INITIAL DECISION RELEASE NO. 1141
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17811

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

In the Matter of HANS PETER BLACK and INTERINVEST CORPORATION, INC.	INITIAL DECISION OF DEFAULT May 26, 2017

APPEARANCES: Richard M. Harper II and Michael J. Vito for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

Respondents Hans Peter Black and Interinvest Corporation, Inc., defrauded their clients and flouted their fiduciary duty by directing the investment of over $17 million of client assets into four high-risk penny stock companies without disclosing that Black received over $1.7 million dollars in payments from those companies. This initial decision grants the Division of Enforcement's motion for default and remedial relief, permanently barring Black from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, associational bar) and revoking the investment adviser registration of Interinvest.

Procedural Background

On January 24, 2017, the Securities and Exchange Commission issued an order instituting administrative proceedings (OIP) against Respondents, pursuant to Section 203(e) and (f) of the Investment Advisers Act of 1940. The OIP alleges that in *SEC v. Interinvest Corp., Inc.*, No. 1:15-cv-12350-MLW (D. Mass.) (*Interinvest*), on December 27, 2016, the district court permanently enjoined Respondents from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Advisers Act Section 206(1) and (2). OIP at 2.

Interinvest was served with the OIP on January 30, 2017, and Black was served on February 15. *Hans Peter Black*, Admin. Proc. Rulings Release No. 4623, 2017 SEC LEXIS 568, at *1-2 (ALJ Feb. 23, 2017). After they failed to file answers by February 22 and March 7, their respective deadlines, I ordered Respondents to show cause why the proceeding should not be

determined on default. *Id*. at *1; *Hans Peter Black*, Admin. Proc. Rulings Release No. 4669, 2017 SEC LEXIS 717, at *1 (ALJ Mar. 9, 2017).

Because *Interinvest* was resolved by default and no substantive findings independent of the complaint were made by the court, I also ordered the Division to submit a motion including legal analysis and evidentiary support for the allegations and requested sanction in accordance with *Rapoport v. SEC*, 682 F.3d 98, 215 (D.C. Cir. 2012), and *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016). *Hans Peter Black*, 2017 SEC LEXIS 717, at *2. On April 14, 2017, the Division submitted its motion and seven declarations.[1]

As neither Respondent has filed an answer, responded to the orders to show cause, or otherwise defended this proceeding, I find Black and Interinvest to be in default and deem the allegations in the OIP to be true. *See* OIP at 3; 17 C.F.R. §§ 201.155(a)(2), .220(f). This proceeding will be determined upon consideration of the record, including the deemed-true facts in the OIP,[2] the Division's declarations, and the underlying documents from *Interinvest* and filings with government regulators, officially noticed pursuant to Rule of Practice 323. *See* 17 C.F.R. §§ 201.155(a), .323; *Robert Bruce Lohmann*, 56 S.E.C. 573, 583 n.20 (2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions").

Among the declarations that I have considered is that of John McCann, a staff accountant for the Commission, summarizing the Division's financial and trading evidence, particularly as to Black's direction of Interinvest's clients' investments in related companies and of the undisclosed compensation that Black received from those companies. *See generally* McCann Decl. The Division provided supporting nonpublic documents from its investigatory file with its motion, although it is not clear that the supporting documentation is complete. *See* McCann Decl. ¶ 4(d), (f). The materials that are summarized by McCann would be admissible in U.S. District Court if submitted individually: nonhearsay statements by Interinvest, *cf*. Fed. R. Evid. 801(d)(2); and business records, public records, and other documentary evidence, 17 C.F.R. § 201.323; *cf*. Fed. R. Evid. 803(6), (8). 17 C.F.R. § 201.320(b); *see Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at *14 (Jan. 30, 2009) ("[H]earsay statements may be admitted in evidence and, in an appropriate case, may form the basis for findings of fact." (quoting *Charles D. Tom*, 50 S.E.C. 1142, 1145 (1992))), *pet. denied*, 416 F. App'x 142 (3d Cir. 2010). And by defaulting, neither Respondent has objected to the consideration of McCann's declaration. I therefore find that McCann's declaration, even if it would not strictly satisfy Fed.

