INITIAL DECISION RELEASE NO. 1221
ADMINISTRATIVE PROCEEDING
FILE NO. 3-18130

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
JEFFREY GAINER	:	November 2, 2017

APPEARANCES: Robin Andrews for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Jeffrey Gainer from the securities industry. He previously was convicted of the sale of unregistered securities.

I. INTRODUCTION

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on August 22, 2017, pursuant to Sections 15(b) of the Securities Exchange Act of 1934 and 203(f) of the Investment Advisers Act of 1940. The proceeding is a follow-on proceeding based on *United States v. Gainer*, No. 1:15-cr-231 (N.D. Ohio Oct. 19, 2016), in which Respondent Jeffrey Gainer was convicted of the sale of unregistered securities in violation of Section 5 of the Securities Act of 1933. In a related civil proceeding, *SEC v. Abdallah*, No. 1:14-cv-1155 (N.D. Ohio Oct. 27, 2017), which Gainer was enjoined against violating the registration and antifraud provisions of the federal securities laws.

Gainer was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on September 14, 2017. His Answer was due within twenty days of service on him. *See* OIP at 3; 17 C.F.R. § 201.220(b). He did not file an Answer and was ordered to show cause, by October 30, 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. *Jeffrey Gainer*, Admin. Proc. Rulings Release No. 5176, 2017 SEC LEXIS 3301 (A.L.J. Oct. 16, 2017). To date, Gainer 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 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 *United States v. Gainer* and *SEC v. Abdallah* and of the public official records of the Commission.

II. FINDINGS OF FACT

On October 28, 2016, Gainer was convicted of one count of the sale of unregistered securities, in violation of Section 5(a) of the Securities Act, 15 U.S.C. § 77e(a), in *United States v. Gainer*, ECF No. 119. The conviction was based on his July 15, 2016, plea of guilty. *United States v. Gainer*, ECF Nos. 83, 119 at 1. He was sentenced to fifty-two months of imprisonment, followed by three years of supervised release, and ordered to pay $7,000,718.33 in restitution, jointly and severally with Kenneth Grant, Thomas Abdallah, and Mark George. *United States v. Gainer*, ECF No. 119 at 2-3, 5-6.

On October 27, 2017, Gainer was enjoined, on consent, against violating Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder in *SEC v. Abdallah*, ECF No. 328. The court also found him liable for disgorgement of $1,661,214 plus prejudgment interest, "deemed satisfied by the criminal restitution order entered against [him]" in the criminal case. *SEC v. Abdallah*, ECF No. 328 at 5.

Gainer was associated with PrimeSolutions Securities, Inc., a registered broker-dealer and state-registered investment adviser, from October 2010 until May 2014.[1] OIP at 1; *United States v. Gainer*, ECF No. 83 at 27, 32. The misconduct on which the conviction was based occurred from in or around August 2010 through in or around February 2014. OIP at 2; *United States v. Gainer*, ECF No. 1 at 14; No. 119 at 1. Gainer sold unregistered securities in KGTA Petroleum, Ltd., to approximately fourteen investors who collectively lost approximately $7 million. *United States v. Gainer*, ECF No. 1 at 14-15; No. 83 at 31-31; No. 119 at 1. KGTA was marketed to investors as a petroleum company that earned profits from buying and selling various refined fuel products and crude oils; in fact it was a Ponzi scheme. *United States v. Gainer*, ECF No. 1 at 1-2, 8, 14; No. 119 at 1.

III. CONCLUSIONS OF LAW

Gainer has been convicted within ten years of the commencement of this proceeding of an offense that "involves the purchase or sale of any security" within the meaning of Sections 15(b)(4)(B)(i) and 15(b)(6) of the Exchange Act and of Sections 203(e)(2)(A) and 203(f) of the Advisers Act.

[1] *See also* Jeffrey Lee Gainer, BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited October 31, 2017). Official notice is taken of this and any other Financial Industry Regulatory Authority, Inc., records cited herein. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014). FINRA has barred Gainer. Jeffrey Lee Gainer BrokerCheck Report.

IV. SANCTION

A collateral bar will be ordered.[2]

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. §§ 78*o*(b)(6), 80b-3(f). 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*, Advisers Act 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, Gainer's conduct was egregious and recurrent. Over a period of more than three years, he caused losses to individuals through selling securities to them as part of a Ponzi scheme. While scienter is not an element of the registration violation for which Gainer was convicted, it is an element of the antifraud violations against which he was enjoined. His ill-gotten gains from the scheme amounted to $1,661,214. Gainer has not made assurances against future violations. His occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could engage in the securities industry. The violations are recent. The more than $7 million that he was ordered to pay in restitution 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

[2] It is noted that Gainer was previously warned twice that if he failed to file an Answer or respond to the order to show cause, he would be deemed to be in default, and the undersigned would enter an order barring him from the securities industry. *Jeffrey Gainer*, 2017 SEC LEXIS 2874, at *2 n.2; 2017 SEC LEXIS 3301, at*2. Gainer never responded or disputed the sanction.

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). A violation involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

The Commission considers 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[3] – at least fifty unqualified bars and three bars with the right to reapply after five years.[4] 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 – from August 2010 to February 2014 – of Gainer'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 and Section 203(f) of the Investment Advisers Act of 1940, Jeffrey Gainer 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.[5]

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[3] In the cases authorized before the effective date of the Dodd-Frank 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.

[4] 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."

[5] Thus, he is 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;

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.[6]

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Carol Fox Foelak
Administrative Law Judge

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

[6] 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).