Initial Decision Release No. 1256
Administrative Proceeding
File No. 3-18271

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

In the Matter of

Jeffrey D. Smith,
Joseph Carswell, and
Michael W. Fullard

Initial Decision of Default
June 19, 2018

Appearances: Robert F. Schroeder for the Division of Enforcement, Securities and Exchange Commission

Before: Cameron Elliot, Administrative Law Judge

Summary

Respondents Jeffrey D. Smith and Joseph Carswell convinced investors to give them roughly $750,000 to obtain and monetize multi-million-dollar financial instruments in what is commonly called a "prime bank" scheme. There is no evidence that they did anything with the money other than distribute it to themselves and their associates. One of those associates, Respondent Michael W. Fullard, acted as a finder for one of the transactions. None of the three were, or were associated with, registered broker-dealers. This initial decision bars Respondents 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, but allows Fullard to apply to participate in the industry again in five years.

Procedural Background

On October 31, 2017, the Securities and Exchange Commission issued an order instituting administrative proceedings (OIP) against Respondents, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The OIP

alleges that in *SEC v. Smith*, No. 1:16-cv-4171 (N.D. Ga.), on October 11, 2017, the district court permanently enjoined Smith and Carswell 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 enjoined all three Respondents from future violations of Exchange Act Section 15(a). OIP at 2.

Fullard was served with the OIP on November 26, 2017, Carswell was served on December 13, 2017, and Smith was served on February 5, 2018. *Jeffrey D. Smith*, Admin. Proc. Rulings Release No. 5462, 2018 SEC LEXIS 93, at *1 & n.1 (ALJ Jan. 12, 2018); *Jeffrey D. Smith*, Admin. Proc. Rulings Release No. 5632, 2018 SEC LEXIS 613, at *2-3 (ALJ Feb. 27, 2018). After they failed to file answers by their respective deadlines, I ordered Respondents to show cause why the proceeding should not be determined against them by default. *Jeffrey D. Smith*, Admin. Proc. Rulings Release No. 5523, 2018 SEC LEXIS 225, at *1-2 (ALJ Jan. 24, 2018); *Smith*, 2018 SEC LEXIS 613, at *3.

The Division of Enforcement initially moved to default Carswell and Fullard before Smith was served. But I denied their motion without prejudice because it relied almost entirely on paragraph B.4 in the OIP alleging what had been alleged in the civil action complaint to support the requested sanction. *See Smith*, 2018 SEC LEXIS 613, at *1-2; OIP at 2 (alleging that "The Commission's complaint alleged that . . ."). I allowed the Division to renew its motion—and append Smith—with evidence establishing that sanctions are appropriate under the multi-factor analysis in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *Smith*, 2018 SEC LEXIS 613, at *2-3. On March 26, 2018, the Division submitted its renewed motion and eleven exhibits.[1]

Confidential Information

Some of the exhibits filed by the Division include personally identifiable information, such as dates of birth, account and routing numbers, and copies of driver's licenses and passports. *See* Exs. D-H. Although the Division has not sought a protective order, *see* 17 C.F.R. § 201.322(a), I have an

[1] The exhibits include a copy of the civil action complaint (Ex. A); declarations of the Division's senior investigative counsel (Ex. B) and two of the alleged victims of Respondents (Exs. C and D); the investigative testimony of Keisha Renee Perry, an alleged participant in Respondents' scheme (Ex. E), and one of her law firm's disbursement logs (Ex. F); an example of the limited escrow agreement used by Respondents (Ex. I); and the original and corrected final judgment in the civil action (Exs. J and K).

independent obligation to ensure that such information is not publicly disseminated. *See, e.g.*, 5 U.S.C. §§ 552(b)(4), 552a(b), (i). I have therefore reviewed the submissions and find that the harm resulting from disclosure of those exhibits containing such sensitive personal information outweighs the benefits of disclosure. *See* 17 C.F.R. § 201.322(b).

Default

Because none of the Respondents have filed an answer, responded to the orders to show cause, or otherwise defended this proceeding, I find Smith, Carswell, and Fullard 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, the Division's submissions, and the underlying documents from the civil action 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").[2]

