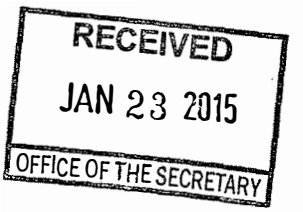
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No.

ADMINISTRATIVE PROCEEDING
File No. 3-16152



In the Matter of

Albert Reda,

Respondent.

DIVISION OF ENFORCEMENT'S BRIEF IN SUPPORT OF MOTION FOR DEFAULT

Dated: January 23, 2015

Respectfully submitted,

//s// Martin F. Healey

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COUNSEL FOR
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The Division of Enforcement ("Division") submits this brief in support of its motion for an initial decision on default as to Albert Reda as to allegations that he violated Section 10(b) of the Securities Exchange Act ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(a), thereunder, 17 C.F.R. 240.10b-5. As relief, the Division seeks a) an Order pursuant to Section 21C of the Exchange Act, 15 U.S.C. § 78u-3, that Mr. Reda cease-and-desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5, thereunder, b) an Order pursuant to Section 15(b)(6) of the Exchange Act, 15 U.S.C. § 780(b)(6), barring Mr. Reda from participating in any offering of a 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 or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, and c) an

Order pursuant to Section 21C(f) of the Exchange Act, 15 U.S.C. § 78u-3(f), barring Reda from serving as an officer and director of a public company.

The accompanying Declaration of Martin F. Healey (*"Healey Decl. ")* is submitted in support of the facts set out below.

Procedural Background

On September 22, 2014, the Commission issued an Order Instituting Proceedings ("OIP") as to Albert Reda. Also on September 22, 2014, the Commission's Office of the Secretary sent by Certified Mail, Return Receipt Requested, correspondence to Reda that enclosed the OIP. The Office of the Secretary mailed the correspondence to Attorney William L. Buus, who previously had represented Reda. Counsel for the Division subsequently spoke with Mr. Buus who advised that he would not be representing Reda in this matter and that he was not authorized to accept service of the OIP on Reda's behalf. *Healey Decl. ¶ 3.*

On October 17, 2014, counsel for the Division mailed the OIP and accompanying letters from the Division and the SEC's Office of the Secretary to Mr. Reda at the below address, which is a federal correctional institution where he is incarcerated serving a sentence resulting from his conviction in the criminal case referenced below:

Albert Reda [redacted]

Reda is serving a twenty-six month prison sentence having been found guilty of one count of wire fraud and one count of mail fraud after a jury trial in a parallel criminal proceeding in the District of Massachusetts (United States v. Albert Reda, et al., Crim. No. 11-CR-10416-DJC) ("the criminal case"). *Healey Decl. ¶ 9.* Among other things, the letter from the Office of the

Secretary forwarded to Reda on October 17 specifically referenced Section IV of the OIP, which sets out the requirement for Reda to file an answer to the OIP within twenty (20) days. The OIP was sent via certified mail, including a request for a return receipt. The Division received the return receipt on November 12, 2014, indicating that the certified mailing containing the OIP and letter from the Office of the Secretary had been received and signed for at USP Lompoc on November 6, 2014. *Healey Decl. ¶ 4.*

On November 17, 2014, counsel for the Division spoke with Tracy DuBose, the case manager for Mr. Reda at the Lompoc facility. Ms. DuBose advised that procedures at Lompoc ensure that mail received at the facility is delivered to an inmate within twenty-four hours of its receipt, which means Reda received the OIP no later than November 7, 2014. *Healey Decl. ¶ 5.*

Section IV of the OIP ordered that Mr. Reda file an Answer to the allegations contained in the OIP within twenty (20) days of its receipt. The Division has not received an answer to the allegations from or on behalf of Reda. In addition, the Division is not aware of an answer having been filed with the Office of the Secretary. *Healey Decl. ¶ 6.*

