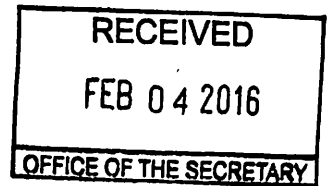


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16795

In the Matter of

Joseph J. Fox,

Respondent.

DIVISION OF ENFORCEMENT'S
SUPPLEMENTAL BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY DISPOSITION

Pursuant to the Court's Order Requesting Supplemental Briefing dated January 15, 2016, the Division of Enforcement ("the Division") respectfully submits this Supplemental Brief in Support of its Motion for Summary Disposition against Respondent Joseph J. Fox ("Fox").

I. ARGUMENT

To determine whether a sanction under Section 15(b)(6) of the Securities Exchange Act of 1934 is in the public interest, courts weigh the factors identified in Steadman v. SEC. In the Matter of Gary M. Kornman, Exchange Act Rel. No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009). One of the Steadman factors is the respondent's degree of scienter. Id. Scienter is "a mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193-94 n. 12 (1976). Recklessness can satisfy the scienter requirement. SEC v. Jakubowski, 150 F.3d 675, 681 (7th Cir. 1998). A plaintiff need not show scienter to prove a violation of the registration provisions of Section 5 of the Securities

Act. See, e.g., SEC v. CMKM Diamonds, Inc., 729 F.3d 1248, 1256 (9th Cir. 2013) (collecting cases).

Although a showing of scienter is not required to establish a violation of Section 5, there is ample evidence to demonstrate that Fox acted at least recklessly in violating the securities registration provisions. At the time Fox committed the registration violations in question, he was an experienced securities professional. He held various FINRA licenses between 1993 and 2003, including licenses required to exercise supervisory responsibility. (OIP ¶ 1.)¹ From 2010 to 2014, he held the following FINRA licenses: Series 7 (General Securities Representative), Series 24 (General Securities Principal), Series 28 (Introducing Broker/Dealer Financial and Operations Principal) and Series 63 (Uniform Securities Agent State Law Examination). *Id.* Fox passed the Series 7 examination that covered “regulatory requirements for private placements/resales,” including the “Securities Act, Regulation D, Section 4(2), Section 4(6) and Regulation S.” See General Securities Representative Qualification Examination (Series 7) Content Outline, at 14 (available at http://www.finra.org/sites/default/files/Series_7_Outline.pdf). Fox also passed the Series 24 examination that covers the securities registration requirements and exemptions. See General Securities Principal Qualification Examination (Series 24) Content Outline, at 26-27 (available at http://www.finra.org/sites/default/files/Series_24_Outline.pdf). In addition, Fox served as the Chief Executive Officer of a registered broker-dealer and its holding company and, as such, was charged with ensuring compliance with the federal securities laws. (OIP ¶ 1.)

¹ See also Fox’s BrokerCheck Report (available at <http://brokercheck.finra.org/Individual/Summary/2386001>). The Court may take official notice of information on FINRA’s website pursuant to Rule of Practice 323. See, e.g., In the Matter of Timothy J. Geidel, 2014 WL 10937644, at *1 (Jan. 8, 2014).

In light of his credentials and experience, Fox must have known the basic requirements for complying with the securities registration provisions and foreseen the risk of violating those provisions by selling securities to non-accredited investors. Nevertheless, Fox repeatedly violated the registration provisions over the course of several years by selling millions of dollars of unregistered securities to hundreds of investors without complying with any exemption from registration. There is no dispute that Fox knew that Ditto Holdings was selling securities to non-accredited investors. Ditto Holdings made a series of Form D filings claiming that its offerings were exempt under Rule 506 and acknowledging that it sold securities to non-accredited investors. See Ditto Holdings' Form D filings (available at <http://www.sec.gov/cgi-bin/browse-edgar?company=Ditto+Holding&owner=exclude&action=getcompany>).² Further, Fox did not take any steps to determine whether any of the individuals who purchased his personal shares of Ditto Holdings stock were sophisticated investors.³ Among other things, Fox failed to provide the investors with the required financial information about Ditto Holdings or to ensure that Ditto Holdings maintained complete and accurate financial information. (OIP ¶¶ 5-6.) Fox attempts to mitigate this fact by pointing to the subsidiary company's financial statements, but none of the investors invested in the subsidiary company and its financial statements do not provide any information about how Fox and Ditto Holdings used the investors' funds or how many shares were outstanding. See Ditto Trade's FOCUS Reports

² The Court may take official notice of the Commission's public official records pursuant to Rule of Practice 323. See, e.g., In the Matter of Austin Funding.com Corporation, 2015 WL 8467734, at *1-2 (Dec. 9, 2015).

