

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 100045 / May 1, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21925**

**In the Matter of**

**TIMOTHY A. NEMECKAY,**

**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 15(b) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Timothy A. Nemeckay (“Nemeckay” or “Respondent”).

**II.**

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Nemeckay, age 64, is a resident of Utah. Nemeckay is the Founder, President, Secretary, and Board Manager of Mine Shaft Brewing, LLC (“Mine Shaft”) and is listed as an Executive Officer on Mine Shaft’s Form D filings. Nemeckay has never been registered with the Commission in any capacity. In 2014, The State of Utah ordered Nemeckay to cease and desist from securities violations, barred him from association with a broker-dealer and from becoming

licensed as such, and ordered him to pay restitution and fines of \$350,000.<sup>1</sup> In 2016, Nemeckay was sanctioned by the Commission in a follow-on to the State bar with an associational bar and from participating in any offering of a penny stock.<sup>2</sup>

## B. ENTRY OF THE INJUNCTION

2. On October 6, 2023, a final judgment was entered against Nemeckay, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (“Securities Act”), and Sections 10(b) and 15(a)(1) of the Exchange Act and Exchange Act Rule 10b-5 in the civil action entitled Securities and Exchange Commission v. Mine Shaft Brewing, LLC, et al., Civil Action Number 2:21-CV-00457-DBB-JCB, in the United States District Court for the District of Utah.

3. In connection with the sale of Mine Shaft securities:

a. Nemeckay misrepresented to investors, among other things, that Mine Shaft would use the majority of its funds to establish a brewery and restaurant, that Mine Shaft’s offering was exempt from registration, that investors would receive 8% annual returns, and that Mine Shaft had large investors and an experienced team of professionals;

b. Nemeckay failed to disclose that Mine Shaft had no material revenues, that he was barred from association with or participation in an offering of penny stock, that he used the bulk of investor funds to pay his personal expenses, including paying his restitution obligations to victims from his prior securities fraud scheme; and

c. Nemeckay offered and sold securities of Mine Shaft in unregistered transactions and did so without registering with the Commission as a broker.

## III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act;

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<sup>1</sup> *In the Matter of Timothy A. Nemeckay and Nemeckay Group Incorporated*, SD-14-0009, SD-14-0010 (2014).

<sup>2</sup> *In the Matter of Timothy A. Nemeckay*, SEC File No. 3-17360 (2016).

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act; and

#### IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, [www.sec.gov](http://www.sec.gov), at <http://www.sec.gov/eFAP>. Respondent also must serve and accept service of

documents electronically. All motions, objections, or applications will be decided by the Commission.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman  
Secretary