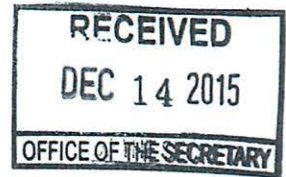


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16876



In the Matter of

EFIM AKSANOV,

Respondent.

DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT EFIM
AKSANOV

The Division of Enforcement hereby moves for summary disposition pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice [17 C.F.R. § 201.250]. The Division respectfully submits that summary disposition is appropriate and that the Court should resolve this proceeding in favor of the Division and impose a penny stock bar in the public interest against Respondent Efim Aksanov.

In support of this Motion, the Division relies upon the accompanying memorandum of law and the Declaration of Rhonda L. Jung. The Division respectfully requests that the Court grant this motion.

Dated: New York, New York
December 11, 2015

Respectfully submitted,
DIVISION OF ENFORCEMENT

By:

A handwritten signature in blue ink, appearing to read "Paul G. Gizzi".

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THE DIVISION OF ENFORCEMENT'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY DISPOSITION AGAINST EFIM AKSANOV

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December 11, 2015

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I. INTRODUCTION

The Division of Enforcement respectfully submits this memorandum of law, and the Declaration of Rhonda L. Jung and exhibits attached thereto, in support of its motion for summary disposition pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice, 17 C.F.R. § 201.250. The Division respectfully seeks an Order barring Respondent Efim Aksanov from participating in an offering of penny stock, pursuant to Section 15(b)(6)(A)(ii) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78o(b)(6)(A)(ii), in light of his conviction, based on his guilty plea, for conspiracy to commit securities fraud in *United States v. Aksanov*, S2 13 Cr. 410-NRB-5 (S.D.N.Y Mar. 31, 2015).

II. PROCEDURAL HISTORY

On September 30, 2015, the Securities and Exchange Commission issued an Order Instituting Proceedings ("OIP") in this case. The OIP seeks appropriate remedial sanctions against Aksanov pursuant to Section 15(b)(6) of the Exchange Act. OIP ¶ III.B. On October 5, 2015, Aksanov accepted service of the OIP, and his answer to the OIP was due by October 28, 2015. At a prehearing conference on November 3, 2015, Aksanov represented that he had sent an answer to the OIP. Tr. at 8. To date, the Division had not received a copy of the answer, and there is no answer posted in the Pleadings, Orders, and Decisions folder for this proceeding on the Commission's website, which indicates that the Office of the Secretary has not received a copy either.

At the November 3 prehearing conference, the parties agreed to file motions for summary disposition by December 11, 2015. As set forth herein, the material facts are not disputed in this proceeding.

III. STATEMENT OF UNDISPUTED FACTS

A. Respondent

Aksanov is ■ years old. (OIP ¶ II.A.1¹; Declaration of Rhonda L. Jung Ex. C, Tr. at 2:17.) Aksanov was a principal of Stock News Info LLC (“Stock News”), an entity that purportedly introduced issuers to individuals and entities that provide internet and other electronic promotions from in or about 2012 through at least March 2013. OIP ¶ II.A.1. During that time, Aksanov participated in an offering of Face Up Entertainment Group, Inc. (“Face Up”) stock. OIP ¶ II.A.1; Jung Decl. Exhibit A ¶ 11. Aksanov’s longtime friend, Steve Koifman (“Koifman”) was also a principal of Stock News.² Jung Decl. Ex. D at 31. Face Up was a penny stock dually quoted on the OTC Bulletin Board and OTC Link (formerly, “Pink Sheets”) operated by Pink OTC Markets, Inc. under the symbol “FUEG.” Jung Decl. Ex. F, G.

B. The Criminal Charges

On March 28, 2013, Aksanov was charged in a criminal complaint alleging that he, Koifman, and other conspirators had participated in a fraudulent scheme to manipulate artificially the market price of Face Up common stock. Jung Decl. Ex. A (Complaint in *United States v. Alexander Goldschmidt, et al.*, 13 Mag. 828 (HBP)).

According to the criminal complaint, judicially authorized wiretaps revealed that Aksanov, and his co-conspirators (collectively, the “Conspirators”) were engaged in a “pump and dump” market manipulation scheme in which they worked to fraudulently inflate the market price and

¹ At the prehearing conference, Aksanov said he admitted most of the allegations. Tr. at 8:4. But because his answer has not been received, the Division does not know which allegations he admitted.

