Initial Decision Release No. 1233
Administrative Proceeding
File No. 3-17959

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

In the Matter of

Gregory Reyftmann

Initial Decision on Default
February 6, 2018

Appearances: John V. Donnelly III, Christopher R. Kelly, and A. Kristina Littman for the Division of Enforcement, Securities and Exchange Commission

Before: Brenda P. Murray, Chief Administrative Law Judge

Background

On May 1, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Section 15(b) of the Securities Exchange Act of 1934, alleging that Gregory Reyftmann, who worked for a broker-dealer, led a scheme that defrauded investors by falsifying trade execution prices when customers bought and sold shares. OIP at 4-5. The OIP alleges that on February 9, 2015, a final judgment by default was entered against Reyftmann in *SEC v. Leszczynski*, No. 1:12-cv-7488 (S.D.N.Y.) (civil action), enjoining him from violating the antifraud provisions of the securities laws. OIP at 3. The issue presented here is whether the allegations in the OIP are true, and if so, what, if any, remedial actions are appropriate, pursuant to Exchange Act Section 15(b), including whether Reyftmann should be barred from participating in any offering of penny stock.[1] *Id.* at 7.

[1] "The term 'penny stock' generally refers to a security issued by a very small company that trades at less than $5 per share. Penny stocks generally are quoted over-the-counter, such as on the OTC Bulletin Board (which is a

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Reyftmann was served with the OIP on May 24, 2017. *Gregory Reyftmann,* Admin. Proc. Rulings Release No. 4896, 2017 SEC LEXIS 1970, at *2 (ALJ June 28, 2017). Reyftmann has not answered the OIP and did not participate in the prehearing conference conducted via telephone on July 7, 2017. Prehr'g Tr. 3. At the prehearing conference, the Division of Enforcement stated that neither Reyftmann nor anyone acting on his behalf had contacted the Division. *Id.* Reyftmann failed to respond by July 28, 2017, to an order to show cause why he should not be held in default and the proceeding determined against him. *See Gregory Reyftmann,* Admin. Proc. Rulings Release No. 4911, 2017 SEC LEXIS 2053, at *2 (ALJ July 10, 2017).

At my direction, the Division filed a motion for default and sanctions (Motion) on August 14, 2017. *Id.* Attached to the Motion as exhibits are Reyftmann's BrokerCheck Report from the Financial Industry Regulatory Authority, Inc. (Ex. 1); Reyftmann's employment agreement with LinkBrokers Derivatives Corporation Inc., signed December 4, 2004 (Ex. 2); Reyftmann's 2006-07 employment agreement with LinkBrokers, dated August 2, 2006 (Ex. 3); Reyftmann's 2009-10 management letter with LinkBrokers, dated November 10, 2009 (Ex. 4); a customer order to Reyftmann on February 3, 2005 (Ex. 5); a portion of LinkBrokers' trade blotter on that date (Ex. 6); an email from Reyftmann to the customer on February 3, 2005 (Ex. 7); a February 7, 2005, email to Reyftmann (Ex. 8); an email to Reyftmann on February 24, 2005 (Ex. 9); a chain with two emails on April 10 and 11, 2006 (Ex. 10); and a sworn declaration from Kristina Littman, senior Division counsel in the civil action, dated January 20, 2015 (Ex. 11).

Reyftmann has not filed an opposition to the Motion.

Findings of Fact

Reyftmann is in default for failing to answer the allegations in the OIP, to appear at the July 7, 2017, prehearing conference, to respond to the Division's dispositive Motion within the time provided, and to otherwise defend the proceeding. OIP at 8; 17 C.F.R. §§ 201.155(a)(1)-(2), .220(f),

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facility of FINRA) or OTC Link LLC (which is owned by OTC Markets Group, Inc., formerly known as Pink OTC Markets Inc.); penny stocks may, however, also trade on securities exchanges, including foreign securities exchanges. In addition, the definition of penny stock can include the securities of certain private companies with no active trading market." SEC, *Fast Answers: Penny Stock Rules* (May 9, 2013), https://www.sec.gov/fast-answers/answerspennyhtm.html.

.221(f). Accordingly, I deem the allegations in the OIP to be true. 17 C.F.R. § 201.155(a).

