Initial Decision Release No. 1348
Administrative Proceeding
File No. 3-17621

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

In the Matter of

Andrew Stitt

Initial Decision
February 6, 2019

Appearance: Chris Davis for the Division of Enforcement, Securities and Exchange Commission

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's renewed motion for entry of sanctions by default. Respondent Andrew Stitt is barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization or 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 proceeding is a follow-on proceeding based on a permanent injunction entered against Stitt by the United States District Court for the Northern District of Texas.[2]

---

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

[2] *See SEC v. Team Res.*, No. 3:15-cv-1045-N (N.D. Tex.) (civil case); OIP ¶ II.A.2.

Stitt was served with the OIP in December 2017.[3] At the time Stitt was served, this proceeding was assigned to a different administrative law judge, who issued an initial decision in January 2018.[4] The Commission later issued a notice that the initial decision had become final.[5]

In June 2018, the Commission stayed all pending cases.[6] In August 2018, the Commission allowed the stay to lapse, vacated decisions in all pending cases, remanded all cases pending before it, and ordered that all pending cases be reassigned.[7] The Commission's remand order included this case among a list of vacated and remanded cases.[8] Following the Commission's August order, this proceeding was reassigned to me.[9]

Following reassignment, I determined that Stitt had been served with the OIP.[10] Because he had not answered the OIP, I ordered him to show cause why he should not be found in default.[11] Stitt did not respond to the order to show cause and he also failed to participate in a telephonic prehearing conference held in early November 2018.[12] Following the prehearing conference, I invited the Division to submit supplemental

---

3 *Andrew Stitt,* Admin. Proc. Rulings Release No. 6188, 2018 SEC LEXIS 2840, at *1, *3 (ALJ Oct. 15, 2018).

4 *Andrew Stitt*, Initial Decision Release No. 1231, 2018 WL 637806 (ALJ Jan. 30, 2018).

5 *Andrew Stitt*, Exchange Act Release No. 83258, 2018 SEC LEXIS 1159 (May 16, 2018).

6 *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10510, 2018 WL 3193858 (June 21, 2018).

7 *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 WL 4003609, at *1 (Aug. 22, 2018).

8 *Id.* at Ex. A.

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

10 *Stitt,* 2018 SEC LEXIS 2840, at *3.

11 *Id.* at *3–4.

12 *Andrew Stitt*, Admin. Proc. Rulings Release No. 6349, 2018 SEC LEXIS 3278, at *4 (ALJ Nov. 20, 2018).

evidence in support of a motion for default it had previously filed.[13] After it declined that invitation, I denied the motion without prejudice.[14] The Division then renewed its motion, this time including supporting evidence.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Commission Rule of Practice 323, 17 C.F.R. § 201.323.[15] Because he failed to answer the OIP or otherwise participate in this proceeding, Stitt is in default.[16] As a result of Stitt's default, I have accepted as true the factual allegations in the OIP.[17] In making the findings below, I have applied preponderance of the evidence as the standard of proof.[18]

Stitt was part of a fraudulent oil and gas investing scheme that lasted five years, and involved over 450 investors and losses in excess of $33 million.[19] As part of the scheme, fronters identified potential investors from lists of leads, phoned the potential investors, and read prepared scripts, spinning tales of significant profits from investments "in highly productive oil and gas wells."[20] Stitt, whose role in the scheme lasted from October 2010 until March 2012, served as a closer whose job was to secure investments after the fronters contacted potential investors.[21] As a closer, Stitt, using the alias "Andy Belson," reiterated the fronters' representations, and promised

---

13 *Andrew Stitt*, Admin. Proc. Rulings Release No. 6290, 2018 SEC LEXIS 3147 (ALJ Nov. 5, 2018).

14 *Stitt*, 2018 SEC LEXIS 3278, at *15.

15 I take official notice of the docket in the civil case and the orders the court has issued.

16 *See* 17 C.F.R. §§ 201.155(a), .220(f); *Pending Admin. Proc.*, 2018 WL 4003609, at *1.

17 *See* 17 C.F.R. §§ 201.155(a), .220(f).

18 *See John Francis D'Acquisto*, Investment Advisers Act of 1940 Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998).

19 *See* civil case, ECF No. 75, at 1.

20 Div. Ex. 1 at 2; Div. Ex. 5 at 45–46, 53–54; Div. Ex. 7 at 27–31, 58, 61–63, & Sub Ex. 129; Div. Ex. 8, at Sub Ex. 153.