Findings of Fact

In 2012 and 2013, Smith, Carswell, and Fullard acted as unregistered broker-dealers in connection with soliciting, offering, and selling interests in a fraudulent prime bank scheme. OIP at 2. During that time, Smith and Carswell did business under various names, including Capital Funding, Inc., Atlantis Capital LLC, and Atlanta Capital LLC. *See* Ex. B ¶ 2; Ex. E at 26-29, 35-36. They raised roughly $750,000 from four identified investors—James Sarver, TALC Properties LLC, VAJRA Energy Limited, and Jose Yenny—by representing that they would use the funds to obtain financial instruments worth millions of dollars. *See* Ex. B ¶¶ 2, 6-7, 9-10; *see also* Ex. I. The investors were told that the instruments would be monetized and that the proceeds would be reinvested to generate returns of up to 35% per week at no risk. *See id.* ¶ 3. Fullard referred at least one of the investors to Smith and Carswell as a "finder." *See id.* ¶ 2; *see also* Ex. E at 39, 59 (Fullard "came as a party with Carswell" and was "part of the team"). But none of the investors' money was ever used as promised. *See* Ex. B ¶¶ 4-5. The investors

[2] These findings that Respondents are in default and no hearing is necessary commence the 75-day period in which an initial decision must be issued. *See* 17 C.F.R. § 201.360(a)(2)(C); OIP at 3.

have been able to recover only a small fraction of their investments. *See, e.g.*, Ex. C ¶ 16, Ex. D ¶¶ 20, 29.

Investors

James Sarver

At a meeting on April 15, 2013, Carswell told Sarver that if Sarver wired $200,000 to Keisha Perry of The Perry Law Group, it would be used to lease an instrument with a value of $10 million. Ex. C ¶ 4. Carswell told Sarver the instrument would be monetized for 80% of its value and Sarver would be loaned $7.2 million of the proceeds within 45 days. *Id.* ¶¶ 4, 9. Carswell further explained that Smith of Capital Funding would trade the remaining $800,000 generating profits sufficient to pay off the $7.2 million loan. *Id.* ¶¶ 4-5. Carswell vouched for Smith and assured Sarver that there was "no risk." *Id.* ¶¶ 7-8. At the same meeting, Sarver also spoke by phone with Smith, who repeated Carswell's description of the "no risk" transaction. *Id.* ¶¶ 10-11.

A few days later, Sarver received a call from Carswell, who informed him that Smith had obtained a $100 million standby letter of credit that could be used to obtain a loan on the same terms described at the meeting. *Id.* ¶ 13. On April 18, 2013, Sarver transferred $200,000 to The Perry Law Group. *Id.* ¶ 14; *see also* Ex. E, Ex. 31 (escrow agreement). Perry's disbursement logs show that within three days of receiving Sarver's funds, all of the money (minus the law firm's commission and fees) had been distributed to Smith and Carswell or their alter egos. *See* Ex. F; *see also* Ex. B ¶ 14 (explaining investigation by the Division suggesting that one of the payees, Knox Corporation Unlimited, is an alter ego of Smith). As of May 20, 2015, Sarver had not received the loan and had recovered only $17,500 of his initial investment. Ex. C ¶ 16. The Division has found no evidence that any of the money was ever used to purchase an instrument for Sarver. *See* Ex. B ¶¶ 4-5.

TALC Properties LLC

In 2013, TALC Properties was managed by Tony Scott, Sam Watkins, and Jayson Colavalla. Ex. D ¶ 3. The three managers attended a meeting with Smith, Carswell, and Perry on April 3, 2013. *Id.* ¶ 11. During the meeting, Smith represented that Atlanta (or Atlantis) Capital could obtain a standby letter of credit and loan 60% of the proceeds of its monetization to TALC Properties. *Id.* ¶ 16. Smith stated that the remainder would be loaned to Atlanta Capital to be invested to generate 35% in weekly profit. *Id.* Smith assured Scott, Watkins, and Colavalla that their money was "100% safe" and that it would be impossible to lose money. *Id.* ¶ 17. Smith and Perry

promised that any funds from TALC Properties would leave escrow only once the standby letter of credit was validated. *Id.* Carswell did not dispute any of Smith's representations. *Id.* ¶ 18.

On April 4, 2013,[3] TALC Properties wired $150,000 to an escrow account as instructed by Smith and Perry. *Id.* ¶ 20; Ex. D, Ex. 1 ¶ B. Colavalla signed a release authorizing the disbursement of the money from escrow after Smith and others had told him that a standby letter of credit had been identified and verified. Ex. D ¶ 22; *see* Ex. D, Ex. 1 at 10-12. When TALC Properties did not receive the proceeds as promised, and Colavalla made inquiries of Smith, Carswell, and Perry, they each blamed the others for the delay. Ex. D ¶ 23. Perry provided Colavalla a copy of her disbursement log that shows that the money was not used to purchase the standby letter of credit, but instead went to Smith, Carswell, and a number of individuals that Colavalla did not know, including Brad Howell, Fullard, and Carol Fullard. *Id.* ¶¶ 26-27; Ex. E, Ex. 18; *see also* Ex. B ¶¶ 4-5. As of March 20, 2018, TALC Properties had recovered only $52,000. Ex. D ¶ 29.