[1] The seven declarations are of: (1) Richard Harper, attaching eight exhibits (Harper Decl.); (2) Michael J. Vito, attaching seventy-one exhibits (Vito Decl.); (3) John McCann (McCann Decl.); (4) Reza Majidi-Ahy (Majidi-Ahy Decl.); (5) Peggy Block (Block Decl.); (6) John P. Frederick (Frederick Decl.); and (7) Dr. Frederic Greenberg (Greenberg Decl.).

[2] Because paragraph B.2 of the OIP begins with "[t]he Commission's complaint alleges that," the only fact in that paragraph deemed true is that the complaint made the referenced allegations; the allegations themselves, by contrast, are not deemed true because they are not directly recited in the OIP.

R. Evid. 1006 (pertaining to summary evidence), is "relevant, material, and bears satisfactory indicia of reliability," such that it is "fair" to consider it in evaluating sanctions in the public interest. 17 C.F.R. § 201.320(b); *see Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (instructing consideration of, among other factors, the egregiousness of the respondent's actions to determine whether sanctions are in the public interest), *aff'd on other grounds*, 450 U.S. 91 (1981).

All filings and all documents and exhibits of record have been fully reviewed and carefully considered. All arguments and proposed findings and conclusions that are inconsistent with this initial decision have been considered and rejected.

Findings of Fact

Interinvest is a registered investment adviser based in Boston, Massachusetts, which purportedly managed almost $95 million as of April 2015. OIP at 1; *see* Vito Decl. Exs. 1-2; *id*. Ex. 4 at 9 (of 26).[3] Black founded Interinvest in 1980 and served as its principal client relationship manager through June 2015. OIP at 2; *see* Vito Decl. Exs. 1-2; *id*. Ex. 6 at 19 ("[W]e don't have anyone in the firm . . . whose accounts are managed by anyone other than, at the top, Dr. Black."). Black held various management positions, including chairman, president, chief compliance officer, and chief investment officer, but always maintained control over the company. OIP at 2; *see, e.g.*, Vito Decl. Ex. 6 at 19 (describing Interinvest's "corporate structure" as "a hub and spoke" with Black at the center); *id*. Ex. 47 (email from Interinvest chief compliance officer addressing Black as "Interinvest Control Persons [*sic*]").

Beginning about a decade ago, Black joined the boards of directors of Amorfix Life Sciences Ltd., Wi2Wi Corporation, Tyhee Gold Corp., and Williams Creek Gold Limited (collectively, the Canadian penny stock companies). OIP at 2. Black served as a director of Amorfix from November 2006 until August 2014, Vito Decl. Ex. 18 at 31; *id*. Ex. 19; a director of Wi2Wi from March 2006 through at least March 2015, *id*. Ex. 23 at 4, 6; *id*. Ex. 24 at 1 (of 2); a director of Tyhee Gold from May 2011 through at least April 2014, *id*. Ex. 26 at 4; and a director of Williams Creek from March 2010 until July 2010 and from November 2011 through at least June 2014, *id*. Ex. 30[4] at 2; *id*. Ex. 31 at 1 (of 2); *id*. Ex. 33 at 1, 15. On these four boards, he took active leadership roles that allowed him to exercise control over the companies' investment and financing decisions. *See, e.g.*, *id*. Ex. 20 at 19 (Amorfix finance committee

[3] Where exhibit pages are Bates numbered or internally paginated, citations are to those numbers; where exhibits lack Bates numbers and internal pagination is absent or inconsistent, citations are to the page of the exhibit with a parenthetical indicating the total number of pages in the exhibit. Citations to a document's Bates number omit the alphabetical prefix and any leading zeros.

[4] Vito Declaration Exhibits 30 and 31 predate Williams Creek's name change in June 2011. *See* Press Release, Williams Creek Gold Ltd., Williams Creek Changes its Name to Williams Creek Gold Limited (June 14, 2011), http://www.marketwired.com/press-release/correction-from-source-williams-creek-changes-its-name-williams-creek-gold-limited-tsx-v-wcx-1526527.htm (last visited May 24, 2017).

chairman); Ex. 24 at 1 (of 2) (Wi2Wi chairman); *id*. Ex. 25 at v-vii (same); *id*. Ex. 27 at 12 (of 25) (Tyhee Gold audit committee member); *id*. Ex. 33 at 13, 15, 19 (Williams Creek investment committee member, interim chairman and chief executive officer, and interim chief financial officer).