The factual findings and legal conclusions in this initial decision are based on the entire record, which includes the exhibits attached to the Division's two declarations regarding service and its Motion.[2] I take official notice of materials filed in the civil action and other relevant public government records. 17 C.F.R. § 201.323. I apply preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981).

From February 2005 until July 2010, Reyftmann was a registered representative with LinkBrokers, a registered broker-dealer with its principal place of business in New York City.[3] OIP at 1-2; Mot. Ex. 1 at 1; *see id.* Ex. 2 at 521, 533; *id.* Ex. 3 at 504, 507; *id.* Ex. 4 at 571. "Linkbrokers acted as an interdealer broker predominantly for market counterparties and institutional customers dealing in equities and fixed income products." OIP at 4.

Reyftmann was the manager of the LinkBrokers' "Cash Desk." OIP at 4; *see* Mot. Ex. 2 at 521, 538; *id.* Ex. 3 at 504; *id.* Ex.4 at 571. Between 2003 and 2009, Reyftmann obtained Series 7, 24, 55, and 63 securities licenses.

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[2] The Division's second service declaration (Donnelly Decl.) included two copies of the declaration of service in the civil action by the French Officer of the Judiciary Police, one translated into English and one in the original French (Exs. 1 & 2, respectively); a certified copy of the pages for A.G.R. Investments on the website for a private, business-entity-information aggregator, Societe.com, http://www.societe.com/societe/a-g-r-investissement-514518851.html (last accessed on June 13, 2017) (Ex. 3); and an English translation of the website (Ex. 4). The Division has consecutively paginated the final exhibit; I cite to the Division's page numbers, rather than the webpage-by-webpage numbering that subdivides the exhibit.

[3] On August 14, 2014, the Commission accepted LinkBrokers' offer of settlement which resulted in an order to cease and desist from any violations of Section 15(c) of the Exchange Act; of censure; and to disgorge $14,000,000. *Linkbrokers Derivatives LLC,* Exchange Act Release No. 72846, 2014 WL 3963152, at *11. LinkBrokers had changed its name and reorganized as an LLC on June 30, 2011, prior to its settlement with the Commission but after the period relevant to this proceeding. *See* FINRA, *BrokerCheck Report Linkbrokers Derivatives LLC CRD# 12300* at 15 (2017), https://files.brokercheck.finra.org/firm/firm_123000.pdf.

Mot. Ex. 1 at 1, 3. The OIP states the following regarding Reyftmann's violations:

> From at least 2005 through at least February 2009 (the "relevant period"), Reyftmann and others perpetrated a fraudulent markup/markdown scheme by falsifying trade execution prices and embedding hidden markups or markdowns on over 36,000 customer transactions.[4] Through this fraudulent scheme, Reyftmann and other Linkbrokers employees involved in the scheme defrauded customers of $18.7 million.
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> Reyftmann led the fraudulent scheme and urged and encouraged others on the Cash Desk to participate in it.
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> Reyftmann knew that the prices and/or commissions that he, the other participants in the scheme, and Linkbrokers reported to their customers were false because he knew the prices at which the transactions were actually executed were different from the gross prices reported to the customers, and because he and the others involved in the scheme created the fictitious gross prices themselves.
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> * * *
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> At times during the relevant period, Reyftmann and some of his colleagues employed a second scheme to defraud customers. Specifically, at times, when a customer placed a limit order and there was a favorable intraday movement in the price of the security, Reyftmann instructed others to take advantage of

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[4] For example, a customer asked Reyftmann to sell short 16,000 shares of Mercury Interactive Corp. (ticker symbol MERQ). Mot. Ex. 5. Reyftmann sold the shares at $47.639 per share but told the customer that the sale price was only $47.539 per share. *Id.* Exs. 6-7. The difference between the actual per share sale price and the price reported to the customer was $0.1. On 16,000 shares, Reyftmann overcharged the customer $1,600 in addition to the $160 commission to which LinkBrokers was entitled. *Id.* Ex. 6; OIP at 5.

> favorable intraday price movements to steal a piece of a profitable customer trade.

OIP at 4-5.

