Initial Decision Release No. 1340
Administrative Proceeding
File No. 3-17650

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

In the Matter of **Joe Lawler**	**Initial Decision of Default** December 21, 2018

Appearance: Polly Atkinson for the Division of Enforcement, Securities and Exchange Commission

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for default and sanctions. Respondent Joe Lawler is barred from associating with a 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.

Procedural Background

The Securities and Exchange Commission initiated this proceeding in October 2016, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934.[1] This is a follow-on proceeding based on a final judgment entered in May 2016 by the United States District Court for the District of New Mexico.[2] The Division alleges that from May 2008 through August 2012 Lawler offered and sold the

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[1] OIP at 1; *see* 15 U.S.C. § 78*o*(b).

[2] *See SEC v. Projaris Mgmt., LLC*, No. 1:13-cv-849 (D.N.M.).

securities of a pooled investment vehicle, and received compensation for each transaction in which investors bought the securities.[3] During that time period, he was neither registered with the Commission nor associated with any person or entity registered with the Commission.[4] The Division alleges that the district court enjoined Lawler in a consent judgment from violating the registration and antifraud provisions of the Securities Act of 1933 and the Exchange Act.[5] And the OIP paraphrases the Commission's allegations from its complaint in the district court.[6]

A different administrative law judge originally presided over this proceeding and issued an initial decision of default.[7] But the Commission vacated that decision following the Supreme Court's decision in *Lucia v. SEC*,[8] and the matter was reassigned to me to provide Lawler with the opportunity for a new hearing.[9] Lawler was directed to propose how further proceedings should be conducted,[10] but he never submitted a proposal or filed an answer.[11] Only the Division of Enforcement participated in the telephonic prehearing conference that I held on October 25, 2018.[12] Thereafter, I ordered Lawler to show cause why the proceeding should not be determined against him due to his failure to answer the OIP or otherwise defend the

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[3] OIP at 1.

[4] *Id.* at 1.

[5] *Id.* at 1; *see* 15 U.S.C. §§ 77e(a), 77e(c), 77q(a), 78j(b), 78*o*(a); 17 C.F.R. § 240.10b-5.

[6] OIP at 1–2.

[7] *Joe Lawler*, Initial Decision Release No. 1117, 2017 SEC LEXIS 887 (ALJ Mar. 21, 2017).

[8] 138 S. Ct. 2044 (2018); *see Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at *2–3 (Aug. 22, 2018).

[9] *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2–3 (ALJ Sept. 12, 2018).

[10] *Joe Lawler*, Admin. Proc. Rulings Release No. 6088, 2018 SEC LEXIS 2600, at *1 (ALJ Sept. 26, 2018).

[11] *Joe Lawler*, Admin. Proc. Rulings Release No. 6275, 2018 SEC LEXIS 3037, at *1 (ALJ Nov. 1, 2018).

[12] *Id.* at 1.

proceeding.[13] The Division then filed a motion for default and sanctions, supported by a declaration and six exhibits.[14] Lawler did not file an opposition to the Division's motion. In conducting this proceeding and considering the Division's motion, I gave no weight to the opinions, orders, or rulings issued by the prior administrative law judge.[15]

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed.[16] Because Lawler is in default, I have deemed true the allegations in the OIP and, consistent with Commission precedent, will rely on those allegations in conjunction with other evidence in the record developed since the proceeding was reassigned to me.[17] That other evidence includes the factual allegations admitted when Lawler pleaded guilty to twelve counts of wire fraud in a criminal action in the United States District Court for the District of New Mexico,[18] and the factual allegations in the civil complaint, which Lawler agreed that he could neither "contest" nor

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13 *Id.*

14 The exhibits are cited as "Div. Ex. _" using the documents' internal pagination.

15 *See Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at *4.

16 17 C.F.R. § 201.323.

17 *See Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at *4; *see also* 17 C.F.R. § 201.155(a); *David E. Lynch*, Exchange Act Release No. 46439, 2002 WL 1997953, at *1 & n.12 (Aug. 30, 2002) (instructing that, "if additional evidence is adduced in a proceeding against a respondent" who is in default, "the decisionmaker properly should consider that evidence in the determination of the proceeding").