In addition to the compensation that he received as a board member, *see, e.g.*, Vito Decl. Ex. 36 at 4, 97-98 (Tyhee Gold director's fees of C$23,145 for 2012, C$13,000 for 2013, and C$8,250 for 2014); *id*. Ex. 33 at 5, 7 (Williams Creek disclosure of $13,829 in option-based awards to Black for the year ended January 31, 2014), Black collected over C$1.7 million in expense reimbursements and consulting fees from the Canadian penny stock companies since 2010. McCann Decl. ¶ 5. These payments were funneled through Zurmont Research Incorporated. *See id*. Zurmont is an "economic and finance research firm" managed by Black and owned by Black and Elfriede Black. Vito Decl. Ex. 14 at 222; *see id*. Ex. 15 at 7512-13 (identifying Black as "a controlling person" and "a shareholder" of Zurmont as of June 2011); *id*. Ex. 16 at 6201, 6203 (identifying Black as president and "actionnaire," or shareholder, of Zurmont as of January 2014); *id*. Ex. 17 at 8-9 (stating that Black is president of Zurmont in April 2015 disclosure).

In sum, Zurmont received over C$20,000 from Amorfix in January 2014, about C$240,000 from Wi2Wi since November 2012, over C$900,000 from Tyhee Gold since December 2011, and about C$550,000 from Williams Creek since January 2012. McCann Decl. ¶¶ 4(a)-(c), 5(a)-(d); *see* Vito Decl. Ex. 39 at 26942-60; *id*. Ex. 37 at 631-59; *id*. Ex. 38 at 787; *id*. Ex. 36 at 1-93; *id*. Ex. 15 at 7512-13; *id*. Ex. 41 at 25; *id*. Ex. 42 at 23.

At the same time that he served on the boards of the Canadian penny stock companies and received compensation from them, Black was directing large sums of money toward the companies. Client account statements show that, between January 2010 and February 2015, Interinvest's clients' holdings in the Canadian penny stock companies increased from $1.2 million to $18.9 million. McCann Decl. ¶¶ 4(f), 7(a); *see also* Vito Decl. Ex. 49.

The investments in the high-risk Canadian penny stock companies were made without full disclosure of Black's conflicts of interest. Interinvest disclosed Black's board memberships in some of its Forms ADV Part 2B, and there is evidence that some investors received those Forms ADV. *See* Vito Decl. Ex. 43 at 24 (of 27) (2011), *id*. Ex. 44 at 24-25 (of 27) (2012), *and id*. Ex. 46 at 24-25 (March 2014); *see* Block Decl. ¶ 6 (stating only that the investor "received at least one Form ADV"), *and* Frederick Decl. ¶ 6 (stating that the investor "received Form ADVs" without specifying which ones). However, Interinvest failed to disclose Black's interest in Zurmont until April 2014. *Compare* Vito Decl. Ex. 43 at 24 (of 27) (2011), *id*. Ex. 44 at 24-25 (of 27) (2012), *and id*. Ex. 46 at 24-25 (March 2014), *with id*. Ex. 3 at 25 (April 2014). The Forms ADV never disclosed the massive volume of related entity transactions that channeled money from the Canadian penny stock companies through Zurmont to Black. *See, e.g.*, *id*. Ex. 3 at 13-14, 25. Investor declarations make plain that neither Interinvest nor Black supplemented the deficient disclosures in the Forms ADV. *See, e.g.*, Block Decl. ¶¶ 7, 9; Frederick Decl. ¶¶ 7, 9; Greenberg Decl. ¶¶ 9, 11.

The investments were also made despite Interinvest's self-described "[c]onservative, risk-averse investment approach" investment "[s]tyle." Vito Decl. Ex. 13 at 149498 (investor

welcome packet). Investors told Black that they were risk averse. *See, e.g.*, Block Decl. ¶ 3 ("I instructed Interinvest that I did not want high risk investments."); Vito Decl. Ex. 11 at 8 (schedule A to Frederick's investment advisory agreement stating that his investment objection was "[l]ong term growth without excessive risk"). Black nevertheless made investments in companies that he knew were unavoidably risky. *See, e.g.*, Vito Decl. Ex 41 at 18 (Williams Creek disclosing that "[m]ineral exploration and development is highly speculative and involves inherent risks"); *id*. Ex. 55 at 4 (Tyhee Gold "is an advanced exploration enterprise with no ongoing revenues"). And he made investments in companies in financial distress. *See, e.g.*, *id*. Ex. 59 at 1 (warning that 2010 and 2011 financials "cast significant doubt as to the ability of [Amorfix] to continue as a going concern"); Majidi-Ahy Decl. ¶ 4 (Wi2Wi "often lacked funding to satisfy outstanding expenses and to enable it to manufacture product to satisfy client orders").

