INITIAL DECISION RELEASE NO. 1328
ADMINISTRATIVE PROCEEDING
FILE NO. 3-18460

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
DAVID ALCORN	:	December 11, 2018

APPEARANCE: Donald W. Searles for the Division of Enforcement, Securities and Exchange Commission

David Alcorn, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars David Alcorn from the securities industry. He was previously enjoined against violations of the federal securities laws.

I. INTRODUCTION

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on April 30, 2018, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on *SEC v. Janus Spectrum, LLC*, No. 2:15-cv-609 (D. Ariz.), in which Alcorn was enjoined from violating the antifraud and registration provisions of the federal securities laws.

On June 21, 2018, the Division of Enforcement filed a Motion for Entry of Default and Sanctions. Later that day, "[i]n light of the Supreme Court's decision in *Lucia v. SEC*," 138 S. Ct. 2044 (2018), the Commission stayed all pending administrative proceedings, including this one. *Pending Admin. Proc.*, Securities Act of 1933 Release Nos. 10510, 2018 SEC LEXIS 1490; 10522, 2018 SEC LEXIS 1774 (July 20, 2018). On August 22, 2018, the Commission ended the stay and ordered that respondents in pending proceedings, including this one, "be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter," and that "the ALJ shall issue an order directing the parties to submit proposals for the conduct of further proceedings"; the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 SEC LEXIS 2058, at *2-4 (August 22 Order); Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2-3 (C.A.L.J. Sept. 12, 2018). The undersigned issued the required order on October 3, 2018. *David Alcorn*, Admin. Proc. Rulings Release No. 6134, 2018 SEC

LEXIS 2726 (October 3 Order). The October 3 Order ordered the parties to submit proposals for the conduct of further proceedings by November 30, 2018.

On November 15, 2018, the parties filed a joint proposal in which Alcorn represents that: (1) he was properly served with the OIP on May 3, 2018, by U.S. Postal Service certified mail with confirmation of receipt by his counsel, whom he authorized to accept service on his behalf; (2) he did not timely file an answer to the OIP; and (3) has no intention of filing an answer or of filing an opposition for the Division's motion for default and imposition of sanctions. The parties stipulate and agree that the undersigned should proceed to rule on the Division's motion. Alcorn is in default as he has failed to answer, failed to respond to a dispositive motion, and has affirmatively declined to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2).

II. FINDINGS OF FACT

Alcorn was enjoined in *SEC v. Janus Spectrum, LLC*, from committing violations of the antifraud and registration provisions of the federal securities laws: Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and Sections 5 and 17(a) of the Securities Act; the court also ordered him to pay, jointly and severally with others, disgorgement of $6,172,360 plus prejudgment interest of $959,436 for a total of $7,131,796, and ordered him to pay a civil penalty of $3,394,798. *SEC v. Janus Spectrum, LLC*, ECF Nos. 239 and 258.[1]

The court in *SEC v. Janus Spectrum, LLC*, found the following in its order, ECF No. 239, ruling on the Commission's motion for summary judgment: Janus's business involved preparing applications for, managing, and monetizing, on behalf of "clients," licenses in the 800 MHz spectrum regulated by the Federal Communications Commission. Janus charged the clients $40,000 for each application. Some of its client agreements also provided for profit-sharing. Janus collected more than $9 million in application fees from 325 investors during 2011-2015. Alcorn is the president of David Alcorn Professional Corporation (DAPC) which became the sole owner of Janus as of January 2014; prior to that date it owned 55%. Alcorn, through presentations, webinars, emails, in-person meetings, phone calls, conference calls, and radio shows, made representations to potential clients and investors about the characteristics and benefits of acquiring the licenses or facilitated the making of such misrepresentations. The representations included estimates of expected high returns without risk and touted the experience of Janus's principals. Alcorn told investors that Sprint would likely want to lease the licenses from them even though a representative of Sprint had told him that Sprint would not have an interest in Janus's licenses and was forbidden from buying them.

In addition to concluding that Alcorn violated the antifraud provisions, Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, the court concluded that the offerings were securities, offered and sold without a registration statement being in effect in violation of Section 5 of the Securities Act and that Alcorn acted as an unregistered broker in violation of Section 15(a) of the Exchange Act.[2]

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[1] ECF Nos. 239 and 258 are attached to the Division's Motion for Default as Exhibits 2 and 3, respectively.

[2] Alcorn is not registered with the Financial Industry Regulatory Authority, Inc. (FINRA). *See* BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited December 10, 2018).

III. CONCLUSIONS OF LAW

Alcorn 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

As the Division requests, 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*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5 (July 25, 2008). 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, Alcorn's conduct was egregious and recurrent, over a period of four years, and involved a high degree of scienter. For example, he represented to investors that Sprint would likely want to lease the licenses when a representative of Sprint had told him that Sprint would have no interest in them. 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 fraud in the securities industry. The violations are recent. Alcorn has not recognized the wrongful nature

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Official notice is taken of this and any other 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).

of his conduct or made assurances against future violations, although he affirmatively declined to defend this proceeding. The over $9 million raised from 325 investors 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). An injunction involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, David Alcorn 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.[3]

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.[4]

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Carol Fox Foelak
Administrative Law Judge

[3] Thus, he would be 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).

[4] 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).