18 Lawler did not enter a plea stipulating to only certain allegations, and nothing indicates that he objected to certain allegations. *See, e.g.*, *United States v. White*, 408 F.3d 399, 402–03 (8th Cir. 2005) (finding that a defendant's guilty plea did not constitute an admission to facts that the defendant disavowed during his plea hearing); *Valansi v. Ashcroft*, 278 F.3d 203, 216 n.10 (3d Cir. 2002) (recognizing that a defendant "may . . . plead guilty to only one of the allegations required to prove an element of her crime"). Rather, he pleaded guilty to all twelve counts of a superseding indictment. *See* Div. Exs. 1–3. In that circumstance, he "admitted all the well-pleaded facts in the indictment by pleading guilty." *United States v. Hill*, 53 F.3d 1151, 1155 (10th Cir. 1995) (en banc).

claim that he has not admitted.[19] In making the findings below, I have applied preponderance of the evidence as the standard of proof.[20]

In 2008, Joe Lawler opened Victory Partners Financial, which offered and sold securities in the form of investments in a trust, which in turn claimed to invest in metals, commodities, and a fund focused on overseas investments.[21]

By the end of 2010, Lawler had ceased operating Victory and transferred all investment accounts to Projaris Management, LLC, which he created in September 2010.[22] Although Lawler's name does not appear on Projaris's Articles of Organization, Lawler exercised sole control over Projaris's operation.[23] Between October 2010 and April 2012, Lawler caused his sons to open multiple bank accounts for Projaris—accounts that he similarly exercised sole control over, despite not being named on them.[24]

Lawler represented to prospective investors in Projaris that he would invest their funds in metals, real estate, or a REIT (Real Estate Investment Trust).[25] Lawler further represented that the trust would grow at a rate of twelve to fifteen percent annually, that risk was "limited," that principal return was guaranteed, that there were no tax consequences, that there were

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19 Div. Ex. 4 at 4; *see* Div. Exs. 4–6; *Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) ("Whether or not issues established in the consent judgment were 'actually litigated' for purposes of [collateral] estoppel, the Commission's application of factual preclusion in the follow-on proceeding was appropriate because the judgment unambiguously barred Siris from making any future challenge to the allegations in the [civil] complaint."); *Marshall E. Melton*, Investment Advisers Act of 1940 Release No. 2151, 2003 WL 21729839, at *9 (July 25, 2003); 17 C.F.R. § 202.5(e).

20 *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998).

21 Div. Ex. 5 at 6–7.

22 *Id.* at 7–8.

23 Div. Ex. 2 at 1; *see* Div. Ex. 5 at 5, 8.

24 Div. Ex. 2 at 1–2.

25 *Id.* at 3; Div. Ex. 5 at 8.

no fees apart from a set-up fee, and that a portion of investors' funds would be donated to a charity of investors' choice.[26]

These representations were knowingly or recklessly false. Lawler never created a REIT, nor did he invest funds in real estate.[27] Indeed, of the $1.4 million Victory and Projaris received for investment, only about $600,000 was invested as represented.[28] The approximately $835,000 in remaining funds were used to perpetuate the scheme or were misappropriated by Lawler and his codefendants in the civil case.[29] Approximately $429,000 of the remaining funds were used by Lawler and his family for daily living expenses and to support their lifestyle.[30] Lawler and his family also spent approximately $172,000 on unapproved business ventures and undisclosed trading.[31]

Approximately $199,000 was used to make Ponzi-style payments to withdrawing investors.[32] If an investor complained of the investment's lack of performance and threatened to report him, Lawler would use funds from another Projaris investor to pay off the concerned investor.[33] After various investors complained, Lawler conducted a conference call in July 2014, with the complaining investors and falsely said he could not return their

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[26] Div. Ex. 2 at 2–3; Div. Ex. 5 at 8–9, 13–14.

[27] Div. Ex. 2 at 3.

