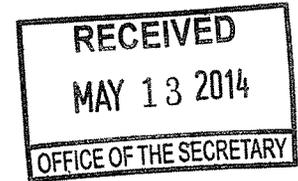


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**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15755**



**In the Matter of**

**MARK FEATHERS,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S REPLY**  
**MEMORANDUM IN SUPPORT OF MOTION**  
**FOR SUMMARY DISPOSITION AGAINST**  
**RESPONDENT MARK FEATHERS**  
**PURSUANT TO COMMISSION RULE OF**  
**PRACTICE 250**

## **I. INTRODUCTION**

The Division of Enforcement (“Division”) respectfully submits this reply in support of its motion for summary disposition of this follow-on proceeding against Mark Feathers (“Feathers”) brought pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”). Feathers’ opposition does not raise any issues that preclude summary disposition. Based on the injunction entered in the civil proceeding, the Division requests that Feathers be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization, and from participating in any offering of penny stock.

## **II. ARGUMENT**

### **A. Feathers’ Purported “Facts” Merely Seek to Relitigate Issues Raised in the District Court Proceeding**

Feathers asserts that three “facts” are “germane” to this proceeding, however, Feathers is merely trying to relitigate arguments he made before the District Court. The Division cited the applicable authority that precludes relitigation of facts determined in an earlier proceeding, and Feathers ignores this and cites no authority for his efforts to relitigate issues decided in the District Court. *See James E. Franklin*, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713 & n.13, 2007 WL 2974200, *petition for review denied*, 285 F. App’x 761 (D.C. Cir. 2008); *Michael V. Lipkin and Joshua Shainberg*, Initial Dec. Rel. No. 317 (Aug. 21, 2006), 88 S.E.C. Docket 2346, 2006 WL 2422652 (“It is well established that the Commission does not permit a respondent to relitigate issues decided in the underlying civil proceeding.”), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

Feathers' "Fact No. 1" is that the complaint filed in the District Court action included an error, which claim was litigated in the District Court. Feathers filed numerous motions to dismiss and/or for sanctions in the District Court based on this argument.<sup>1</sup> The District Court held a hearing on these and related motions on February 22, 2013, and denied Feathers' motions. (Dkt. No. 272.) Feathers promptly re-filed a motion on February 22, 2013, raising the same issues. (Dkt. No. 275.) After another hearing, this motion was denied. (Dkt. No. 454.) Feathers fully litigated this claim in the District Court, and it is not appropriate to relitigate it in this proceeding.

Moreover, the Commission's for summary judgment did not include the challenged allegations that Feathers cites as "Fact No. 1." Feathers knows this, because at the June 28, 2013 hearing on the cross-motions for summary judgment, the District Judge expressly asked counsel for the Commission whether the allegations challenged by Feathers were part of the motion. Counsel confirmed that they were not part of the motion for summary judgment. (*See* Bulgozdy Dec., Ex. 1.) Feathers' argument on this point is not germane in any way to the propriety of summary disposition.

Feathers also argues under "Fact No. 1" that the Administrative Law Judge should not accept any "financial representations" from the Division. The motion for summary disposition is not based on financial representations by the Division, but rather is based on the entry of a permanent injunction and the factual findings of the District Court. Feathers' "Fact No. 1" is an improper attempt to relitigate issues litigated in the District Court and does not preclude summary disposition.

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<sup>1</sup> *See, e.g.*, Motion to Dismiss for Cause on November 5, 2012 (Dkt. No. 93); Request for Fed. R. Civ. P. 9 Special Sanctions Against Roger Boudreau for Misconduct of a Government Agent Acting Under color of Authority and Fed R. civ. P. 12(b)(6) Dismissal for Cause on November 26, 2012 (Dkt. No. 126).

Feathers' "Fact No. 2" was also fully litigated in the District Court. Feathers moved to dismiss the Receiver because he was not a certified public accountant. (*See, e.g.*, Motion to Dismiss Receiver (Dkt. No. 94).) The motion was denied. (Dkt. No. 272.) Feathers' obliquely refers to a California State Bar proceeding, but fails to provide any details on the outcome. In fact, Feathers filed a complaint with the California State Bar against counsel for the Commission, which complaint was dismissed without any action being taken against counsel. (Bulgozdy Dec., ¶ 3.) Feathers' vague arguments about a conspiracy between counsel for the Commission and the Receiver, which he litigated in the District Court, are not a basis to deny summary disposition.

In his "Fact No. 3," Feathers complains of "a rigged pre-trial" proceeding in the District Court, "prejudicial labeling," and that a review of the "offering documents of the funds" will demonstrate that he is innocent of fraud. Yet again, these arguments do not prevent summary disposition. There is no evidence that the District court proceedings were "rigged," and in any event, this is not the forum to litigate such a claim. The "prejudicial labeling" complaint likely refers to the Commission's allegation that Feathers made "Ponzi-like" payments to investors. Feathers also litigated his complaint with that terminology in the District Court.<sup>2</sup> Feathers' argument that a review of the offering documents will vindicate him is an effort to relitigate the substance of the claims decided by the District Court, which had all the offering documents in the record on summary judgment. Indeed, the District Court refers to the offering documents in the decision on summary judgment. Therefore, Feathers' "Fact No. 3" does not provide a basis to deny summary disposition.

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<sup>2</sup> Feathers sought a temporary restraining order and preliminary injunction, and sanctions, for the Commission's use of the "*fighting words* 'Ponzi-like.'" (*See* Dkt. No. 113, at p. 1.) The District Court denied this motion. (Dkt. No. 143.)

Finally, Feathers claims that “scores and scores” of investors support him. The question of whether summary disposition is appropriate, and whether Feathers should be barred from the industry, is not a popularity contest. The issue is whether such a bar is in the public interest. While Feathers asserts that not a single investor opposes him, in fact, the District Court docket shows that more than one investor has written a letter to the Court opposing Feathers’ plans. (See Bulgozdy Dec., Exs. 2, 3, 4, 5, 6.) Nonetheless, whether investors are “for” Feathers or “against” him is not one of the factors used to determine whether a bar is in the public interest.

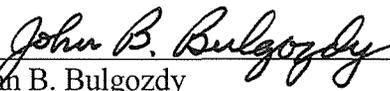
Feathers does not dispute that the District Court entered a permanent injunction against him. The District Court findings are not subject to relitigation, and those findings establish that barring Feathers from the securities industry is in the public interest.

### **III. CONCLUSION**

Accordingly, the motion for summary disposition should be granted and Feathers should be barred pursuant to Section 15(b) of the Securities Exchange Act of 1934.

Dated: May 12, 2014

Respectfully submitted,

  
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