On November 25, 2014, the Court issued an Order setting a prehearing conference for December 4, 2014. Counsel for the Division forwarded a copy of the Order via facsimile to Mr. Reda at USP Lompoc and subsequently forwarded telephone dial-in information for the prehearing conference to Reda, also via facsimile. Reda or a representative did not call in to the scheduled December 4 prehearing conference. At the request of the Division, based on uncertainty as to whether Reda actually received the notices referenced above, the Court ordered that the telephonic prehearing conference be rescheduled to December 17, 2014, at 4:00 p.m. EST. *Healey Decl. ¶ 7.*

On December 5, 2014, counsel for the Division forwarded a copy of the Order, via overnight and certified mail with return receipt requested, to Mr. Reda at USP Lompoc. The Division received an executed return receipt for the correspondence that included the Order on December 15, 2014. The return receipt indicated receipt at USP Lompoc on December 11, 2014. Also on December 11, counsel for the Division sent dial-in information for the prehearing conference to the legal department at USP Lompoc and, on that same date, received an e-mail from a legal assistant at USP Lompoc, Stacey Morales, who confirmed that the legal department at USP Lompoc had received the dial-in information for the December 15. prehearing conference. *Healey Decl.* ¶ *8.*

At the December 15, 2014, prehearing conference, Mr. Reda did not dial-in. The Court recessed the hearing for fifteen minutes and during that time counsel for the Division spoke with Desaree Diaz, a camp secretary at USP Lompoc. Ms. Diaz advised that on the appointed time on that date (4:00 p.m. EST; 1:00 p.m. PST) Reda had been brought to the conference room at USP Lompoc that had been set aside for him to be able to call in to the prehearing conference. When he arrived, Reda informed the correctional facility personnel at USP Lompoc that he did not wish to participate in the call. *Healey Decl.* ¶ *8.*

Discussion

A. Mr. Reda's Default

Rule 155 of the Commission's Rules of Practice ("Rule"), 17 C.F.R. § 201.155 provides that:

> (a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:
>
> (1) to appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or
(3) to cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to Rule 180(b).

The Respondent here, Albert Reda, is currently incarcerated at the Federal Prison Camp in Lompoc CA (USP Lompoc). Pursuant to Rule 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i), service of an OIP on an individual may be made by delivering a copy of the OIP to the individual or to an agent authorized by appointment or by law to receive such notice. Here, on October 17, 2014, the Division sent by Certified Mail Return Receipt Requested correspondence to Reda that enclosed the OIP. The Division mailed the OIP and two accompanying letters from the Division and the SEC's Office of the Secretary, respectively, to Reda at his current place of abode, which is a federal correctional institution where he is incarcerated serving a sentence resulting from his conviction in the criminal case. The criminal case arose from the same facts and circumstances that resulted in this administrative proceeding. *Healey Decl. ¶ 10.*

Among other things, the letter from the Office of the Secretary that was part of the October 17 mailing specifically referenced Section IV of the OIP, which sets out the requirement for Mr. Reda to file an answer to the OIP within twenty (20) days. The OIP was sent via certified mail, including a request for a return receipt. The Division received the return receipt on November 12, 2014, indicating that the certified mailing containing the OIP and letter from the Office of the Secretary had been received and signed for at USP Lompoc on November 6, 2014. *Healey Decl. ¶ 4.*

On November 17, 2014, counsel for the Division spoke with the case manager for Mr. Reda at the Lompoc facility, Tracy DuBose. Ms. DuBose advised that procedures at Lompoc ensure that mail received at the facility is delivered to an inmate within twenty-four hours of its

receipt at the facility, which means Reda received the OIP no later than November 7, 2014. *Healey Decl.* ¶ 5.

Therefore, Mr. Reda was served with the OIP as of November 7, 2014. Both the OIP itself and the letter from the Office of the Secretary referenced that he was required to file an answer to the OIP. Rule 220, 17 C.F.R. § 201.220 requires that a respondent file an answer within twenty (20) days of service unless otherwise ordered. Here, the OIP specifically required that an answer be filed within twenty days of service as contemplated in the rule. Reda has not filed an answer and, therefore, entry of an initial decision on default is appropriate.