² According to BrokerCheck on Finra’s website (available at: <http://brokercheck.finra.org/>), Koifman held Series 7, 63, and 55 licenses, but has not been associated with a broker-dealer since 2008.

trading volume of Face Up common stock, and then sold shares of the stock at artificially inflated prices to the investing public for a profit. Jung Decl. Ex. A, ¶ 11. The details of the scheme, as described in the criminal complaint, are as follows:

Face Up was secretly controlled by one of the Conspirators, Yitz Grossman (“Grossman”), a previously convicted felon, who was a purported “consultant” to the company.³ *Id.* ¶ 8. Grossman had put his family members, including his father-in-law, in nominal leadership positions at the company and owned or controlled the majority of the company’s purportedly freely trading stock. *Id.* ¶ 22 a. i. The stock was deposited in brokerage accounts that the Conspirators beneficially owned or controlled (the “Nominee Accounts”). *Id.* ¶ 22 a. iii. The Conspirators coordinated trading between and amongst the Nominee Accounts to inflate the market price of Face Up and to create the false appearance of liquidity and demand for the stock. *Id.* ¶ 22 a. ii, 23, 28. During the relevant period, Grossman hired various individuals, including “CC-1,” Aksanov, and Koifman, to create prolific promotional campaigns designed to drum up retail investor interest in the stock. *Id.* ¶ 26, 27. The FBI intercepted phone calls between and amongst the Conspirators that revealed discussions about driving up the stock price and coordinating the stock promotions with the trading. *Id.* ¶ 5.

Before any additional manipulative activity could occur, Aksanov was arrested and the Commission suspended trading in the common stock of Face Up. *See* Order of Trading Suspension (Apr. 4, 2013) (available at: <http://www.sec.gov/litigation/suspensions/2013/34-69293-o.pdf>). As detailed in the criminal complaint, Aksanov’s arrest may also have stopped him from harming CC-1: At one point, Grossman came to believe that CC-1 had stolen approximately \$350,000 from

³ Grossman consented to a permanent penny stock bar. *In the Matter of Yitz Grossman*, Admin. Proc. File No. 3-16715 (Aug. 4, 2015).

him -- money that was slated to be used to promote Face Up as part the “pump.” *Id.* ¶ 39, 40. In response to this purported betrayal, Grossman enlisted Aksanov, Koifman, and others to get the money back by threatening CC-1 with the use of force and improper economic harm. *Id.* ¶ 41-43.

On August 15, 2013, Aksanov was charged in a superseding indictment with, among other charges, conspiracy to commit securities fraud in *United States v. Alexander Goldschmidt, et al.*, 13 Cr. 410 (NRB)(S.D.N.Y). Jung Decl. Ex. B. On October 21, 2014, Aksanov pleaded guilty to one count of conspiracy to commit securities fraud in violation of Title 18 United States Code § 371. In his plea allocution Aksanov admitted, among other things, that he was involved in a scheme to manipulate the stock price of Face Up so that the individuals involved in the scheme would profit. Jung Decl. Ex. C, at 11.

C. Aksanov’s Sentencing

On March 30, 2015, Aksanov was sentenced to 21 months imprisonment followed by three years of supervised release. Jung Decl. Ex. D, E. The Court also entered a forfeiture order against Aksanov in the amount of \$21,750.

At Aksanov’s sentencing, his attorney sought a variance from the applicable sentencing guideline based on three things. First, multiple proffer meetings wherein Aksanov “essentially [laid] out the whole scheme” for the Government. Jung Decl. Ex. D at 7-8. Second, information that Aksanov gave to the Government concerning Grossman’s efforts to obstruct justice after the Conspirators arrest. *Id.* at 10-11. Finally, a list disclosing the identity and number of shares owned by each of Grossman’s nominees that Aksanov provided to the Government.⁴ *Id.* at 8, 9.

⁴ According to Aksanov’s counsel, Aksanov obtained the list from Grossman when Grossman first approached Aksanov to promote Face Up. During that meeting, Grossman told Aksanov “‘I want to do this stock. I want to pump and dump this stock. I have control over all these individuals.’ And

The Assistant United States Attorney explained that the Government had not offered Aksanov a cooperation agreement because Aksanov had minimized his role in the fraudulent scheme during the proffer meetings. *Id.* at 29. Consequently, the Government did not file a motion for a downward departure pursuant to § 5K1.1 of the United States Sentencing Guidelines. *Id.* at 28-29. The Government did, however, acknowledge that he had provided information that was relevant and helpful to the case and did not oppose Aksanov's motion for a variance. *Id.* at 29-30.

Although Aksanov said he was very sorry for what he had done, he continued to minimize his own culpability. Aksanov claimed:

At the time I was doing it, I did not know a hundred percent that it was not legal. The business from Stock News Info I got involved in that my business partner, Steve Koifman. He was more of a stock guy than I was, and I believed 78 percent of everything that he told me based on the fact that we were friends, and we knew each other for a long time; that most of this stuff was legit because we were just introducing people and getting a fee for it....