Conclusions of Law

Advisers Act Section 203(f) authorizes the Commission to impose an associational bar against Black if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he has been enjoined from any action, conduct, or practice specified in Advisers Act Section 203(e)(4); and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). Similarly, Advisers Act Section 203(e) empowers the Commission to revoke Interinvest's registration if: (1) the sanction is in the public interest; and (2) the investment adviser is permanently enjoined by any court of competent jurisdiction from "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4).

The statutory bases to impose an associational bar against Black and to revoke Interinvest's registration have been satisfied. During the time of his misconduct, Black was associated with Interinvest, a registered investment adviser. OIP at 1-2; Vito Decl. Ex. 2; *see* 15 U.S.C. § 80b-2(a)(11) (defining investment adviser as "any person who, for compensation, . . . advis[es] others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities"). In *Interinvest*, Black and Interinvest were both enjoined from future violations of the federal securities laws, well within the meaning of "conduct . . . in connection with the purchase or sale of any security" under Advisers Act Section 203(e)(4). 15 U.S.C. § 80b-3(e)(4), (f); *see* OIP at 2; Harper Decl. Exs. 6-7. Respondents did not file answers or oppose the motion and therefore have not offered any evidence to refute the conclusion that the statutory bases for a sanction have been satisfied. Accordingly, a sanction will be imposed if it is in the public interest.

Sanctions

The Division seeks a permanent associational bar against Black and revocation of Interinvest's registration. Mot. at 24. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman*, namely: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. 603 F.2d at 1140; *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). 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 a flexible one, and no one factor is dispositive. *Gary M. Kornman*, 2009 WL 367635, at *6.

In *Ross Mandell*, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and that the law judge's decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." 2014 WL 907416, at *2 (internal quotation marks omitted). After engaging in such analysis, I have determined that it is appropriate and in the public interest to bar Black from participation in the securities industry to the fullest extent possible and to revoke the registration of Interinvest.

At the outset, I note that Respondents were enjoined in *Interinvest* for conduct involving fraud. *See* Harper Decl. Exs. 6-7. The Commission considers misconduct involving fraud to be particularly egregious and requiring a severe sanction. *See Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (stating that 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). 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 WL 5493265, at *8 (Oct. 29, 2014). The *Steadman* factors confirm the appropriateness of that guidance in this case.

Respondents' conduct was egregious and recurrent. As investment advisers, Respondents were fiduciaries subject to the "affirmative duty [of] utmost good faith" imposed by Section 206 of the Advisers Act, requiring them to make "full and fair disclosure of all material facts" to their clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, 194 (1963); *see* 15 U.S.C. § 80b-6; *Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 17 (1979). Over a five year period, Black—who had "final approval" and "responsibility" for every trade made by Interinvest, Vito Decl. Ex. 6 at 11-12, 19; *see* Block Decl. ¶ 4; Frederick Decl. ¶ 4; Greenberg Decl. ¶ 3—directed the investment of over $17 million in client assets into the four Canadian penny stock companies. *See* McCann Decl. ¶¶ 4(f), 7(a). But he never disclosed that those same companies paid him, through Zurmont, at least $1.7 million during the same period. *See* McCann Decl. ¶ 5. He never disclosed that he sometimes controlled the companies' financing decisions and decided whether the companies would make payments *to him*. *See, e.g.*, Majidi-Ahy Decl. ¶¶ 4, 6, 7 (exercising "almost full control of all financing decisions" and of "how to allocate available Wi2Wi funds across the company's expenses," Black "did not request or require board approval to direct funds to Zurmont"); Vito Decl. Ex. 20 at 19 (stating that Black, as chair of the finance committee, was "mak[ing] recommendations . . . on the pricing, size and form of capital raises" as chair of Amorfix's finance committee); *id.* Ex. 39 at 26942-60 (email requesting *Black's* "approval" of Amorfix's payment of C$23,305.63 to Zurmont). He never disclosed his intimate understanding of the viability of each of the companies even while he continued to tout Interinvest's conservative investment strategy. *Compare, e.g.*, Majidi-Ahy