B. Mr. Reda Violated Section 10(b) of the Exchange Act and Rule 10b-5(a), Thereunder

1. Elements of the Alleged Offenses

The OIP alleges violations of the federal securities laws as to Mr. Reda for his actions pursuant to the theory of "scheme liability" created by Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder. Exchange Act Rule 10b-5(a) states that it is unlawful for any person "[t]o employ any device, scheme, or artifice to defraud" in connection with the purchase or sale of a security. To establish scheme liability, courts generally require that the defendant commit a deceptive or fraudulent act or orchestrate a fraudulent scheme. *See, e.g., SEC v. Collins & Aikman Corp.*, 524 F.Supp.2d 477, 485-86 (S.D.N.Y. 2007); *see also, SEC v. Kearns*, 691 F.Supp.2d 601, 618 (D.N.J. 2010) (recognizing a claim for scheme liability where SEC alleged "(1) that the defendant committed a deceptive or manipulative act, (2) in furtherance of the alleged scheme to defraud, (3) with scienter,") (*quoting SEC v. Lucent Technologies, Inc.*, 610 F.Supp.2d 342 at 350 (D.N.J. 2009)); *see also VanCook v. SEC*, 653 F.3d 130, 138 (2d Cir. 2011) (elements of a violation of Section 10(b) are (1) employing a device, scheme or artifice to

defraud, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) by jurisdictional means).

To demonstrate violations of the antifraud provisions of the federal securities laws, including Rule 10b-5(a) of the Exchange Act, the Commission must show that a party acted with scienter. *Aaron v. SEC*, 446 U.S. 680, 691 (1980). *See also SEC v. Hasho*, 784 F.Supp. 1059, 1106 (S.D.N.Y. 1992). Scienter is a mental state embracing intent to deceive, manipulate or defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). Circuit courts have concluded that scienter may also be established by a showing that a defendant acted with recklessness or sometimes "extreme recklessness," both of which are characterized by an "extreme departure from the standards of ordinary care." *See, e.g., SEC v. Infinity Group Company*, 212 F.3d 180, 192 (3d Cir. 2000) (requiring showing of conscious misbehavior or recklessness); *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2007) (showing of extreme recklessness can satisfy scienter requirement).

2. The Allegations of the OIP Establish Mr. Reda's Violations

Pursuant to Rule 155(a), because of Mr. Reda's failure to answer the OIP or to otherwise defend this proceeding, he may be deemed in default. As a result, the allegations of the OIP may be deemed to be true. A summary of those allegations follows.

During the relevant time frame, Reda was the Treasurer and a member Board of Directors of 1st Global Financial, Inc. ("1st Global"), a Nevada corporation with its principal place of business in Las Vegas, Nevada. 1st Global purportedly was in the real estate investment or development business. *OIP* ¶¶ *A(1), B(1)*. On November 4, 2013, after a jury trial in *United States v. Reda, et al.*, 11-CR-10416-DJC (D. Mass.), Reda was convicted of one count of wire fraud, attempted wire fraud and conspiracy to commit securities fraud relating to a

scheme and artifice to defraud (Count Eleven of the Superseding Indictment in which he was charged) and one count of mail fraud, attempted mail fraud and conspiracy to commit securities fraud relating to a scheme and artifice to defraud (Count Twelve of the Superseding Indictment). *OIP ¶ A(1).* On March 11, 2014, Reda was sentenced to 26 months' imprisonment to be followed by one year's supervised release. He was also ordered to pay a fine of $6,000 and to forfeit $16,000. *Id.*

The enforcement action against Mr. Reda closely tracks the criminal charges for which he was convicted. Both the criminal and civil charges arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the FBI ("Fund Manager"). In exchange for the kickbacks the Fund Manager purchased restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist. *OIP ¶ C.1.* 1st Global, a penny stock company, was the company used by Reda in the scheme. *OIP ¶¶ A(1), C(1).*