[28] Div. Ex. 5 at 15; *see* Div. Ex. 2 at 2. Lawler and Projaris are not even able to account for all of the $600,000 that was purportedly invested. Div. Ex. 5 at 15.

[29] Div. Ex. 5 at 16.

[30] *Id.* These expenses included auto purchases, personal rent and utilities, travel, restaurants and bars, groceries, department stores, and expenses related to a defaulted mortgage. *Id.* at 16–17.

[31] *Id.* at 16. The unapproved trading accounted for $129,000 of lost investor money. *Id.* The trades included unsuccessful margin trading for metals and unsuccessful equities trading. *Id.* Another $43,000 was spent on real estate training seminars, unbeknownst to investors. *Id.*

[32] *Id.*

[33] *Id.* at 15–16.

investments because the assets were tied up in real estate.[34] Finally, approximately $35,000 was used to pay commissions for soliciting investors.[35]

Lawler therefore knew that the representations regarding returns, lack of fees, and charitable donations were false because he was knowingly operating a Ponzi scheme and had access to the bank statements while directing how the money in the bank accounts should be spent.[36] He comingled investors' funds without regard to each investor's investment objectives or risk tolerance.[37] In addition, Lawler either knew or was reckless in not knowing that Projaris was not able to legitimately accept IRA rollovers under IRS rules but he nevertheless successfully targeted investors' retirement accounts.[38]

Once investors were pulled into the scheme, Lawler created inflated account statements that misrepresented the allocation of each investor's assets in the trust, how many "units" the investor owned in each category, the current value of the investment, and the interest accrued.[39] The manufactured account statements caused some investors to make additional investments in the trust.[40]

In June 2015, Lawler pleaded guilty to the superseding indictment in the criminal prosecution against him.[41] He was sentenced in November 2015 to thirty-six months in prison and restitution of $478,511.37 to five identified victims.[42]

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[34] Div. Ex. 2 at 3.

[35] Pamela Hass received commissions as the National Sales Director of Projaris for soliciting investors and inviting them to participate in calls with Joe Lawler, among other duties. Div. Ex. 5 at 17.

[36] Div. Ex. 2 at 3; Div. Ex. 5 at 14–15.

[37] Div. Ex. 5 at 9–10.

[38] Div. Ex. 2 at 3; Div. Ex. 5 at 8–9, 14–15.

[39] Div. Ex. 5 at 13.

[40] *Id.*

[41] Div. Ex. 1.

[42] Div. Ex. 3 at 3, 6.

In January 2016, Lawler consented to the entry of injunctions against him in the civil case.[43] And in May 2016, the district court enjoined Lawler from violating Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.[44] The court also found that Lawler profited from his scheme in the amount of $835,000.[45] It thus found him jointly and severally liable to disgorge that amount, plus $85,146 in interest.[46] The court further ordered him to pay a civil monetary penalty of $150,000.[47]

Conclusions of Law

The Exchange Act gives the Commission authority to impose collateral and penny stock bars[48] against Lawler if, as is relevant here, (1) he was associated with or seeking to become associated with a broker or dealer at the time of his misconduct; (2) he was enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security"; and (3) imposing a bar is in the public interest.[49]

As to the first element, Lawler acted as an unregistered broker-dealer throughout the time of his misconduct. A *broker* is a "person engaged in the

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[43] Div. Ex. 4.

[44] Div. Ex. 6.

[45] *Id.* at 4.

[46] *Id.*

[47] *Id.*

[48] A collateral bar, also referred to as an industry bar, is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014).

[49] 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii). Although Lawler's misconduct began before Congress conferred the authority to impose a collateral bar in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), Lawler's operation of Projaris as part of his ongoing fraudulent scheme occurred after collateral bars were authorized. *See Bartko v. SEC*, 845 F.3d 1217, 1220–21, 1224 (D.C. Cir. 2017) (holding that a collateral bar cannot be imposed for wrongdoing committed before July 22, 2010, the effective date of Dodd-Frank).