Reyftmann knew the prices reported to customers were false because he and others involved in the scheme created the prices; he knew that the scheme's purpose was to make a profit for LinkBrokers above the agreed upon commission; and persons at LinkBrokers, including information technology personnel, explained to Reyftmann how the software accommodated the fraudulent scheme. OIP at 5; Mot. Ex. 8-10. By "selectively engaging" in the scheme "only when the volatility in the market was sufficient to conceal the fraud," Reyftmann further showed an awareness that he was defrauding customers. OIP at 5.

Reyftmann's annual bonus from LinkBrokers was directly tied to the Cash Desk's gross revenue. *Id.* at 6-7. Reyftmann's ill-gotten gains—that is, the portion of his bonus attributable to the fraudulent schemes—totaled $3,181,068, from 2005 through 2009. *Id.* at 7.

On February 9, 2015, the United States District Court for the Southern District of New York entered a final judgment by default in the civil action. OIP at 3. The court enjoined Reyftmann from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and ordered Reyftmann to disgorge $3,181,068 together with prejudgment interest of $989,072 and to pay a civil penalty of $4,555,000. *Id.*; Default Judgment as to Defendant Gregory Reyftmann at 2-3, *Leszczynski* (S.D.N.Y. Feb. 9, 2015), ECF No. 51.

Reyftmann was living at 9 Avenue Jean-Baptiste Charcot, 34740 Vendargues, France, as of June 1, 2014. Donnelly Decl. Ex. 1 at 7; *see Gregory Reyftmann*, 2017 SEC LEXIS 1970, at *1-2 (finding service at the same address on May 24, 2017). From June 25, 2011, through at least, June 2017, Reyftmann was the manager of A.G.R. Investments, located at the same address. Donnelly Decl. Ex.4 at 2-4; *see Gregory Reyftmann*, 2017 SEC LEXIS 1970, at *2.

Conclusions of Law

Exchange Act Section 15(b)(6), 15 U.S.C. § 78*o*(b)(6)(A), provides that

> With respect to any person . . . , at the time of the alleged misconduct, who was associated . . . with a broker or dealer, or any person . . . , at the time of the alleged misconduct, who was participating, in an

> offering of any penny stock, the Commission, by order, shall . . . bar any such person from being associated with a broker [or] dealer, . . . or from participating in an offering of penny stock, if the Commission finds . . . that such . . . bar is in the public interest and that such person . . . is enjoined from [certain securities-related conduct].

Pursuant to this statutory authority, the Division asks that I bar Reyftmann from association with any broker or dealer and from participating in a penny stock offering. Mot. at 9. To impose the relief sought by the Division, I must find that Reyftmann was enjoined from violating the securities laws; that he was associated with a broker or dealer at the time of the misconduct for which he was enjoined; and that the bars are in the public interest.

Reyftmann was associated with a broker-dealer at the time of securities-related misconduct for which he was enjoined.

It is a matter of public record that, in 2015, Reyftmann was enjoined from violations of the antifraud provisions of the Securities Act and the Exchange Act for actions taken while he was associated with a broker-dealer. Default Judgment at 2-3, *Leszczynski*, ECF No. 51; Mot. Ex. 1 at 1; *see* OIP at 1-3. The injunction prohibits "conduct . . . in connection with the purchase or sale of any security." 15 U.S.C. § 78*o*(b)(4)(C).

I conclude that Reyftmann can be barred from association with a broker-dealer and prohibited from participating in a penny stock offering because he was associated with a broker dealer when he committed the violations that caused the injunction.

The broker-dealer bar and penny stock bar have both been part of Section 15(b)(6) since the penny stock bar was added to the Exchange Act. *See* Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, § 504, 104 Stat. 931, 952-53 (1990). The plain language of the 1990 amendment—fundamentally unchanged through the present[5]—

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[5] There are differences that make the retroactivity analysis in *SEC v. Bartko*, 845 F.3d 1217 (D.C. Cir. 2017) inapposite. In *Bartko*, the court held that the Commission could not apply a collateral bar based on conduct that predated the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), without making the industry specific findings that were required under earlier statutory language. *Bartko*, 845 F.3d at 1224-26; *see, e.g.*, *Harding Advisory LLC*, Securities Act Release No. 10330, 2017 WL 1163327, at *1 (Mar. 29, 2017). Section 15(b)(6)

