ORIGINAL

ADMINISTRATIVE PROCEEDING
FILE NO. 3-17115

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

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| **In the Matter of**<br><br>**LOUIS V. SCHOOLER,**<br><br>**Respondents.** | **Judge Carol Fox Foelak** |

# DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

May 19, 2016

Division of Enforcement
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## I. INTRODUCTION

Respondent Louis V. Schooler's opposition to the Division of Enforcement's ("Division") motion for summary disposition raises no issues that preclude summary disposition in this matter. Schooler does not deny that he was permanently enjoined after the district court found him liable for securities fraud and securities registration violations. And he agrees that, with regard to whether sanctions are warranted, the egregiousness of his misconduct, the recurrent nature of his misdeeds and his level of scienter all "facially lean[] against" him. Instead, he relies on his pending appeal to dispute the district court findings against him and argues that his appeal bars the Hearing Officer from making any findings or sanctions against him. In doing so, he ignores, and does not even attempt to address, the well-established precedent that collateral estoppel prevents him from challenging the findings below and that the pendency of his appeal has no bearing on this motion. The motion, therefore, should be granted, and permanent associational and penny stock bars should be imposed.

## II. ARGUMENT

### A. The Division Has Established the Facts Necessary for the Division to Prevail

To prevail on its motion for summary disposition, the Division must establish that: (1) Schooler has been enjoined from violating the federal securities laws, and (2) it is in the public interest to impose the bars against him. The Division has met its burden on both.

First, in his opposition, Schooler not only concedes that he has been enjoined from violating the federal securities laws, he admits that the district court found that he made material misrepresentations to investors regarding the value of land while engaged in the offer and sale of unregistered securities. Opp. at II.A, p. 2; *see also* Resp.'s Answer ¶ 11.B.2 (admitting the injunction against him). Permanent injunctions were entered by the district court on January 21, 2016, permanently enjoining Schooler from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934

(Exchange Act"), and Rule 10b-5 thereunder, ordering disgorgement and prejudgment interest of over $147 million, and a civil penalty of $1,050,000. Kalin Decl., Ex. 7 at 8-13.[1]

Second, the undisputed record shows that associational and penny stock bars should be imposed against Schooler in the public interest. This is true because the record establishes all of the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). In fact, in his opposition, Schooler admits that the "first three factors" under *Steadman*—that is, the egregiousness of the misconduct, the recurrent nature of the infractions, and the level of scienter—"facially lean[] against Schooler." Opp. at II.A.1, p. 5.

Schooler had to concede this given the findings of the district court. On May 19, 2015, the district court granted the SEC partial summary judgment, finding that Schooler had violated Section 5 of the Securities Act by selling unregistered securities to investors for over 30 years. Kalin Decl., Ex. 5 at 8, 24-25. The district court further held that Schooler was liable for disgorgement of over $136 million, representing the amount he had raised from approximately 3,400 investors over the course of about 30 years, discounted by the present value of the land. *Id.*

Then, on June 3, 2015, the district court granted the SEC partial summary judgment on its fraud claims, finding that Schooler had in fact committed fraud in one of Schooler's offerings (the "Stead Offering"). Kalin Decl., Ex. 6, at 19-20. The Stead Offering ran from August 2010 through September 2012, and raised approximately $5.6 million from over 250 investors. *Id.*, Ex. 7 at 7-8. The district court found that Schooler had defrauded investors in the Stead Offering because the offering brochure materially misstated the value of the Stead property. *Id.*, Ex. 6 at 13-14, 17-18. The court further found that this misrepresentation of the fair market value of the South Stead property would have led a reasonable investor to believe that the property was worth more than double its actual fair market value. *Id.* at 14. As a result, the district court found that the statement was a material misrepresentation. *Id.* The district court also found that Schooler acted with scienter

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[1] In his opposition, Schooler seems to suggest that the permanent injunction was entered against him by "consent." Opp. at I, p. 1. That is not correct. The district court entered the judgment against Schooler after making findings of fact and conclusions of law on summary judgment.