VAJRA Energy Limited

In December 2012, VAJRA entered into an escrow agreement with Atlanta Capital and The Perry Law Group, memorializing that VAJRA would provide $150,000 and Atlanta Capital would "assist with procuring a financial instrument." Ex. I ¶¶ A, B. Jody McConkey of VAJRA submitted $150,000 to Perry on December 10, 2012. Ex. E, Ex. 14. McConkey was told on December 19, 2012, that a standby letter of credit had been obtained, so VAJRA authorized the release of its monies in escrow. *See* Ex. E, Ex. 16 at 1. McConkey was subsequently told by Atlanta Capital and Fullard that they had attempted to monetize the instrument twice, but by January 30, 2013, VAJRA still had not received any money or even a copy of the standby letter of credit. *Id.* As in other transactions, Smith and Carswell were operating as Atlanta Capital. *See* Ex. E at 93 (Perry contacted Smith and Carswell to address McConkey's complaints about Atlanta Capital).

The Division found no evidence that VAJRA's money was used to purchase an instrument as Atlanta Capital and Fullard represented. *See* Ex. B ¶¶ 4-5. Instead, Perry's disbursement logs for VAJRA show that on December 19, 2012, she released VAJRA's funds—all but $11,000 of which went to alter egos and associates of Smith, Carswell, and Fullard. *See* Ex. E, Ex. 14; *see also* Ex. B ¶ 14. The disbursement to Fullard, in particular, was

---

[3] Colavalla's affidavit appears to contain a typo in the year, but the proper year is plain from context and other record evidence.

contrary to McConkey's understanding that VAJRA's money "does not go to [Fullard]." Ex. E, Ex. 17 at 1; *see* Ex. E at 96-97.

Jose Yenny

In July 2012, Yenny entered into an escrow agreement with Carswell and The Perry Law Group, which noted that Carswell would "assist with procuring a financial instrument" in exchange for $249,970 from Yenny. Ex. E, Ex. 20 ¶¶ A, B. Yenny wired the money to The Perry Law Group. *See* Ex. E at 107-09; *id.*, Ex. 22. And, between July 30 and August 15, 2012, Perry's disbursement logs show that her law firm distributed the money to Smith and Carswell and their associates. *See* Ex. E, Ex. 21. As with the other three investors, the Division was unable to uncover any evidence that Yenny's funds were used to obtain a standby letter of credit or other instrument. *See* Ex. B ¶¶ 4-5.

Civil Enforcement Action

In November 2016, the Commission commenced the civil action against Respondents based on the conduct outlined above. *See* Ex. A ¶¶ 22-57. On October 11, 2017, the district court entered a final judgment of default against all three, which was corrected on December 20, 2017. Exs. J, K. The court permanently enjoined Smith and Carswell from future violations of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5. OIP at 2; Ex. K at 2-5. The court further enjoined Smith, Carswell, and Fullard from future violations of Exchange Act Section 15(a). OIP at 2; Ex. K at 6.

In addition, Smith, Carswell, and Fullard were ordered to disgorge $355,520, $132,570, and $23,000, respectively. Ex. K at 6-7. The court also imposed prejudgment interest and civil penalties on all three Respondents. *Id.* at 6-8.

Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose an associational bar against Respondents if: (1) Respondents were permanently enjoined from any action, conduct or practice specified in Section 15(b)(4)(C), which includes any conduct or practice in connection with acting as a broker-dealer or in connection with the purchase or sale of any security; (2) they were associated with a broker or dealer, whether registered or unregistered, at the time of the misconduct; and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (b)(6)(A)(iii); *see Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized

to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding").

The statutory bases to impose an associational bar—including a penny stock bar—against Respondents have been satisfied. During the time of their misconduct, Smith, Carswell, and Fullard were acting as unregistered broker-dealers. OIP at 2. And "[a] person who acts as an unregistered broker-dealer is 'associated' with a broker-dealer for the purposes of Section 15(b)." *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657, at *2 n.2 (Apr. 23, 2015). That association with broker-dealers provides sufficient grounds to also bar Respondents from participating in an offering of penny stock because Exchange Act Section 15(b)(6) contemplates that such a bar may follow from *either* prior participation in a penny stock offering *or* association with a broker-dealer. *See* 15 U.S.C. § 78*o*(b)(6); *accord Loughrin v. United States*, 134 S. Ct. 2384, 2390 (2014) (recognizing that the words that "or" connects are normally alternative options). In the civil action, Respondents were 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 Exchange Act Section 15(b). 15 U.S.C. § 78*o*(b)(4)(C); *see* OIP at 2; Ex. K at 2-6. 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 appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) 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 SEC LEXIS 367, at *22 (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 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). This is a flexible inquiry, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22.