21 Div. Ex. 1 at 2; Div. Ex. 5 at 54–55.

unreasonable returns.[22] But Stitt omitted that: (1) past investment programs had fared poorly, (2) area oil wells were producing little or no oil, (3) he received sales commissions on investments, and (4) he was using an alias.[23]

Considering these facts, it is apparent that the scheme in which Stitt participated was essentially a boiler room. A boiler-room scheme has been described as "a telemarketing operation in which salespeople call lists of potential investors in order to peddle speculative or fraudulent securities."[24] For his part in the scheme, Stitt received $214,371 in sales commissions.[25]

The securities Stitt offered and sold as part of the scheme were not registered.[26] Stitt has never registered with the Commission as a broker-dealer and has never been associated with a registered broker-dealer.[27]

In August 2016, the United States District Court for the Northern District of Texas permanently enjoined Stitt from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5.[28]

---

[22] Div. Ex. 1 at 2; *see* Div. Ex. 8 at 465–66.

[23] Div. Ex. 1 at 2–3.

[24] *SEC v. Wolfson*, 539 F.3d 1249, 1252 n.6 (10th Cir. 2008). According to the Commission, boiler room schemes are characterized by the use of numerous sales people cold-calling potential investors, high-pressure tactics, and "inaccurate, highly exaggerated and misleading representations." *Barnett & Co.*, Exchange Act Release No. 6466, 1961 WL 60017, at *2 (Feb. 8, 1961); *see also Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *3 n.20 (June 26, 2014).

[25] Div. Ex. 1 at 3; OIP ¶ II.A.I.; *see* Div. Ex. 7 at 34–35, 130 (discussing commission payments); Div. Ex. 9, at Sub Ex. 2 (selected checks made payable to Andy Stitt).

[26] OIP ¶ II.A.I.

[27] *Id.*

[28] Div. Ex. 10 at 2.

Conclusions of Law

The Exchange Act gives the Commission authority to impose a collateral bar[29] against Stitt if, as is relevant here, (1) he was associated with or seeking to become associated with broker or dealer at the time of the misconduct at issue; (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.[30]

The first factor is met in this case. A broker is a person "engaged in the business of effecting transactions for the account of others."[31] Receipt of transaction-based compensation is a strong indicator that one is acting as a broker.[32] The fact that Stitt was involved in recruiting and soliciting potential investors lends additional weight to the determination that he was a broker.[33] And given the relevant factors, it is not surprising that boiler room participants are often described as brokers.[34]

Stitt's participation in the scheme was the basis for his injunction.[35] There is therefore no doubt that he was associated with a broker—himself—at the time of his misconduct.[36]

---

[29] 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).

[30] 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii).

[31] 15 U.S.C. § 78c(a)(4)(A).

[32] *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *4 & n.27 (Feb. 15, 2017).

[33] *Id.* at *4; *see SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) (holding that factors relevant to whether a person is a broker include "regular participation in securities transactions," being employed by the securities issuers, receipt of commissions instead of salary, past history of selling the securities of other issuers, giving advice to investors, and active recruitment of investors).

[34] *See, e.g., United States v. Becker*, 502 F.3d 122, 125 (2d Cir. 2007) (describing the participants in a boiler-room scheme as brokers).

[35] *See* Div. Ex. 9 at 1–3; Div. Ex. 10.

Turning to the second factor, the district court permanently enjoined Stitt from selling unregistered securities, acting as an unregistered broker-dealer, committing fraud in the offer or sale of any securities, and committing fraud in connection with the purchase or sale of any securities.[37] The terms of this injunction meet the requirement that a court has enjoined Stitt from "engaging in … *any* conduct … in connection with the … sale of *any* security."[38]

To determine whether imposing a collateral bar would be in the public interest, I must weigh the public-interest factors set forth in *Steadman v. SEC*.[39] These 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 the likelihood that the respondent's occupation will present opportunities for future violations.[40]

---

[36] *See Tagliaferri*, 2017 WL 632134, at *5 ("Because we find that Tagliaferri himself met the definition of a 'broker,' we also find that he met the definition of a 'person associated with a broker' for purposes of Exchange Act Section 15(b)(6)"); *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *8 (July 26, 2013) (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").

[37] *See* Div. Ex. 10 at 2.

[38] 15 U.S.C. § 78*o*(b)(4)(C) (emphasis added).

[39] 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Securities Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

[40] *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016).

