaging in or continuing any conduct or practice in connection with . . . the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act.

IV. SANCTION

A collateral bar will be ordered.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 78*o*(b)(6). The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Investment Advisers Act of 1940 Release No. 2151, 2003 SEC LEXIS 1767, at *5 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

As described in the Findings of Fact, Lawler's conduct was egregious and recurrent over a period of four years, and involved a high degree of scienter. Lawler has not made assurances against future violations, but had he done so, their weight would be diminished by the fact that he has been adjudged guilty of a felony based on related conduct. His occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could participate in the securities industry. The violations are relatively recent. The $835,000 of ill-gotten gains that he was ordered to disgorge is a measure of the direct harm to the marketplace. Further, as the Commission has often emphasized, the public interest determination extends beyond

consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). Violations involving dishonesty weight in favor of a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

The Commission considers a fraud to be especially serious and to subject a respondent to the severest of sanctions. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *29-30. Indeed, from 1995 to the present, there have been over fifty litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred[4] – at least fifty unqualified bars and three bars with the right to reapply after five years.[5] Further, in every such case that followed the statutory provision of collateral bars, the Commission imposed a collateral bar rather than an industry specific bar, reasoning that the antifraud provisions of the securities laws apply broadly to all securities-related professionals and violations demonstrate unfitness for future participation in the securities industry, even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 SEC LEXIS 1926 (May 27, 2016). The time period – through August 2012 – of Lawler's violative conduct does not run afoul of the court's ruling in *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017), that a collateral bar cannot be imposed when the violative conduct on which a follow-on proceeding was based ended before the July 22, 2010, effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, JOE LAWLER IS BARRED from associating with any 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.[6]

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[4] In the cases authorized before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which authorized collateral bars, the Commission imposed industry-specific bars, such as a bar from association with an investment adviser on a respondent who had been associated with an investment adviser at the time of his violation.

[5] Those three were *Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987 (Oct. 22, 1996), *Martin B. Sloate*, Exchange Act Release No. 38373, 1997 SEC LEXIS 524 (Mar. 7, 1997), and *Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504 (June 30, 2008). The Commission's opinions do not make clear the factors that distinguished these cases from those in which unqualified bars were imposed, but there is little difference between a "bar" and a "bar with the right to reapply in five years."

[6] Thus, Lawler will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any

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.[7]

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Administrative Law Judge

penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Exchange Act Section 15(b)(6)(A), (C).

[7] A respondent may also file a motion to set aside a default pursuant to 17 C.F.R. § 201.155(b). *See Alchemy Ventures, Inc.*, Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *13 & n.28 (Oct. 17, 2013); *see also David Mura*, Exchange Act Release No. 72080, 2014 SEC LEXIS 1530 (May 2, 2014).