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contemplates that one type of bar may be imposed for misconduct in the other industry by using "or" to separate both the possible factual predicates and the possible types of bars. *Accord Loughrin v. United States*, 134 S. Ct. 2384, 2390 (2014) (recognizing that "or" is almost always used as a disjunctive conjunction, that is, the words that "or" connects are alternative options).[6] In fact, the Commission has recognized that the disjunctive language of the statute allows it to impose a broker-dealer bar based solely on misconduct in a penny stock offering. *See* Penny Stock Disclosure Rules, 57 Fed. Reg. 18,004, 18,010 (Apr. 28, 1992); *see also, e.g.*, *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *3 (Apr. 20, 2012) (finding that respondents' participation in a penny stock offering at the time of their misconduct "satisfied" the "threshold statutory requirements for the imposition of," among other sanctions, a broker-dealer bar). Because nothing in Section 15(b)(6) indicates otherwise, that recognition suggests that the converse is also allowed where necessary to protect the public. *Accord Aaron v. SEC*, 446 U.S. 680, 695 (1980) (holding that—as long as doing so is consistent with the statutory language—the federal securities laws should be "construed 'not technically and restrictively, but flexibly to effectuate [their] remedial purposes'" (quoting *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 151 (1972))). Finally, it is a basic tenant of statutory interpretation that a statute should be construed so that effect is given to all its provisions. *See Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017).

The fact that the Commission has declined to impose penny stock bars in certain situations where the respondents had not participated in penny stock offerings based on the particular factual situation does not undercut the natural reading of Section 15(b)(6). *See, e.g.*, *James Harvey Thornton,* Exchange Act Release No. 41007, 1999 WL 40985, at *5 (Feb. 1, 1999), *pet. denied*, 199 F.3d 440 (5th Cir. 1999) (per curiam) (unpublished); *Alan E. Rosenthal*, Exchange Act Release No. 40387, 1998 WL 549558, at *2-3 & nn. 7-10 (Sept. 1, 1998). The Commission is "not obligated to make its sanctions uniform," *Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004), and

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has a combination of broker-dealer and penny stock bars. Pre–Dodd-Frank, however, industry bars for broker-dealers, municipal securities dealers, transfer agents, and investment advisers were contained in four separate provisions of the Exchange Act and the Investment Advisers Act of 1940 without references to each other. *See Bartko*, 845 F.3d at 1219, 1226.

[6] A disjunctive conjunction "express[es] an alternative, contrast, or opposition between the meanings of the words or word groups that it connects." *Webster's Third New International Dictionary* 651 (1971).

the failure to impose a sanction in one proceeding does not negate the Commission's statutory authority to impose different sanctions in the future. The decision to impose a particular sanction in one proceeding is unique to the facts in that proceeding. *See Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 WL 4336702, at *13 (Sept. 16, 2011) ("[W]e consistently have held that the appropriateness of the sanctions imposed depends on the facts and circumstances of the particular case and cannot be determined precisely by comparison with action taken in other cases.").

The case law suggests that where a respondent commits egregious fraud, the Commission will exercise its statutory authority to the fullest extent in imposing sanctions, rather than fashion a sanction limited to the capacity in which the respondent served. *See, e.g.*, *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *5-7, *10-11 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Bugarski*, 2012 WL 1377357, at *3-6. In addition, the Commission has declined to review several initial decisions that imposed a penny stock bar based solely on evidence of association with a broker or dealer. *See* 17 C.F.R. § 201.411(c); *see, e.g.*, *George Louis Theodule*, Initial Decision Release No. 607, 2014 WL 2447731, at *5 n.6 (ALJ June 2, 2014), *finality order*, Exchange Act Release No. 72604, 2014 WL 3402293 (July 14, 2014). Given the egregious nature of Reyftmann's misconduct as discussed below, the rationale of *Siris, Bugarski*, and *Theodule* and similar decisions is more applicable than that of *Thornton* and *Rosenthal*.

It is in the public interest to bar Reyftmann from association with a broker or dealer and from participating in an offering of penny stock.

To determine whether a sanction is in the public interest, the Commission considers 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. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *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).