I never really basically participated in [Stock News] too much. I let my partner do that... Most of the connections were based through him, and . . . we were just introducing. When Yitz Grossman came to us, we basically introduced a few different people that had websites and introduced those websites to Yitz Grossman and Face-Up Entertainment. At the end of the day, we did not know a hundred percent that Yitz Grossman was going to put fake news out into the marketplace in the beginning. We did not know too much what his real intentions were until later on into our relationship.

Id. at 30-32.⁵

In sentencing Aksanov, the Court said:

We obviously have had an extensive conversation today about the broad scheme and Mr. Aksanov's role in that scheme....I think two take-aways result from this extensive discussion: One is that Mr. Aksanov participated extensively in an effort to cooperate, but was ultimately reluctant to be entirely forthcoming,

Mr. Aksanov [said] 'Who are the individuals? How many shares do they have?' [Aksanov wrote] it all down...." *Id.* at 9-10.

⁵ Aksanov similarly downplayed his role in the conspiracy and denied he did anything illegal during the prehearing conference. Tr. at 8, 10.

although I don't think there is any indication that he was dishonest in what he said. I think the other take-away for me is that his role in the offense was more active than a passive middle man. I am also not persuaded that this was the only penny stock manipulation that Mr. Aksanov participated in. In short, this was not a one-time, one off event.

Id. at 39-40.

Based on the Court's determination that Aksanov played an active role in the scheme and had participated in other penny stock manipulations, the Court imposed a special condition on Aksanov's three year supervised release which bars Aksanov from engaging in any stock promotion or marketing activities for any publicly traded company, or disseminating news or reports on the Internet regarding any publicly traded company. See Jung Declaration, Ex. E at 4.

IV. ARGUMENT

Rule 250(a) of the Commission's Rules of Practice permits a party, with leave of the hearing officer, to move for summary disposition of any or all the OIP's allegations. Rule 250 expressly provides that a motion for summary disposition should be granted if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Summary disposition is particularly appropriate in a follow-on proceeding such as this one.⁶ No genuine issue of material fact exists regarding the appropriateness of the Division's request for a penny stock bar. Aksanov's conviction is a matter of public record, and the public interest analysis strongly favors the imposition of a permanent penny stock bar.

⁶ See, e.g., *In the Matter of Gordon A. Driver*, Initial Decision Release No. 432, 2011 SEC LEXIS 3271, at *5 (Sept. 22, 2011) (noting Commission approval of use of summary disposition procedure in "cases such as this one where the respondent has been enjoined or convicted"); *In the Matter of Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *20-21 & n. 24 (Feb. 4, 2008) (collecting cases), *petition for review denied*, *Gibson v. SEC*, 561 F.3d 548 (6th Cir. 2009) (summary disposition granted and broker-dealer and investment adviser associational bars issued based on entry of injunctions).

A. Aksanov's Conviction Establishes the Basis for Administrative Relief.

Under Exchange Act Section 15(b)(6), the Commission is authorized to bar from participating in an offering of penny stock, any person who, at the time of the alleged misconduct, was participating in the offering of any penny stock and was convicted of any offense specified in Section 15(b)(4)(B) within ten years of the commencement of the proceedings if such sanction is in the public interest.⁷ The predicate offenses in Section 15(b)(4)(B) include, among other things, any crime that involves the purchase or sale of any security, or conspiracy to commit any such offense.

At all times relevant to this proceeding, Face Up was a penny stock. Face Up qualified as a penny stock because it did not meet any of the exceptions to the definition of "penny stock" in Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. For example, Face Up traded at less than five dollars per share during the relevant period, Jung Decl. Ex. 6. In addition, Face Up had net tangible assets of less than \$5 million per year and average revenue of less than \$6 million per year during its operating history. Jung Decl. Ex. 5.

On October 21, 2014, Aksanov pled guilty to conspiring to commit securities fraud. In his allocation, Aksanov admitted that he was involved in a scheme to manipulate the stock price of Face Up so that the individuals involved in the scheme would profit. And Aksanov himself profited from the scheme, as evidenced by the forfeiture order. Thus, Aksanov is subject to being barred from participating in any penny stock offering.

⁷ A person need not be acting as a broker for the Commission to impose a penny stock bar. See, *In the Matter of Ralph W. Leblanc*, Exchange Act Rel. No. 48254, 2003 WL 21755845, at *4 (July 30, 2003) (affirming ALJ's imposition of a penny stock bar against the president of a penny stock company given that the statute authorizes the Commission to bar any person whether or not they are a broker, dealer, or associated person).