As part of the scheme, at some time prior to June 29, 2011, a third party arranged for Mr. Reda to meet with the Fund Manager to discuss funding for 1st Global. *OIP ¶ C.2.* On or about June 29, 2011, Reda met with the Fund Manager (the "June 29 Meeting"). The Fund Manager explained to Reda that he was prepared to invest Fund monies of up to $5 million in 1st Global stock in exchange for a secret fifty percent kickback to him, enabling the Fund Manager to keep for himself half of the money he was supposedly investing on behalf of the Fund. *OIP ¶ C.3.* At the June 29 Meeting, the Fund Manager also explained the mechanics of the funding, informing Reda that while the Fund Manager could commit to an investment of $5 million of the Fund's money, with $2.5 million being kicked back to the Fund Manager, the Fund Manager did not want to invest the entire amount at once. Therefore,

the Fund Manager told Reda he would invest the money over time in tranches, or installments, of increasing amounts. *OIP ¶ C.4.*

At the June 29 Meeting, the Fund Manager further discussed with Mr. Reda the mechanics of how monies would be kicked back to the Fund Manager. The Fund Manager arranged with Reda that 1st Global would execute a consulting agreement with a nominee consulting company that the Fund Manager purportedly controlled, but that the Fund Manager would not actually provide any consulting services. Reda was told that invoices would be issued by the Fund Manager's nominee company to 1st Global in order to disguise the kickbacks. *OIP ¶ C.5.* At the June 29 Meeting, Reda agreed to the funding/kickback arrangement. *OIP ¶ C.6.*

On various dates between June 30, 2011 and July 5, 2011, Mr. Reda sent the Fund Manager documents related to the kickback transaction, including a consulting agreement between 1st Global and the Fund Manager's nominee consulting company and stock purchase agreements between 1st Global and the Fund. *OIP ¶ C.7.* On or about July 5, 2011, in accordance with wiring instructions provided by Reda, $32,000 was sent by wire transfer from a bank account maintained in Massachusetts, purportedly belonging to the Fund, to a 1st Global corporate bank account outside of Massachusetts. This wire transfer represented the first tranche of funding to 1st Global. *OIP ¶ C.8.*

On or about July 5, 2011, Mr. Reda caused a stock certificate representing the purchase by the Fund of 1st Global shares to be sent to the Fund Manager. *OIP ¶ C.9.* On or about July 6, 2011, Reda caused a total of $16,000 to be sent by wire transfer from a 1st Global corporate bank account outside of Massachusetts to a Citizens bank account held in the name of the Fund Manager's nominee company in Massachusetts. This wire transfer represented Reda's kickback to the Fund Manager from the first tranche of funding to 1st Global. *OIP ¶ C.10.*

The above facts meet all of the elements for a violation of Section 10(b) and Rule 10b-5(a), thereunder. Mr. Reda committed deceptive acts by directly participating in and

orchestrating transactions designed to give the false appearance of investments of Fund monies in 1st Global. He orchestrated the transactions knowing that the Fund Manager would receive kickbacks and that he would receive a percentage of the money. In return for the kickbacks the Fund Manager would purchase shares of 1st Global stock. Finally, the transactions included use of interstate instrumentalities, to wit, wire transfers and mailings.

3. Mr. Reda's Criminal Convictions Collaterally Estop Him From Relitigating the Facts and Claims On Which the Convictions Were Based

In addition to the facts pleaded in the OIP being deemed to be true, the facts and elements of the claims proved against Mr. Reda in the criminal case have been established for purposes of this proceeding. It is well-settled that a criminal conviction constitutes estoppel in favor of the United States in a subsequent civil proceeding arising out of the same underlying conduct. *SEC v. Bilzerian*, 29 F.3d 689, 693 (D.C. Cir. 1994), *cert denied*, 514 U.S. 1011 (1995); *United States v. Bejar-Matrecios*, 618 F.2d 81, 83 (9th Cir. 1980); *Ivers v. United States*, 581 F.2d 1362, 1367 (9th Cir. 1978). The doctrine of collateral estoppel applies equally whether the previous criminal conviction was based on a jury verdict or a guilty plea. *Bejar-Matrecios*, 618 F.2d at 83. As the Court said in *U.S. v. Podell*, 572 F.2d 31, 35 (2d Cir. 1978):

> "It is well-settled that a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case."

