INITIAL DECISION RELEASE NO. 1126
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17693

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

In the Matter of		
	:	INITIAL DECISION MAKING FINDINGS
SEAN P. FINN and	:	AND IMPOSING SANCTION BY DEFAULT
M. DWYER LLC	:	April 21, 2017

APPEARANCE: Stephen W. Simpson for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Respondents Sean P. Finn and M. Dwyer LLC from the securities industry. They were 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 November 21, 2016, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on *SEC v. Malom Grp. AG*, No. 13-cv-2280 (D. Nev. Nov. 1, 2016), in which Respondents were enjoined against violations of the registration and antifraud provisions of the federal securities laws.

Respondents were served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i), (ii), (iv) on January 26, 2017. Their Answer was due within twenty days of service on them. *See* OIP at 3; 17 C.F.R. § 201.220(b). Respondents were warned that if they failed to file an Answer within the time provided, they would be deemed to be in default, and the undersigned would enter an order barring them from the securities industry. *See Sean P. Finn*, Admin. Proc. Rulings Release No. 4425, 2016 SEC LEXIS 4555 (A.L.J. Dec. 8, 2016); OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f). They did not file an Answer, and were ordered to show cause, by April 17, 2017, why they should not be deemed to be in default and be 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. *Sean P. Finn*, Admin. Proc. Rulings Release No. 4658, 2017 SEC LEXIS 691 (A.L.J. Mar. 7, 2017). To date, Respondents have not filed an Answer to the OIP, responded to the order to show cause, or submitted any other correspondence in this proceeding. Accordingly, they have failed to answer or otherwise to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Therefore,

they are in default, and the undersigned finds that the allegations in the OIP are true as to them. *See* OIP at 3; 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. Malom Group AG* and of the public official records of the Commission.

II. FINDINGS OF FACT

From April 2010 through September 2011, Finn, then-resident of Whitefish, Montana, was the sole owner, officer, and employee of M. Dwyer. Finn and M. Dwyer were enjoined in *SEC v. Malom Group AG* 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 and from directly or indirectly participating in the issuance, offer, or sale of any security, with the exception of the purchase or sale of securities listed on a national securities exchange; the court also ordered them jointly and severally liable with others for disgorgement of $6,025,000 plus prejudgment interest of $499,719.67 for a total of $6,524,719.67, and ordered each to pay a civil penalty of $701,950. *SEC v. Malom Grp. AG*, ECF No. 57 at 2-5 (Nov. 1, 2016). The judgment was entered by default on the Commission's motion setting forth factors to be considered in entering a default. *SEC v. Malom Grp. AG*, ECF Nos. 33 (June 5, 2014), 34 (June 6, 2014).

In the conduct underlying the injunction, from April 2010 to September 2011, Respondents acted as unregistered brokers or dealers when they solicited potential investors for two fraudulent advance-fee high-yield investment programs offered by Switzerland-based Malom Group AG. Respondents successfully solicited at least fourteen investors into the two programs. The investors lost all of their invested funds. For recruiting these investors, Respondents were compensated with a percentage of each investment, receiving a total of $701,950 in transaction-based compensation. Respondents were not registered with the Commission in any capacity.

III. CONCLUSIONS OF LAW

Respondents have 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

As the Division requests, 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*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5 (July 25, 2008). 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, Respondents' conduct was egregious and recurrent, over a period of over a year, and involved a high degree of scienter. Their occupation, if they were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, they could engage in fraud in the securities industry. The violations are relatively recent. Respondents have not recognized the wrongful nature of their conduct or made assurances against future violations. The $6,025,000 of ill-gotten gains that the court ordered disgorged 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). An injunction against a scheme involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sean P. Finn and M. Dwyer LLC ARE 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.[1]

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.

[1] Thus, they are 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).

§ 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.[2]

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Carol Fox Foelak
Administrative Law Judge

[2] 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).