

investment. These proven activities occurred in 2011 and 2012, and the proven amount of such compensation was \$40,000. The loss of \$400,000 by one customer is also proven. The proven activities occurred during Mosshart's association with LPL; still at issue is whether or not LPL knew of and approved them such that they were within the scope of his association with LPL during the time he was so associated. Mosshart, who was employed as president of Enviro Board as of January 1, 2012, for an annual salary of \$120,000, also engaged in other activities on behalf of the company, such as public relations, lobbying, and sales. Enviro Board paid a total of \$553,355 for Mosshart's services between May 2011 and May 2013.

The Order also concluded that whether Mosshart also violated Exchange Act Section 15(a) may depend on the scope of his association with LPL, which is disputed on the current record. Further, even if it is established that he was not acting within the scope of that association, it must be established that he was acting as an unregistered broker to conclude that he violated Section 15(a). Additionally, the Order noted that, although Securities Act Section 5 is a strict liability provision, Mosshart's belief that the Enviro Board securities were exempt from registration is relevant to the determination of sanctions, including consideration of the *Steadman* factors.² The Order noted that the Commission rarely imposes an industry bar in a litigated administrative proceeding for violating registration provisions absent an antifraud violation and that those few cases in which a respondent was suspended or barred in the absence of fraud involved conduct that was much more serious, long-running, and otherwise harmful to the markets than Mosshart's conduct as found in the Order.

In light of the above, the parties were ordered to confer with an eye to reaching agreement on further procedures, which may include: agreeing that the undersigned may decide this proceeding, including disputed issues, based on the current record; supplementing the current record with additional filings and documentary evidence; video or audio testimony; or settlement. Mosshart's September 26, 2020, response requests the undersigned to decide the proceeding based on the current record. The Division's September 30, 2020, status report requested the opportunity to make a further evidentiary submission, including evidence from LPL and sworn testimony and exhibits from Mosshart's FINRA proceeding. Accordingly, the Division may submit such further evidence by November 16, 2020. Mosshart may file a response by November 30, 2020.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

² *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).