Decl. ¶¶ 2, 5 (stating that Majidi-Ahy, as CEO, would "personally inform[] Black that Wi2Wi needed additional funding to sustain its operations"), *with, e.g.*, Vito Decl. ¶ 8, Ex. 12 at 2 (of 17) (promising, in a personal "Letter from Dr. Black" on Interinvest's website as of November 2014, to focus on "the preservation of principal" and "embrace . . . below-average risk characteristics" so as to "Do No Harm"). Any one of these omissions would have been material to his investors. *See* Block Decl. ¶¶ 9-10; Frederick Decl. ¶¶ 7-10; Greenberg Decl. ¶¶ 9-12. Taken together, their acts and omissions demonstrate that Respondents fell far short of their fiduciary obligation to divulge "all conflicts of interest which might incline [them] . . . to render advice which was not disinterested." *Capital Gains Research Bureau*, 375 U.S. at 191-92.

As evidenced by the judgment in *Interinvest*, Respondents acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980). Because he either controlled or helped to control Interinvest, Zurmont, and the Canadian penny stock companies, Black knew about his clients' investments, knew about his conflicts, and knew that he and Interinvest had failed to fully disclose those conflicts. Indeed, Black was even warned on March 20, 2014, by Interinvest's chief compliance officer that he was "unable to verify that we have upheld our fiduciary duty to clients by monitoring that there are no real or perceived conflicts of interest" and that "all trading in stocks where Dr. Hans Black has a personal interest by virtue of his role as a board member [should] cease." Vito Decl. Ex. 47 at 134958; *see also id*. Ex. 48 at 126490 (February 28, 2014, email from chief compliance officer to Black stating that "Interinvest can not do any more Wi2Wi notes or other private placements for clients"). Black continued to invest Interinvest's clients' assets in the Canadian penny stock companies after receiving this unambiguous warning. *Id*. Ex. 49 (Interinvest trading log showing "BUY" transactions for all four Canadian penny stock companies after March 20, 2014). Having acted with such knowledge, I can conclude only that Black intended to knowingly violate his fiduciary duty and defraud his customers. *Cf. Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 643 (D.C. Cir. 2008) (observing that "[i]t certainly would have bolstered the Commission's scienter finding if [the respondent] had ignored explicit warnings from other key players"). And, as the company's control person, Black's scienter is imputed to Interinvest. *See J.S. Oliver Capital Mgmt., L.P.*, Securities Act Release No. 10100, 2016 WL 3361166, at *4 (June 17, 2016).

Evidence of Black's interactions with individual investors confirms that he was willing to deceive them blatantly and repeatedly. For example, one retired investor "specifically told Black that [his] risk tolerance [was] low" and to invest less in "gold-related stocks." Greenberg Decl. ¶ 4. In early 2013, the investor wished to "exit the stock market," but Black dissuaded him from selling his shares of Tyhee Gold and Williams Creek by claiming that "these companies produced a lot of gold." *Id*. ¶ 5. At the time, Tyhee Gold and Williams Creek were losing about C$2 million and C$1.3 million a year, respectively. Vito Decl. Ex. 58 at 1; *id*. Ex. 53 at 5. Williams Creek, in fact, "had not advanced its mineral properties to commercial production and [wa]s not able to finance day to day operations through operations." *Id*. Ex. 53 at 8. A year later, the investor instructed Black to sell his gold-related holdings despite Black's protestations that "Tyhee Gold was generating revenues." Greenberg Decl. ¶ 6. Tyhee Gold was still losing money, *see* Vito Decl. Ex. 71 at 1, but Black did not sell. Greenberg Decl. ¶ 6. Ignored, the investor again "specifically directed Black to liquidate Tyhee Gold stock," but "Black did not sell the Tyhee Gold stock." *Id*. ¶ 7. In 2015, Black again failed to follow the investor's express direction to sell all of his shares in Tyhee Gold and Williams Creek. *See id*. ¶¶ 14, 16-19. While

disregarding his client's instructions, Black further falsely stated that "he never received any money from . . . the companies with which he invested [the client's] money," including the Canadian penny stock companies. *Id.* ¶ 15. This evidence of Black's one-on-one misrepresentations is also imputed to Interinvest. *See Timothy S. Dembski*, Securities Act Release No. 10326, 2017 WL 1103685, at *10 & n.34 (March 24, 2017) ("[T]he oral and written material misstatements made by [an owner of an investment adviser] . . . are imputed to it based on agency principles.").[5]