business of effecting transactions in securities for the account of others," while a *dealer* trades on his own account.[50] Lawler did the former for over four years, throughout the period of his misconduct.[51] He held himself out as a broker to his investors, and he offered and sold—that is, effected transactions in—securities to investors around the United States.[52] In addition, Lawler was compensated each time investors bought the securities, which is "one of the hallmarks of being a broker-dealer."[53]

As to the second element, when the district court permanently enjoined Lawler from violating the registration and antifraud provisions of the federal securities laws, it necessarily enjoined him from "engaging in . . . conduct . . . in connection with the purchase or sale of any security."[54]

That leaves the third element. To determine whether to impose a bar, I must consider the public-interest factors discussed in *Steadman v. SEC*.[55] The public interest factors include:

> 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

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50 15 U.S.C. § 78c(a)(4)(A), (5).

51 *See* OIP at 1; Div. Ex. 2 at 1; Div. Ex. 5 at 1.

52 OIP at 1; Div. Ex. 5 at 18; *see Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at *18 (Feb. 20, 2015) (discussing "[a]ctivities that are indicative of being a broker"); *see also Erik W. Chan*, Securities Act Release No. 8078, 2002 WL 507022, at *7 n.42 (Apr. 4, 2002) ("A person effects transactions if he or she participates in . . . helping an issuer to identify potential purchasers of securities, soliciting securities transactions, and participating in the order-taking or order-routing process (for example, by taking transaction orders from customers).").

53 *James S. Tagliaferri*, Securities Act Release No. 10308, 2017 WL 632134, at *4 & nn. 27–28 (Feb. 15, 2017) (quoting *SEC v. Helms*, No. A-13-CV-1036, 2015 WL 6438872, at *3 (W.D. Tex. Oct. 20, 2015)); *see* Div. Ex. 5 at 18.

54 15 U.S.C. §§ 78*o*(b)(4)(C); *see* Div. Ex. 6.

55 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Scammell*, 2014 WL 5493265, at *5.

> the likelihood that the respondent's occupation will present opportunities for future violations.[56]

The Commission also considers the deterrent effect of administrative sanctions.[57] This public interest inquiry is "flexible, and no one factor is dispositive."[58] Before imposing a bar, an administrative law judge must specifically determine why the Commission's interests in protecting the investing public would be served by imposing an industry bar.[59]

In considering the public interest, I am mindful that "in most" cases involving fraud, the public-interest analysis will weigh in favor of a "severe sanction."[60] And because "[t]he securities industry presents continual opportunities for dishonesty and abuse," it "depends heavily on the integrity of its participants and on investors' confidence."[61]

Turning to the *Steadman* factors, it is evident that the public interest and the Commission's interest in protecting the public weigh in favor of an

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[56] *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016) (citing *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *4 & n.18 (Apr. 20, 2012)).

[57] *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Although relevant, general deterrence is not determinative in assessing whether the public interest weighs in favor of imposing a bar. *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

[58] *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009) (quoting *David Henry Disraeli*, Securities Act Release No. 8880, 2007 WL 4481515, at *15 (Dec. 21, 2007), *pet. denied*, 334 F. App'x 334 (D.C. Cir. 2009)), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

[59] *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *1 (Nov. 18, 2014); *see Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

[60] *Siris*, 2013 WL 6528874, at *11 n.71 (quoting *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *7 (Feb. 4, 2008), *pet. denied*, 561 F.3d 548 (6th Cir. 2009)).

[61] *Feathers*, 2014 WL 6449870, at *3 (alteration in original) (quoting *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 & n.53 (July 26, 2013)).

industry bar. For starters, Lawler operated his business as a Ponzi scheme, using later investors' funds to pay earlier investors who complained about the nonperformance of their investment.[62]

Lawler also deceived investors as to the nature of the trust they were investing in. He represented that the trust would grow at a rate of twelve to fifteen percent annually, that the trust was an IRA eligible investment, and that there were no fees other than a set-up fee.[63] None of these assertions was remotely accurate.[64]