The Court in *Gelb v. Royal Globe Insurance Co.*, 798 F.2d 38 (2d Cir. 1986), *cert denied*, 480 U.S. 948 (1987) explained:

> "The Government bears a higher burden of proof in the criminal than in the civil context and consequently may rely on the collateral estoppel effect of a criminal conviction in a subsequent civil case."

798 F. 2d at 43; *accord SEC v. Grossman,* 887 F. Supp. 649, 659 (S.D.N.Y. 1995), *aff'd,* 101 F.3d 109 (2d Cir. 1996); *SEC v. Dimensional Entertainment Corp.,* 493 F. Supp. 1270, 1274 (S.D.N.Y. 1980). *See also Bilzerian,* 29 F.3d at 693.

The criminal case against Mr. Reda stemmed from a superseding indictment returned against him and two others by a federal grand jury in Boston. The criminal case against Reda went to trial in October and November, 2013. After a six day trial the jury returned guilty verdicts against Reda on one count of wire fraud, attempted wire fraud and conspiracy to commit securities fraud relating to a scheme and artifice to defraud (Count Eleven) and one count of mail fraud, attempted mail fraud and conspiracy to commit securities fraud relating to a scheme and artifice to defraud (Count Twelve). *Healey Decl. ¶ 9.*

The criminal charges of which Mr. Reda was convicted were described in the indictment as involving a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, by agreeing to introduce executives of public companies to an undercover agent of the Federal Bureau of Investigation so that the executives could enter into an illegal funding/kickback arrangement. *Healey Decl. ¶ 9, Exhibit 9 (¶ 11).* As discussed above, the OIP in this matter charges Reda with civil violations of the federal securities laws for that very same scheme. Both the scheme outlined in the criminal indictment and the scheme detailed in the OIP involve 1st Global. The related criminal and civil charges grew out of parallel investigations conducted by the federal criminal authorities and the Commission. *Healey Decl. ¶ 10.*

On day six of Mr. Reda's jury trial the trial judge instructed the jury at the close of evidence and prior to its deliberations. *Healey Decl. ¶ 12.* Among others things, the Court instructed as to the elements of wire fraud and mail fraud. *Id., Exhibit 11.* The Court

instructed that in order for the jury to find Reda guilty of wire fraud and mail fraud, respectively, the jury had to find 1) that there was a scheme to defraud or to obtain money or property by means of materially false or fraudulent pretenses, representations or promises, 2) that Reda knowingly and willfully participated in that scheme with the intent to defraud or to obtain money or property by means of materially false or fraudulent pretenses, representations or promises, and 3) the use of interstate wire communications or the mails, respectively, in furtherance of the scheme. *Id., Exhibit 11, pp. 6-(130-137).* The Court then gave expanded instruction as to each of those elements. *Id.*

As discussed above, in order for the Division to establish the sort of scheme liability alleged against Mr. Reda in this proceeding, courts generally require that the defendant commit a deceptive or fraudulent act or orchestrate a fraudulent scheme. *See, e.g., SEC v. Collins & Aikman Corp.*, 524 F.Supp.2d at 485-86. *See also, SEC v. Kearns*, 691 F.Supp.2d at 618 (recognizing a claim for scheme liability where SEC alleged "(1) that the defendant committed a deceptive or manipulative act, (2) in furtherance of the alleged scheme to defraud, (3) with scienter,") (*quoting SEC v. Lucent Technologies, Inc.*, 610 F.Supp.2d 342 at 350 (D.N.J. 2009)). In other words, the elements of the offenses proved against Reda at trial, for each of the three conspiracies, are virtually identical to the elements of the civil violations alleged against him here. The one additional element that would need to be proved in this proceeding, that was not a specific element in the criminal case, is that the scheme be in connection with the purchase or sale of securities. *See Section 10(b) of the Securities Exchange Act ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(a), thereunder, 17 C.F.R. 240.10b-5.* As set out in the OIP, that element would be met by proof that the illegal secret kickbacks paid

as part of the scheme would be in exchange for the Fund Manager purchasing restricted stock of 1st Global. *OIP* ¶¶ *C.1 – C.3.*