Smith and Carswell were enjoined for conduct involving fraud. OIP at 2. The Commission considers such fraudulent misconduct to be particularly

egregious and deserving of a severe sanction. *See Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (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'" (quoting *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 (Apr. 20, 2012))), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Where a respondent, like Smith or Carswell, has been enjoined from violating antifraud provisions of the securities laws, the Commission "typically" imposes a permanent bar. *Toby G. Scammell*, Investment Advisers Act of 1940 Release No. 3961, 2014 SEC LEXIS 4193, at *37 (Oct. 29, 2014). The *Steadman* factors show that the Commission's firm hand with violators of the antifraud provisions is warranted with Smith and Carswell.

By contrast, although he benefited from the fraud of Smith and Carswell and participated in some parts of their scheme, Fullard was not enjoined from violating the antifraud provisions of the securities laws. Nor is there otherwise much evidence of his specific violative conduct. He directed disbursements totaling $11,000 from TALC Properties and $12,000 from VAJRA, both into his wife's account. *See* Ex. E, Exs. 14, 18. This may have been transaction-based compensation, but the record does not provide any explanation for why he received part of the TALC Properties funds. For the VAJRA transaction, Fullard allowed McConkey to believe that Fullard would receive none of the funds placed into escrow by VAJRA. *See* Ex. E, Ex. 17 at 1 (correspondence from McConkey to Perry copying Fullard). And Atlanta Capital—that is, Smith and Carswell—and Fullard collectively told McConkey about their attempts to monetize a standby letter of credit that did not exist. Ex. B ¶¶ 4-5; Ex. E, Ex. 16 at 1. But it is not clear how much Fullard knew about the existence of the standby letter of credit or whether Fullard made the representations or merely failed to correct the misstatements of Smith and Carswell about the instrument. *See* Ex. E, Ex. 16 at 1. Nor is there any evidence that he actively participated in any transactions other than the one involving VAJRA. Application of the *Steadman* factors is thus more equivocal in his case.

Egregiousness

Smith's and Carswell's misconduct was egregious. Each made express representations to potential investors that they would obtain and monetize financial instruments to generate millions of dollars in proceeds for the investors, while assuring them that the investment was "no risk" and "100% safe." *E.g.*, Ex. C ¶¶ 4-5, 7-11; Ex. D ¶¶ 16-17. But once they had convinced the investors to release their funds from escrow by misrepresenting the status of their attempts to obtain the promised instruments, Smith and

Carswell directed Perry to disburse the funds to them, their aliases, and their associates. *See* Ex. B ¶¶ 4-5; Ex. C ¶¶ 13-15; Ex. D ¶ 22; Ex. E, Ex. 16 at 1. And although Fullard apparently did not make the same types of explicit promises that Smith and Carswell made, his actions in connection with the VAJRA transaction were serious. In total, Respondents and their associates misappropriated approximately $750,000 from four investors. *See* Ex. B ¶¶ 2, 4-5. The district court ordered Respondents to disgorge a total of $511,090 plus prejudgment interest. Ex. K at 6-7. And there is evidence that they may have targeted even more victims. *See, e.g.*, Ex. E, Ex. 28 (escrow agreement related to transaction to obtain a $5 million instrument).

Moreover, all three Respondents acted as securities brokers without registering. OIP at 2. In requiring that brokers or dealers register with the Commission to purchase or sell securities, Section 15(a) ensures "that customers . . . receive either the regulatory protections that result from a [broker] being registered himself or the protections that stem from the [broker] being supervised by a registered firm." *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 SEC LEXIS 662, at *72-73 (Feb. 20, 2015) (quoting *Charles A. Roth*, 50 S.E.C. 1147, 1152 (1992)). Respondents' failures to register deprived their clients of these regulatory protections, making it easier for Respondents and their associates to defraud them.

Recurrence

Smith and Carswell worked together to defraud at least four investors over a two year period. OIP at 2. And they attempted to do the same to other investors, although none of those additional transactions appear to have been consummated. *See* Ex. E at 112-20.