Instead, Lawler used investor funds to benefit himself and his family. He used investor funds to pay off a mortgage.[65] He also used investor funds to support his and his family's lifestyle, paying for auto purchases, personal rent and utilities, travel, restaurants and bars, groceries, department stores, and credit card bills.[66] When investors attempted to withdraw their money, he paid them off with other investors' funds.[67] Lying to investors while using their funds to support one's lifestyle and run a Ponzi scheme is highly egregious conduct. The egregious nature of his conduct is underscored by the $478,511.37 in restitution and $835,000 in disgorgement for which he is liable.[68]

Lawler's conduct was recurrent. By its nature, a Ponzi scheme involves recurrent fraud; attracting ever more investors is necessary in order to keep the scheme operating. Lawler sold securities to over twenty investors over the course of at least four years.[69]

Lawler's conduct showed a high degree of scienter. It was no accident that he used investor funds to fund his lifestyle or pay off a mortgage. Lawler did not mistakenly mishandle investor money; he had access to the Victory's

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[62] Div. Ex. 2 at 3; Div. Ex. 5 at 16.

[63] Div. Ex. 5 at 13–14.

[64] *Id.*

[65] *Id.* at 16–17.

[66] *Id.*

[67] *Id.* at 16.

[68] Div. Ex. 3 at 6; Div. Ex. 6 at 4.

[69] Div. Ex. 2 at 1; Div. Ex. 5 at 1, 17.

and Projaris's bank statements and directed how the money in the bank accounts should be spent.[70] Therefore, he knew that he was sending out fraudulent account statements to investors.[71] Lawler affirmatively and intentionally lied to investors and stole their money for his benefit. Furthermore, the wire fraud offense to which he pleaded guilty necessarily involved intent to defraud,[72] and the antifraud violations of Securities Act 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5 necessarily involved scienter.[73]

Given Lawler's violations, the egregiousness of those violations, the level of scienter shown by his conduct, his relatively short period of incarceration,[74] and that Lawler has also failed to make any assurances against future violations or show that he recognizes the wrongfulness of his conduct, I determine that if Lawler remains in the securities industry, he is likely to engage in future misconduct.[75]

Finally, imposing a bar will serve the Commission's interest in deterring others from engaging in similar misconduct.

In sum, Lawler's egregious conduct harmed investors and if he were able to remain in the industry, he would have the opportunity to cause additional

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[70] Div. Ex. 2 at 1–2; Div. Ex. 5 at 16.

[71] *See* Div. Ex. 5 at 13.

[72] *See* 18 U.S.C. § 1343; *United States v. Caldwell*, 560 F.3d 1202, 1207 (10th Cir. 2009); Div. Exs. 1–3.

[73] *See* 15 U.S.C. §§ 77q(a)(1), 78j(b); 17 C.F.R. § 240.10b-5; *Aaron v. SEC*, 446 U.S. 680, 701–02 (1980); Div. Exs. 4–6.

[74] Div. Ex. 3 at 3. Lawler was sentenced to imprisonment for a term of thirty-six months followed by thirty-six months of supervised release. *Id.* at 3–4.

[75] See *Korem*, 2013 WL 3864511, at *6 n.50 ("[T]he existence of a violation raises an inference that it will be repeated." (alteration in original) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004))); *cf. John A. Carley*, Securities Act Release No. 8888, 2008 WL 268598, at *22 (Jan. 31, 2008) (determining whether to impose a cease-and-desist order and holding that "[o]ur finding that a violation is egregious 'raises an inference that [the misconduct] will be repeated'" (quoting *Geiger v. SEC*, 363 F.3d at 489)), *remanded on other grounds sub nom. Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).

harm. The Commission's interest in protecting the investing public would be served by imposing an industry and penny stock bar.

Order

The Division of Enforcement's motion for default and sanctions is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934, Joe Lawler is BARRED from associating with a 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.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[76] 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.[77] 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.

Lawler may move to set aside a default. 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.[78] 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. Such motion, if filed, should be directed to the

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[76] *See* 17 C.F.R. § 201.360.

[77] *See* 17 C.F.R. § 201.111.

[78] 17 C.F.R. § 201.155(b).

Commission, as the hearing officer may only set aside a default "prior to the filing of the initial decision."[79]

James E. Grimes
Administrative Law Judge

[79] *Id.*