With respect to the other facts proven that were necessary to establish Reda's his criminal liability, he is, and would be, collaterally estopped from relitigating those facts in this forum. As a result, in addition to establishing Reda's liability through the facts deemed true in the OIP, the Division establishes all of its claims because of the collateral estoppel effect of Reda's criminal convictions on wire and mail fraud. Very simply, Reda's criminal convictions collaterally estop him from relitigating the facts on which those convictions were based and from contesting liability on claims based on that same conduct. Save for proving that Reda's scheme was in connection with the purchase or sale of securities, the criminal convictions establish all the necessary elements of the causes of action for violations of Section 10(b) and Rule 10b-5, thereunder.

C. Sanctions

1. A Cease-and-Desist Order Should Issue as to Mr. Reda

Under Section 21C(a) of the Exchange Act, the Commission is authorized to issue an order requiring a person who has violated a relevant statute, regulation or rule under its jurisdiction to cease and desist from committing or causing such a violation or any future violation of such statute, regulation or rule. 15 U.S.C. § 78u-3(a). Entry of a cease-and-desist order is not "automatic" upon proof of a past violation. *See KPMG Peat Marwick, LLP v. SEC,* Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at*101, *114 (Jan. 19, 2001), *pet. denied,* 289 F.3d 109, 124-25 (D.C. Cir. 2002). There must be evidence of "some risk" of future violation before a cease-and-desist order is appropriate. *Id.* The risk need not be very great, however, to warrant issuing a cease-and-desist order and is less onerous than the "likelihood of future violations" standard for obtaining injunctive relief. *Id.* However, courts have held that

the "some risk" standard still requires more proof than just that the respondent committed a prior violation. *See WHX Corp. v. SEC*, 362 F.3d 854, 859 (D.C. Cir. 2004).

In addition to risk of future violations, the Commission also considers the following factors to determine whether a cease-and-desist order is appropriate, with no one factor being dispositive: a) the seriousness of the violation; b) the isolated or recurrent nature of the violation; c) the violator's state of mind; d) the sincerity of any assurances against future violations; e) the recognition by the violator of the wrongful nature of his conduct; and f) the opportunity to commit future violations. *In the Matter of Maria T. Giesige*, SEC Release No. ID-359, 2008 WL 4489677 (Oct. 7, 2008) (citing *KPMG Peat Marwick, LLP*, 54 SEC 1135, 1192 (2001).

Here, each of the above factors weighs in favor of issuance of a cease-and-desist order as to Mr. Reda. The violations of the securities laws were egregious; egregious enough to warrant both criminal and civil prosecution, with the imposition of a twenty-six month prison sentence in the criminal case. The violations were not isolated. Reda received a $16,000 payment for a first tranche of funding, but was ready, willing and able to continue receiving future payments. *OIP* ¶¶ *4, 8.* Had the FBI not pulled the plug on the undercover operation there is no reason to believe Reda would not have continued with the scheme. Reda's state of mind reflects a high degree of scienter. He acted with full disclosure and understanding of the illegal nature of the conduct, and with the clear intention to illegally enrich himself. As to assurances against future violations, Reda has offered none. In fact, this default is premised on Reda's failure to answer or otherwise defend the allegations brought by the Division, punctuated by his failure to appear at the prehearing conference scheduled and noticed by the Court. In that same vein, nothing before, during or since his trial and conviction on the related criminal charges indicates any recognition or acknowledgment by Reda of the wrongful nature of his conduct.

Finally, the violations alleged against Mr. Reda, and for which he was convicted in the criminal case, involve a company that trades in the relatively unregulated over-the-counter stock market. Those markets are easily accessible, offering ample opportunity for Reda to commit future violations of the federal securities laws relating to trading in penny stocks. The cumulative weight of these factors easily meets the standard for "some risk" of future violations. Therefore, the issuance of a cease-and-desist order is both appropriate and necessary to ensure the highest possible barriers to a recurrence of these sorts of violations by Reda.