³ In his response brief, Fox claims that *only* two of the individuals who purchased his shares of Ditto Holdings stock were non-accredited. Since Fox did not take any steps to determine the status of the individual investors, he has no basis on which to make that claim. (OIP ¶ 16.) And, pursuant to Section V of the Order Instituting Proceedings, Fox is precluded from arguing otherwise.

(available at <http://www.sec.gov/cgi-bin/browse->

[edgar?company=Ditto+Trade&owner=exclude&action=getcompany](http://www.sec.gov/cgi-bin/browse-edgar?company=Ditto+Trade&owner=exclude&action=getcompany)). Further, Fox attempts to excuse his wrongdoing by suggesting that he confused the requirements of Rule 506 with the less stringent requirements of Rule 504. However, Fox's claim is unavailing given his knowledge of and experience in the securities industry and the plain language of Regulation D:

“If the issuer sells securities under § 230.505 or § 230.506(b) to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to purchasers when it sells securities under § 230.504, or to any accredited investor.”

17 CFR 230.502(b).

It is not necessary to find that the respondent acted with a certain level of scienter for a sanction to be in the public interest. “The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive.” In the Matter of David Henry Disraeli and Lifeplan Associates, Inc., Exchange Act Rel. No. 57027, 2007 WL 4481515, at *15 (Dec. 21, 2007). Collateral and penny stock bars have been imposed in many cases where, similar to the present case, the underlying violations do not require a showing of scienter. See, e.g., In the Matter of Charles F. Kirby and Gene C. Geiger, Securities Act Rel. No. 8174, 2003 WL 71681, at *10-11 (Jan. 9, 2003) (litigated action barring individuals from associating with a broker or dealer and from participating in penny stock offerings with a right to apply for reentry after five years based on violations of Section 5); In the Matter of Robert Patrick Stephens, Securities Act Rel. No. 9461, 2013 WL 5427958 (Sept. 30, 2013) (settled action imposing collateral and penny stock bars based on violations of Section 5); In the Matter of Joseph A. Padilla, Exchange Act Rel. No. 66683, 2012 WL

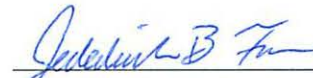
1066120 (Mar. 29, 2012) (settled action imposing collateral bar with a right to apply for reentry after three years based on violations of Section 5); In the Matter of Gary J. Yocum, Exchange Act Rel. No. 66682, 2012 WL 1066119 (Mar. 29, 2012) (settled action imposing collateral bar with a right to apply for reentry after three years based on violations of Section 5); see also In the Matter of Peak Wealth Opportunities, LLC and David W. Dube, CPA, Exchange Act Rel. No. 69036, 2013 WL 812635, at *8-10 (Mar. 5, 2013) (imposing a collateral bar based on others factors even though “only the lowest degree of scienter” was established).

II. CONCLUSION

For these reasons and the reasons set forth in the Division’s Motion for Summary Disposition and Brief in Support and the Division’s Reply in Support of its Motion for Summary Disposition, the Division hereby respectfully requests that the Court issue an order barring Fox from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in any offering of penny stock with the right to apply for reentry after five years.

Dated: February 3, 2016

Respectfully submitted,



Jedediah B. Forkner
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Securities and Exchange Commission
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CERTIFICATE OF SERVICE

Jedediah B. Forkner, an attorney, certifies that on February 3, 2016, he caused a true and correct copy of the **Division of Enforcement's Supplemental Brief in Support of its Motion for Summary Disposition** to be served on the following Respondent by United Parcel Service Overnight Delivery and e-mail delivery:

Mr. Joseph J. Fox

[REDACTED]
Long Beach, CA [REDACTED]
jfox@sovestech.com

By:


Jedediah B. Forkner

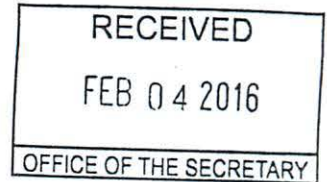
Division of Enforcement
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Dated: February 3, 2016



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SECURITIES AND EXCHANGE COMMISSION

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February 3, 2016

Via Overnight Delivery

Mr. Brent J. Fields
Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: In the Matter of Joseph J. Fox
Administrative Proceeding File No. 3-16795

Dear Mr. Fields:

Please find enclosed the Division of Enforcement's Supplemental Brief in Support of its Motion for Summary Disposition. Feel free to call me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Jedediah B. Forkner".

Jedediah B. Forkner

Enclosures