Reyftmann's conduct was egregious and recurrent. Reyftmann's fraud was not a one-time mistake; he oversaw other employees in a daily routine

that defrauded customers of $18.7 million over five years.[7] OIP at 4. He supervised not one, but two different schemes during this period. *See id.* at 4-6. One typical transaction resulted in a customer unwittingly paying an extra $1,600—1000% more than the $160 commission that he or she had agreed to pay. Mot. Exs. 5-7; OIP at 5. As a result of that sale and hundreds or thousands of similar transactions, Reyftmann personally pocketed $3,181,068 from the schemes. OIP at 7; *see* Default Judgment at 3, *Leszczynski*, ECF No. 51.

Reyftmann also showed a high degree of scienter, "a mental state embracing intent to deceive, manipulate, or defraud," as evidenced by the fact that the district court enjoined him from violating Section 10(b) and Rule 10b-5, which require a finding of scienter. *Aaron*, 446 U.S. at 686 n.5; *see* Default Judgment at 2, *Leszczynski*, ECF No. 51; *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007). In addition, Reyftmann was not ignorant of the significance of his conduct because internal correspondence that he received explained that the client would "only see the 'gross' price," and not the actual price at which Reyftmann traded. Mot. Ex. 8 at 1120149. In another indication of scienter, Reyftmann misrepresented the price that he and other employees paid to buy or sell stock only when there was sufficient volatility in the market that customers would not be able to tell that they were being defrauded. OIP at 5.

Reyftmann has not acknowledged that his past conduct violated the securities statutes. *See Christopher A. Lowry*, Investment Advisers Act of 1940 Release No. 2052, 2002 WL 1997959, at *5 (Aug. 30, 2002), *pet. denied*, 340 F.3d 501 (8th Cir. 2003). He has not attempted to rebut the inference that his violations will be repeated by giving any assurance that his future

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[7] One registered representative, Marek Leszczynski, stated under oath that Reyftmann instructed him on how to add markups to trades placed by customers. OIP at 2; *see* Plea at 17-18, *United States v. Leszczynski*, No. 1:12-cr-923 (S.D.N.Y. Aug. 28, 2013), ECF No. 23. Leszczynski pleaded guilty in a criminal case arising from the same conduct that was the basis for the civil action. OIP at 2. Leszczynski was sentenced to a prison term of eighteen months, two years of supervised release, and ordered to pay $1.5 million in restitution. *Id.*; *see* Judgment in a Criminal Case at 2-3, 5, *Leszczynski*, No. 1:12-cr-923 (S.D.N.Y. Jan. 31, 2014), ECF No. 42. Leszczynski was enjoined in a civil enforcement action, and in a follow-on administrative proceeding, settled with the Commission by accepting a collateral bar and a bar against participating in a penny stock offering. *Id.*; *see Marek Leszczynski*, Exchange Act Release No. 71476, 2014 WL 411658 (Feb. 4, 2014).

conduct will not violate the antifraud provisions of the securities statutes. *See Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (citing *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). In summary, Reyftmann's default in the district court and his failure to participate in this proceeding show no respect for procedures intended to protect the public interest.

The fact that Reyftmann has been managing an investment company, A.G.R. Investments, out of his residence in France since June 25, 2011, shows that that Reyftmann has continued his activities in the securities industry. Donnelly Decl. Ex. 1 at 7; *id.* Ex. 4 at 2-4, 7-8, 28, 43. Absent a bar, nothing would preclude him from reentering the industry in the United States and committing securities-related misconduct again.

"The securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence." *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (quoting *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *7 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008)). Consideration of the *Steadman* factors shows that it is in the public interest to subject Reyftmann to the strongest possible sanction, which is a bar from association with any broker or dealer and from participating in an offering of penny stock, pursuant to Section 15(b)(6) of the Exchange Act.

Order

Pursuant to Rule of Practice 155(a), I GRANT the Division's motion for default and sanctions. 17 C.F.R. § 201.155(a).

I ORDER that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Gregory Reyftmann is BARRED from association with any broker or dealer and from participating in an offering of penny stock.[8]

This initial decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360. 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this initial

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[8] The penny-stock bar precludes Reyftmann from "acting as any promoter, finder, consultant, agent, or other person who engages 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." 15 U.S.C. § 78*o*(b)(6)(C).

decision within twenty-one days after service of the initial decision. 17 C.F.R. § 201.360(b). A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule of Practice 111. 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 order resolving such motion to correct a manifest error of fact.

This 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 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.

A respondent has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. *Id.*

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Brenda P. Murray
Chief Administrative Law Judge