INITIAL DECISION RELEASE NO. 1231
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17621

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
ANDREW STITT	:	January 30, 2018

APPEARANCE: Christopher Davis for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

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

I. INTRODUCTION

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on October 6, 2016, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on *SEC v. Team Resources, Inc.*, No. 3:15-cv-1045 (N.D. Tex. Aug. 18, 2016), in which Respondent Andrew Stitt was enjoined against violations of the antifraud and registration provisions of the federal securities laws. The Division of Enforcement filed a Motion for Default Judgment, pursuant to 17 C.F.R. § 201.155(a), on September 27, 2017, before Stitt was properly served with the OIP. Stitt did not file an opposition or any filing in this proceeding.

Stitt was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(iv)(D) by December 12, 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 January 22, 2018, 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. *Andrew Stitt*, Admin. Proc. Rulings Release No. 5444, 2018 SEC LEXIS 55 (A.L.J. Jan. 10, 2018). To date, Stitt 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 *SEC v. Team Resources, Inc.*, and of the public official records of the Commission.

II. FINDINGS OF FACT

On August 18, 2016, Stitt was enjoined, by default, from violating Sections 10(b)(5) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and Sections 5 and 17(a) of the Securities Act of 1933. *SEC v. Team Res., Inc.*, ECF Nos. 37, 38. He was also ordered to pay disgorgement of $214,371 plus prejudgment interest of $40,165.98 and a civil penalty of $214,371. *Id.*

Stitt, a Canadian citizen residing in Jamaica, has never been registered with the Commission as a broker-dealer or associated with a registered broker-dealer. OIP at 1.[1] The misconduct on which the injunction was based occurred in 2011 and 2012; it involved Stitt's selling, as an unregistered broker, interests in at least three unregistered oil-and-gas securities offerings in which he made misrepresentations and omissions.[2] OIP at 2. These included: (1) promising investors unreasonable returns; (2) failing to disclose that prior investment programs had performed poorly; (3) failing to disclose that area wells were producing little or no oil; and (4) failing to disclose that he was receiving sales commissions, of which he received at least $214,371.[3] *Id.* Stitt has affirmatively tried to evade service of the OIP in this proceeding. Motion for Default, Decl. of Chris Davis. *See also Andrew Stitt*, Admin. Proc. Rulings Release Nos. 5236, 2017 SEC LEXIS 3652 (A.L.J. Nov. 20, 2017); 5225, 2017 SEC LEXIS 3572 (A.L.J. Nov. 13, 2017); 5210, 2017 SEC LEXIS 3461 (A.L.J. Oct. 31, 2017) (regarding the Division's efforts to serve the OIP on Stitt).

III. CONCLUSIONS OF LAW

Stitt 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.

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[1] *See also* BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited January 24, 2018). 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).

[2] Thus, the court enjoined him from violating the antifraud provisions – Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5; from acting as an unregistered broker-dealer in violation of Exchange Act Section 15(a); and from selling unregistered securities in violation of Securities Act Section 5.

[3] "[T]ransaction-based compensation" is "one of the hallmarks of being a broker-dealer." *James S. Tagliaferri*, Securities Act Release No. 10308, 2017 SEC LEXIS 481, at *14 (Feb. 15, 2017); *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. Apr. 1, 2011) (quoting *Cornhusker Energy Lexington, LLC v. Prospect Street Ventures*, 2006 WL 2620985 at *6 (D. Neb. Sept. 12, 2006)).

IV. SANCTION

A collateral bar will be ordered.[4]

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*, 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, Stitt's conduct was egregious and recurrent. Over a period of two years, he engaged in securities fraud and other violations through selling securities to investors using material misrepresentations and omissions. Scienter is an element of the antifraud violations against which he was enjoined. His ill-gotten gains from the scheme amounted to $214,371. Stitt has not made assurances against future violations. He has not acknowledged the wrongful nature of his conduct or even responded to the charges in *SEC v. Team Resources, Inc.* or this proceeding, and he affirmatively sought to avoid responsibility by evading service of process. 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 relatively recent. The $214,371 that he was ordered to pay in disgorgement is a measure of the

[4] It is noted that Stitt was previously warned four times 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. *Andrew Stitt*, Admin. Proc. Rulings Release Nos. 5444, 2018 SEC LEXIS 55 (A.L.J. Jan. 10, 2018); 5236, 2017 SEC LEXIS 3652 (A.L.J. Nov. 20, 2017); 5225, 2017 SEC LEXIS 3572 (A.L.J. Nov. 13, 2017); 4292, 2016 SEC LEXIS 3972 (Oct. 21, 2016). Stitt never responded or disputed the sanction.

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). 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[5] – at least fifty unqualified bars and three bars with the right to reapply after five years.[6] 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 – during 2011 and 2012 – of Stitt'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, Andrew Stitt IS BARRED from associating with any broker, dealer, investment adviser, municipal

[5] 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.

[6] 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."

securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[7]

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.[8]

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Carol Fox Foelak
Administrative Law Judge

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

[8] 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).