Fullard actively participated in only one of the four transactions. *See* Ex. E, Exs. 16, 17. But he benefited from $11,000 in disbursements from the TALC Properties escrow even though Colavalla did not know him. Ex. D ¶¶ 26-27; Ex. E at 40-41; Ex. E, Ex. 18 at 2, 4-5. Fullard's receipt of investor monies suggests a greater involvement in the scheme than a single instance of acting as a finder would indicate. *See also* Ex. E at 59 (Fullard was "part of the team" with "the core" of Smith and Carswell). However, the evidence does not establish the nature of that involvement.

Scienter

Smith and Carswell acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976)). They were enjoined from committing securities fraud, showing a high degree of scienter. *See* OIP at 2; Ex. K at 2-5. Both made express

statements to investors that the transactions were risk free, yet directed the investors' funds to the accounts of themselves and their friends instead of using the money as promised. *See, e.g.*, Ex. C ¶¶ 7-8, 10-11 (Carswell making risk-free representation, which was confirmed by Smith); Ex. D ¶¶ 17-18 (*vice versa*). There is no evidence that *any* of the investors' money was used as promised. Ex. B ¶¶ 4-5. For example, TALC Properties entered into an agreement with Atlanta Capital to obtain and monetize an instrument. Ex. D, Ex. 1 ¶¶ A, B. But none of the investor's funds were directed to Atlanta Capital—and tens of thousands went to individuals, such as Carol Fullard, who lacked any apparent connection with securing a $10 million instrument for TALC Properties. *See* Ex. D, Ex. 1 ¶ 1; Ex. E, Ex. 18. Smith and Carswell must have known that they were not facilitating risk-free investments when their *modus operandi* was to never make the investments in the first place.

There is less evidence that Fullard was fully aware of his associates' schemes. Fullard allowed McConkey to think that Fullard was not going to receive any portion of the funds in the VAJRA escrow account even though he was one of Perry's clients who was able to direct the distribution of those funds. *See* Ex. E at 40; *id.*, Exs. 14, 17. And Fullard participated in Smith and Carswell's attempt to string McConkey along by thinking that the transaction would soon be completed. *See* Ex. E, Ex. 16 at 1. But there is otherwise no evidence that Fullard acted with scienter, and I conclude that he did not.

Assurances against future violations, recognition of wrongful conduct, and likelihood of future violations

Although "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.'" *Korem*, 2013 SEC LEXIS 2155, at *23 n.50 (alteration in internal quotation omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)); *see Gann v. SEC*, 361 F. App'x 556, 560 (5th Cir. 2010) (affirming permanent associational bar and reasoning "if [respondent] doesn't know right from wrong in this industry, how can he avoid wrongdoing in the future?"). By defaulting here and in the district court, Respondents have not rebutted that inference or otherwise acknowledged their misconduct.

* * *

Weighing all the factors, there is a substantial need to protect investors from Respondents and deter others from engaging in similar conduct. Associational bars have long been considered effective deterrence. *See Guy P. Riordan*, Securities Act Release No. 9085, 2009 SEC LEXIS 4166, at *81, *81

n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). That deterrent effect may be lessened here because those who, like Respondents, never intend to register or otherwise operate within the bounds of the securities laws are less likely to be concerned they may not be able to register in the future. But the mere fact that the Commission is enforcing the law has some effect. A collateral bar "will prevent [Respondents] 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 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

The record, however, indicates that the severity of the bar should be moderated as to Fullard. *See, e.g., Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504, at *36-37 (June 30, 2008) (finding that allowing respondent to reapply after five years would still protect the public by removing him from the industry and ensuring his compliance by conditioning his reentry into the industry on Commission approval). The limited evidence of Fullard's involvement outside of the VAJRA transaction, his subordinate role, the absence of evidence of affirmative misrepresentations, and the lack of scienter all suggest that his sanction should be distinguished from those imposed on Smith and Carswell. Allowing Fullard to apply to reenter the industry after five years strikes an appropriate balance between protecting the public and recognizing that the Division has not established that Fullard was as culpable as the other Respondents. *See id.*

Order

It is ORDERED that, pursuant to Rule 322, the Office of the Secretary shall MAINTAIN UNDER SEAL the following exhibits to the Division of Enforcement's Motion for a Finding That Respondents Are in Default and for Imposition of Remedial Sanctions: the exhibits to Exhibit D; the exhibits to Exhibit E; Exhibit F; Exhibit G; and Exhibit H. *See* 17 C.F.R. § 201.322.

It is FURTHER ORDERED that the Division of Enforcement's Motion for a Finding That Respondents Are in Default and for Imposition of Remedial Sanctions is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Jeffrey D. Smith and Joseph Carswell are permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

It is FURTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Michael W. Fullard is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock, with the right to apply for reentry after five years to the appropriate self-regulatory organization or, if there is none, to the Commission.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under 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 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 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