B. A Permanent Penny Stock Bar is Appropriate in the Public Interest.

In considering whether sanctions are in the public interest, and if so what sanctions to impose, the Commission typically considers several factors, referred to as the *Steadman* factors. Specifically, the Commission considers the egregiousness of respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. *In the Matter of Eric Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *13-14 & n.21 (Aug. 26, 2011) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). While the inquiry is a "flexible one, and no one factor is dispositive," *Id.* at *14 & n.22 (quoting *In the Matter of David Henry Disraeli*, Exchange Act. Rel. No. 57027, 2007 SEC LEXIS 3015, at *61 (Dec. 21, 2007), *petition denied*, *Disraeli v. SEC*, 334 F. App'x 334 (D.C. Cir. 2009)), in this proceeding each of these factors supports the imposition a penny stock bar.

The undisputed facts and analysis of the *Steadman* factors demonstrates that the public interest weighs heavily in favor of barring Respondent Efim Aksanov from participating in an offering of penny stock. Aksanov's criminal conviction for conspiracy to commit securities fraud supports this conclusion and the facts that gave rise to Aksanov's conviction establish that a penny stock bar is the most appropriate remedy and is necessary for the protection of investors.

On the record in this matter, all of the *Steadman* factors weigh in favor of barring Aksanov from participating in an offering of penny stock. As he admitted in his plea allocution, Aksanov was involved in the scheme to manipulate the stock price of Face Up so that the individuals involved in the scheme would profit. Aksanov's conduct was egregious, performed with a high

degree of scienter, and as Judge Buchwald explicitly found during sentencing, not isolated. Aksanov's company, Stock News, was designed to mislead the investing public by providing "cover" for individuals who own large blocks of stock that they want to dump (the "Sellers"). When Sellers hire stock promoters directly, the promoters are required to identify the Seller in the promotional materials and disclose that the Seller: (i) owns the stock; (ii) has paid for the promotion; and (iii) may (or will) sell shares of the company at or about the time of the promotional report. But, as Aksanov and Koifman knew, Stock News obviated the need for such disclosures. Instead of hiring the promoters directly, Sellers hire Stock News to "orchestrate" the promotional campaign. Jung Decl. Ex. D at 33. In this way, investors are duped into believing that Stock News, rather than Sellers, paid for the promotional report. Aksanov thus played a central role in defrauding penny stock investors and had Aksanov not been criminally charged his illegal conduct would have continued unabated.

It is also clear that Aksanov has not accepted responsibility for his actions. Indeed, his refusal to be completely candid about his role in the scheme during proffer sessions resulted in the U.S. Attorney's refusal to offer him a cooperation agreement. Then Aksanov continued to minimize his own culpability at sentencing. And even now Aksanov does not fully appreciate the wrongfulness of his conduct. As Aksanov asserted at the prehearing conference, he believes he simply got involved with the wrong people, thought he was a consultant and was doing something legal, and pled guilty because he did not have enough money to go to trial. Tr. at 10. In light of Aksanov's refusal to believe that he did anything illegal, he cannot be trusted to see where the line is between legal and illegal conduct in the future. Accordingly, there is a reasonable foreseeable risk that he may engage in similar conduct in the future.

And Aksanov has not made any assurance against future violations. Indeed, quite the opposite – he wants to be free to participate in penny stock offerings in the future. The special condition of release bars Aksanov from engaging in any stock promotion or marketing activities for any publicly traded company, or disseminating news or reports on the Internet regarding any publicly traded company, during his three years of supervised release following his roughly two years being incarcerated. Conveniently, as he stated at the prehearing conference, Aksanov thinks a five year bar is appropriate. Tr. at 8. If he is not permanently barred, Aksanov can be counted on to go right back to what he was doing that led to his conviction – being a “consultant or middleman or introduction person.” *Id.* He as much as said so at the hearing: “And barring me for a period of life . . . I think that’s unfair, because I don’t know what going to happen in 5, 10 years from now.” *Id.* Absent a bar, he will be able to return to his conduct of simply consulting, or simply introducing people, with the end result being further participation in future manipulation of penny stock. And Aksanov is comparatively young at 41 years of age. In five or even ten years Aksanov will still be in the prime of his working career. A permanent bar is needed to insure that his career does not include penny stock sales at the investing public’s expense.

V. CONCLUSION

For the reasons explained herein, the Division respectfully submits that Aksanov should be barred from participating in an offering of penny stock.

Dated: New York, New York
December 11, 2015

Respectfully submitted,



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