2. A Permanent Penny Stock Bar Should Be Imposed as to Mr. Reda

Pursuant to Section 15(b)(6) of the Exchange Act, penny stock bars may be imposed in Commission actions "against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock." 15 U.S.C. § 780(b)(6). This definition includes "any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock." *Id.* Mr. Reda acted to induce the purchase of securities by the undercover FBI agent as part of a fraudulent scheme, and the securities at issue in this matter qualified as "penny stocks" because they did not meet any of the exceptions from the definition of a "penny stock," as defined by Section 3(a)(51) of the Exchange Act, 15 U.S.C. § 78c(a)(51), and Rule 3a51-1 thereunder, 17 C.F.R. 240.3a51-1. Among other things, the securities were equity securities: (1) that were not an "NMS stock," as defined in Exchange Act Rule 600(b)(47), 17 C.F.R. 242.600(b)(47); (2) that traded below five dollars per share during the relevant period; (3) whose issuer had net tangible assets and average revenue below the thresholds of Exchange Act Rule 3a51-1(g)(1); and (4) did not meet any of the other exceptions from the definition of "penny stock" contained in Rule 3a51-1 of the Exchange Act.

Section 15(b)(6)(A) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(A), authorizes the Commission to impose penny stock bars in administrative proceedings. Like the statutory authority for federal courts, section 15(b)(6)(A) authorizes the Commission to impose the bar on "any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock." The Commission may do so if it finds that the bar is in the "public interest" and the person has violated, or has aided and abetted the violation of, the federal securities laws. 15 U.S.C. § 78o(b)(6)(A)(i) (referring to 15 U.S.C. § 78o(b)(4)(A),(D),(E)).

When deciding whether to impose a penny stock bar, federal courts and administrative judges generally consider factors that were first outlined in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) as:

> a) the egregiousness of the defendant's actions, b) the isolated or recurrent nature of the infraction, c) the degree of scienter involved, d) the sincerity of the defendant's assurances against future violations, e) the defendant's recognition of the wrongful nature of his conduct, and f) the likelihood that the defendant's occupation will present opportunities for future violations.

Id. at 1140 (*citing SEC v. Blatt*, 583 F. 2d 1325, 1334 n.29 (5th Cir. 1978); *see also SEC v. Patel*, 61 F.3d 137, 141 (2d Cir.1995) (listing same factors for office and director bar) (citation omitted); *SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1193 (9th Cir. 1998) (same); *see also Clawson v. SEC*, 2005 WL 2174637, at *2 (9th Cir. Sept. 8, 2005) (applying *Steadman* factors and denying petition seeking review of Commission decision imposing permanent penny stock bar); *SEC v. Indigenous Global Development Corp.*, 2008 WL 8853722, at *18 (N.D. Cal. June 30, 2008) (applying *Steadman* factors and imposing permanent penny stock bar); *SEC v. Blackout Media Corp.*, 2012 WL 4051951, at *3 (S.D.N.Y. Sept. 14, 2012) (applying *Patel* factors and imposing permanent penny stock bar); *SEC v. Boock*, 2012 WL 3133638, at *2-3 (S.D.N.Y. Aug. 2, 2012) (applying *Patel* factors and imposing permanent penny stock bar); *In*

the Matter of Vladimir Bugarski et al., Admin. Proceeding File No. 3-14496 (Initial Decisions Release No. 66842 (April 20, 2012)) (applying *Steadman* factors and affirming initial decision imposing permanent penny stock bar, among other relief); *In the Matter of Peter Siris*, Admin. Proceeding File No. 3-15057 (Initial Decisions Release No. 477 (Dec. 31, 2012)) (applying *Steadman* factors and imposing permanent penny stock bar); *In the Matter of Stanley Brooks and Brookstreet Securities Corp.*, Admin. Proceeding File No. 3-14983 (Initial Decisions Release No. 475 (Dec. 11, 2012) (same); *In the Matter of Robert Pribilski*, Admin. Proceeding File 3-14875 (Securities Exchange Act of 1934 Release No. 67915 (Sept. 24, 2012)) (same).