There is no evidence that Respondents recognize the wrongful nature of their conduct or that they have offered any assurances against future violations. 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 WL 3864511, at *6 n.50 (July 26, 2013) (alteration in internal quotation omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). By not appearing, Respondents have failed to rebut that inference. Insofar as the record reveals anything, Respondents' responses to the Commission's investigation show that they do not believe that they have done anything wrong. In January 2015, for example, Interinvest was indignant—"surprised"—that the Commission would be concerned about undisclosed fees and compensation, insisting that "Dr. Black and Interinvest have never received any compensation from any of the [Canadian penny stock companies]." Vito Decl. Ex. 68 at 4. This failure to recognize wrongdoing and to make assurances against future violations demonstrates the threat of future violations. *See Christopher A. Lowry*, Advisers Act Release No. 2052, 2002 WL 1997959, at *5 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003).

Respondents' misconduct continued until recently and caused significant harm to investors. Beyond the sheer amount of investor assets that Respondents committed to essentially worthless stocks since 2010, the way in which Respondents committed those assets assured that investors would be hit hard. Investments in the Canadian penny stock companies made up more than a quarter of the assets in twenty Interinvest client portfolios. McCann Decl. ¶¶ 4(f), 7(b); *see, e.g.*, Block Decl. ¶ 11 (holding over one million shares of Tyhee Gold stock alone). And contrary to Black's representations to investors, *see, e.g.*, Greenberg ¶ 7 ("[Black] told me that there was great liquidity in Tyhee Gold and that he could sell it easily for the price listed on the Canadian stock exchange."), the Canadian penny stock companies were thinly traded and highly illiquid. *See* McCann Decl. ¶¶ 4(d)-(e), 6(b) ("[F]rom 2012 to March 2014, Interinvest accounted for more than half of Tyhee's daily trading volume on 40% of all trading days."). Thus, Respondents' clients and former clients have been unable to mitigate their losses by divesting their shares in the Canadian penny stock companies. *See, e.g.*, Block Decl. ¶ 11 (attesting to her inability to sell Tyhee Gold stocks because "the Canadian regulatory authorities have imposed a trading suspension" on the company); Greenberg Decl. ¶¶ 18-19 (stating that, as

[5] The Division contends that Black failed to instruct Interinvest's sole Boston employee to gather documents responsive to the Commission's February 2015 subpoena even though he had told the Commission staff that he had done just that. *See* Mot. at 14-15. Although it may be a typographical error, the declaration supporting this contention states that the subpoena follow-up occurred on "April 21, 2014," before the subpoena was issued, and I therefore do not rely on this in finding scienter. Vito Decl. ¶ 29.

of May 2015, "Black had still not liquidated the gold-related stocks in [his] portfolio" and would not "transfer [his] money out of [his] Interinvest accounts").

Barring Black from the securities industry and revoking Interinvest's registration will deter future violations. Associational bars have long been considered effective deterrence. *See Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, at *19 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). There is nothing in the record to suggest that the deterrent effect would be lessened in this case. A permanent associational bar "will prevent [Black] 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 WL 1744130, at *20 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

The public interest factors therefore all weigh in favor of a permanent associational bar against Black and revocation of Interinvest's registration. The securities industry "relies on the fairness and integrity of all persons associated with each of the professions covered by the [associational] bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *11 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016). Respondents' misconduct demonstrates that they are incapable of such fairness and integrity, they present a significant risk to the securities market, and they are not currently competent to participate in it in any capacity.

Order

It is ORDERED that the Division of Enforcement's Motion for Findings of Default Against Respondents and for Imposition of Remedial Sanctions is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Hans Peter Black is permanently BARRED from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 203(e) of the Investment Advisers Act of 1940, the investment adviser registration of Interinvest Corporation, Inc., is REVOKED.

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, 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. 17 C.F.R. § 201.360(d). 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.

Respondents may move to set aside the default in this case. Rule 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*.

_____
Cameron Elliot
Administrative Law Judge