INITIAL DECISION RELEASE NO. 1238
ADMINISTRATIVE PROCEEDING
FILE NO. 3-18229

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
DEMITRIOS HALLAS	:	February 27, 2018

APPEARANCE: Michael C. Ellis for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Demitrios Hallas from the securities industry. He previously was enjoined against violations of the antifraud and registration provisions of the federal securities laws. Additionally, the undersigned has completed the reexamination of the record as ordered by the Commission's November 30, 2017, order concerning administrative proceedings. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 SEC LEXIS 3724 (Remand Order) and determined to ratify "all prior actions."

I. INTRODUCTION

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on September 28, 2017, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on *SEC v. Hallas*, No. 1:17-cv-2999 (S.D.N.Y Sept. 27, 2017) in which Respondent Demitrios Hallas was enjoined, by default, against violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Hallas was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on October 12, 2017, by a process server "leaving a copy at [his] office with a clerk or other person in charge thereof." 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 February 23, 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. *Demitrios Hallas*, Admin. Proc. Rulings Release No. 5580, 2018 SEC LEXIS 411 (A.L.J. Feb. 12, 2018). To date, Hallas 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. Hallas*, of the public official records of the Commission, and of Financial Industry Regulatory Authority, Inc. (FINRA), 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).

The undersigned has completed the reexamination of the record as ordered by the Remand Order. As the parties were previously notified, the Remand Order ratified the appointment of the undersigned as an Administrative Law Judge and directed her to "[r]econsider the record, including all substantive and procedural actions taken by an administrative law judge" and "[d]etermine . . . whether to ratify or revise . . . all prior actions" in pending proceedings. *Pending Admin. Proc.*, 2017 SEC LEXIS 3724, at *2; *see Demitrios Hallas*, Admin. Proc. Rulings Release No. 5408, 2017 SEC LEXIS 4150 (A.L.J. Dec. 19, 2017). As required by the Remand Order, the parties were invited "to submit any new evidence [they deem] relevant to the [undersigned's] reexamination of the record" by the date when Hallas's Answer was due. *Pending Admin. Proc.*, 2017 SEC LEXIS 3724, at *2; *see Demitrios Hallas*, 2017 SEC LEXIS 4150 (A.L.J. Dec. 19, 2017). No party submitted such new evidence.[1] The undersigned has reconsidered the record and determined to ratify "all prior actions" that she took prior to November 30, 2017.[2] The process required by the Remand Order has been completed.

II. FINDINGS OF FACT

On September 27, 2017, Hallas was enjoined, by default, from violating Exchange Act Section 10(b)(5) and Rule 10b-5 and Securities Act Section 17(a). *SEC v. Hallas*, ECF No. 21. He was also ordered to pay disgorgement of $260,193.39 plus prejudgment interest of $29,600.86 and a civil penalty of $260,193.39. *Id.*

Hallas, a New York City resident, is not currently associated with a registered broker-dealer. OIP at 1.[3] Previously, Hallas was a registered representative associated with Santander Securities LLC from May 2013 through May 2014, Forefront Capital Markets LLC from August 2014 through July 2015, and PHX Financial, Inc., from August 2015 through November 2015. OIP at 1. Prior to those associations, starting in 2001, he was associated with several other broker-dealers and has an extensive disciplinary history. https://brokercheck.finra.org/individual/summary/4199832. FINRA barred him, by default, as of November 30, 2017. *Id.* The bar resulted from his failure to comply with requests from FINRA for testimony regarding a complaint of alleged recommendation of an unsuitable transaction in a variable annuity. *Id.* In 2014 FINRA suspended him and ordered him to pay restitution and a fine, based on a settlement in which Hallas neither admitted nor denied the allegations against him, in a case where he allegedly recommended unsuitable transactions involving customers' switching from one investment to another and incurring costs without any benefit. *Id.* In 2012, a broker-dealer discharged him for causes that included customer complaints of unauthorized trades and failure to disclose fees. *Id.*

[1] The Division of Enforcement filed a letter generally urging ratification.

[2] Previously, the Chief Administrative Law Judge ratified her designation of the undersigned as the presiding administrative law judge in this proceeding. *Demitrios Hallas*, Admin. Proc. Rulings Release No. 5119, 2017 SEC LEXIS 3119 (C.A.L.J. Oct. 2, 2017); *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5247, 2017 SEC LEXIS 3780 (C.A.L.J. Dec. 4, 2017).

[3] *See also* his BrokerCheck Report, https://brokercheck.finra.org/individual/summary/4199832 (last visited February 23, 2018).

The misconduct on which the injunction was based occurred from March 2014 to May 2016. OIP at 2. Hallas purchased and sold daily leveraged Exchange-Traded Funds and Notes (ETFs and ETNs) in customer accounts, knowingly or recklessly disregarding that these products were unsuitable for the customers. *Id.* Despite the customers' lack of sophistication and knowledge concerning daily leveraged ETFs and ETNs and their risks, Hallas purchased and sold approximately 179 daily leveraged ETF and ETN positions in their accounts. *Id.* Hallas had no reasonable basis for recommending daily leveraged ETFs and ETNs – he did not conduct adequate due diligence on the products; did not adequately understand how the products worked or the risks involved in purchasing and selling them (including the risks inherent in holding daily leveraged ETF and ETN positions open for periods greater than one day); and had no basis to believe that the products were suitable for his customers. *Id.* Hallas misappropriated $170,750 from one customer, a truck driver with no trading or finance experience and no retirement resources outside of the funds that he provided to Hallas. *Id.* That customer transferred funds to Hallas with the understanding that Hallas would make investments on his behalf, but instead, Hallas spent the customer's funds on personal expenditures and concealed that fact from the customer. *Id.*

III. CONCLUSIONS OF LAW

Hallas 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.

IV. SANCTION

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*, 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, Hallas's conduct was egregious and recurrent. Over a period of two years, he engaged in securities fraud and other violations through selling daily leveraged ETFs and ETNs to unsophisticated customers for whom the securities were unsuitable and even misappropriated one customer's life's savings and spent the misappropriated funds for his personal expenditures. Scienter is an element of the antifraud violations against which he was enjoined. His ill-gotten gains from the scheme amounted to $260,193.39. Hallas has not made assurances against future violations, and had he done so, their credibility would have been diminished by his disciplinary history involving unsuitable recommendations and unauthorized trading. He has not acknowledged the wrongful nature of his conduct or even responded to the charges in *SEC v. Hallas* or this proceeding. 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 $260,193.39 that he was ordered to pay in disgorgement 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). 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[4] – at least fifty unqualified bars and three bars with the right to reapply after five years.[5] 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).

[4] 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.

[5] 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."

The time period – from March 2014 to May 2016 – of Hallas'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, Demitrios Hallas 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.[6]

IT IS FURTHER ORDERED that "all substantive and procedural actions taken by an administrative law judge" in this proceeding prior to November 30, 2017, are ratified, and that the process required by the Remand Order has been completed.

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.[7]

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Carol Fox Foelak
Administrative Law Judge

[6] 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).

[7] 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).