Obviously the *Steadman* factors track closely the factors looked to for determining the appropriateness of issuing a cease-and-desist order, discussed above. As with the above analysis relating to a cease-and-desist order, each of the above factors weighs in favor of issuance of a penny stock bar as to Mr. Reda. The violations of the securities laws were egregious. The violations were not isolated. Reda's state of mind reflects a high degree of scienter. He acted repeatedly, with full disclosure and understanding of the illegal nature of the conduct, and with the clear intention to illegally enrich himself. As to assurances against future violations, Reda has offered none, and nothing before, during or since his trial and conviction of the related criminal charges indicates any recognition or acknowledgment by Reda of the wrongful nature of his conduct. Finally, the violations alleged against Reda, and for which he already has been convicted in the criminal case, involve a company that trades in the relatively unregulated over-the-counter stock market. Those markets are easily accessible, offering ample opportunity for Reda to commit future violations of the federal securities laws relating to trading in penny stocks. The fact that he currently is incarcerated does not militate against the penny stock bar as

his release date is July 2016. The cumulative weight of these factors easily meets the standard for imposition of a penny stock bar against Reda.

3. A Permanent Officer and Director Bar Should Be Imposed as to Mr. Reda

The Court has the authority to impose an officer and director bar as to Mr. Reda. The Exchange Act gives the Court express authority to impose officer and director bars:

> In any cease-and-desist proceedings under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) or the rules or regulations thereunder, from acting as an officer or director [of a public company] if the conduct of that person demonstrates unfitness to serve as an officer or director...

Exchange Act §21C(f), 15 U.S.C. § 78u-3(f).

A court is afforded substantial discretion in deciding whether to impose an officer and director bar and may consider a number of factors, including: "(1) the egregiousness of the underlying securities law violation; (2) the defendant's repeat offender status; (3) the defendant's role or position when he engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur." *SEC v. Patel*, 61 F.3d 137, 141 (2d Cir. 1995). The *Patel* factors are matters that a court may consider, among other factors, in exercising its broad discretion whether to impose a bar, but the *Patel* factors are "neither mandatory nor exclusive," and a "district court may determine that some of those factors are inapplicable in a particular case and it may take other relevant factors into account." *SEC v. Bankosky*, 716 F.3d 45, 48 (2d Cir. 2013). In addition, in *SEC v. Bankosky* the Second Circuit accepted the Commission's argument that the *Steadman* factors (generally applicable to bars from association) also are "suggestive and non-exclusive indicators of unfitness to serve" as an officer or director. *Id.* at 49 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979)).

Most of the *Patel* factors are discussed above with respect to whether the court should order a penny stock bar as to Mr. Reda. The same analysis applies in the context of an officer and director bar and, again, weighs heavily in favor of imposition of that bar as well. The *Patel* factors not discussed above include whether Reda was a repeat offender, which he was not. Another factor is the position held by Reda at the time he engaged in the fraudulent conduct. He was 1st Global's Treasurer as well as a member of its Board of Directors. In other words, at the time he committed the fraud he was serving as both an officer and director of the company. This also weighs heavily in favor of a permanent bar being imposed. Finally, Reda had a direct economic stake in the fraud. A kickback went to the seemingly corrupt Fund Manager; a payoff went to Reda. Again, this weighs heavily in favor of a permanent officer and director bar.

Conclusion

For the reasons discussed above, the Division submits that the evidence supports issuance of an initial decision on default as to Mr. Reda, finding that he violated Section 10(b) of the Exchange Act and Rule 10b-5(a), thereunder. The Division further submits that based on the evidence and legal standards referenced above, issuance by the Court of a cease-and-desist order, a penny stock bar and an officer and director bar as to Reda are well-founded and appropriate.

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Respectfully submitted,

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