The Commission also considers the deterrent effect of administrative sanctions.[41] The public interest inquiry is "flexible" and "no one factor is dispositive."[42]

Before imposing a collateral bar, an administrative law judge must determine, based on the evidence presented, whether a bar "is necessary or appropriate to protect investors and markets."[43] I must therefore "'review [Stitt's] case on its own facts' to make findings regarding [his] fitness to participate in the industry in the barred capacities."[44] A decision to impose a collateral bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'"[45]

In Stitt's case, resolving the public-interest inquiry is not difficult. The Commission has remarked that "[t]he securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."[46] And "boiler-room activity is the antithesis of fair dealing."[47] Indeed, "misrepresentations … are an

---

41 *Id.* General deterrence is relevant but not determinative of whether the public interest weighs in favor of imposing a collateral bar. *See Peter Siris*, Advisers Act Release No. 3736, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

42 *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

43 *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (internal quotation marks omitted), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

44 *Id.* (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)).

45 *Id.* (quoting *McCarthy*, 406 F.3d at 189–90); *see also John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012) ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors."), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016).

46 *Seghers*, 2007 WL 2790633, at *7.

47 *Wright, Myers & Bessell, Inc.*, Exchange Act Release No. 7415, 1964 WL 66911, at *5 (Sept. 8, 1964).

inherent part of a boiler-room operation."[48] Allowing a willing boiler-room participant to avoid responsibility for his actions, therefore, "would be highly unrealistic and contrary to the public interest."[49]

Bearing these observations in mind, and considering the *Steadman* public-interest factors in turn, Stitt's conduct was egregious. Stitt played an important role in a larger fraud involving over 450 investors and losses in excess of $33 million. Stitt personally misrepresented or omitted material facts while inducing investors to invest. Stitt's willing participation in a fraudulent scheme shows that he should not be trusted with investors' funds and that excluding him from the securities industry would best serve the Commission's interest in protecting the investing public.

Additionally, Stitt sold unregistered securities and acted as an unregistered broker.[50] The registration requirements in Section 5 and Section 15 are central to the Commission's investor-protection mission.[51] In particular, by selling unregistered securities in violation of Section 5 of the Securities Act, Stitt deprived investors of information they needed to make informed investment decisions.[52]

Stitt's conduct was not isolated. He participated in the scheme for approximately 18 months and received at least 19 commission payments for his efforts.[53]

Stitt also acted with a high degree of scienter. He knew his name was not Andy Belson, but used that alias anyway when soliciting investors. He knew he would receive commissions but never told investors about that material fact. And Stitt repeated the fronters' assertions about highly

---

48 *Id*. at *5 n.10; *see Savva*, 2014 WL 2887272, at *9 (explaining that boiler-room operations "are, at a minimum, deceptive and violate antifraud provisions of the securities laws").

49 *Wright, Myers & Bessell*, 1964 WL 66911, at *5.

50 OIP ¶ II.A.I.

51 *See Allen M. Perres*, Securities Act Release No. 10287, 2017 WL 280080, at *3 (Jan. 23, 2017), *pet. denied*, 695 F. App'x 980 (7th Cir. 2017); *Joseph J. Fox*, Securities Act Release No. 10328, 2017 WL 1103693, at *3 (Mar. 24, 2017).

52 *See Perres*, 2017 WL 280080, at *3.

53 Div. Ex. 9 at Sub Ex. 2.

productive wells but said nothing about the fact that past investment programs had fared poorly and area oil wells were producing little or no oil.

Because Stitt has not participated in this proceeding, he has not made assurances against future misconduct or demonstrated that he understands or recognizes the wrongfulness of his criminal acts.

Additionally, allowing Stitt to remain in the securities industry would present him with future opportunities for further misconduct and would put the investing public at risk. This determination is supported by my finding that Stitt's conduct was egregious.[54]

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

In light of the factors discussed above, I find that it is in the public interest to impose a collateral and penny-stock bar against Stitt.

Order

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

Under Section 15(b) of the Securities Exchange Act of 1934 Andrew Stitt is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Under Section 15(b) of the Securities Exchange Act of 1934, Andrew Stitt, is BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[55] Under that rule, a party may file a petition for

---

[54] *See Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004) (holding that a finding of egregiousness "justifies the inference" that misconduct will recur); *Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 WL 149127, at *11 (Jan. 16, 2008) ("The existence of a violation raises an inference that the violation will be repeated, and where the misconduct resulting in the violation is egregious, the inference is justified").

[55] *See* 17 C.F.R. § 201.360.

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.[56] 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.

Stitt may move the Commission to set aside the default under Rule of Practice 155(b), which 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.[57] 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.[58] Such motion, if filed, should be directed to the Commission, as the hearing officer may only set aside a default "prior to the filing of the initial decision."[59]

James E. Grimes
Administrative Law Judge

---

[56] See 17 C.F.R. § 201.111.

[57] 17 C.F.R. § 201.155(b).

[58] *Id.*

[59] *Id.*