in perpetrating this fraud, because Schooler knew, or should have known, that this affirmative misrepresentation presented a danger of misleading investors when he made it. *Id.* at 17-18. Based on this material misrepresentation, the district court found that Schooler had violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. *Id.*

Thus, for purposes of this proceeding, the relevant facts for the *Steadman* analysis are established. Schooler's conduct was egregious and recurrent, and he acted with a high degree of scienter. Schooler cannot dispute that he defrauded 250 investors out of more than $5.6 million in the Stead Offering, by knowingly or recklessly misrepresenting to them that the Stead land was worth about six times its true value. Kalin Decl. Ex. 7 at 18. The district court also found that Schooler committed intentional fraud. *Id.*, Ex. 6 at 17-18. He knew that he had purchased the Stead property for $1.8 million and that he offered the same land to investors for almost $10 million. *Id.* Ex. 7 at 6. Schooler's only defense to these facts is that the underlying action is up on appeal, but as set forth in detail below, that is not a defense to this action. Opp. at p. 5-6. Therefore, these factors weigh in favor of a bar.

The remaining *Steadman* factors go to the likelihood that a respondent will violate the law in the future, and here, too, they militate in favor of a permanent bar. Schooler's appeal of the Commission's underlying enforcement action and his denials in this Answer and his Opposition that he engaged in any misconduct demonstrate conclusively that he has failed to recognize the wrongfulness of his actions. *Steadman*, 603 F.2d at 1140; *Michael C. Pattison, CPA,* Release No. 3407 (Sept. 20, 2012), 104 S.E.C. Docket 2559, 2012 WL 4320146 at *8 (finding public interest supported sanctions where respondent "continues to dispute" his misconduct).

Schooler has also offered no assurances against future violations of the securities laws. Schooler spent over 30 years of his working life issuing unregistered securities to investors (Kalin Decl. Ex. 7 at 3), and he has stated that he wants to preserve his ability to work in that industry. Opp. at p. 6. In fact, he claims he wants to preserve his ability to work in the "real estate and

investment industries." *Id.*

Therefore, permanent associational and penny stock bars are warranted and in the public interest.[2]

**B. Schooler's Pending Appeal Does Not Preclude Summary Disposition Here**

Schooler has no defense to the fact that permanent injunctions have been entered against him, or that the district court's findings show that bars against him are in the public interest. Instead, he simply relies on the fact that he has appealed the district court judgment. Indeed, in lieu of making arguments regarding his conduct, he simply attaches his appellate brief to his opposition. Opp. App. A. In doing so, Schooler contests "each and every" contention made by the Commission in the action below, which he claims were "adopted wholesale" by the district court. Opp. at II.A, p. 3.

But his disputes with these court findings, and the pendency of his appeal have no bearing in these proceedings. It is well established that the pendency of an appeal does not preclude the Commission from sanctioning a respondent based on the injunctions entered against him by a district court. *See James E. Franklin,* Release No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2007 WL 2974200, at *4 & n.15, *petition for review denied*, 285 F. App'x 761 (D.C. Cir. 2008).

Moreover, Schooler is collaterally estopped from disputing the findings of fact and conclusions of law made in the underlying district court proceedings. Thus, those findings are deemed to be true here, and cannot be re-litigated. *See In re Ted Harold Westerfield*, Release No. 41126 (Mar. 1, 1999), 69 S.E.C. Docket 622, 1999 WL 100954, n.22 (1999) (collecting cases); *In re Robert Lunn*, Initial Dec. Rel. No. 887 (Sept. 21, 2015),__ S.E.C. Docket__, 2015 WL 5528212, at *4 (Sept. 21, 2015) (a collateral attack on the findings and conclusions of the district court is

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[2] The jurisdictional element of association with a broker-dealer or investment adviser is also established. Schooler was associated with WFP Securities Corporation ("WFP"). WFP registered as a broker-dealer in 1994, and as an investment adviser in 2005. *Id.*, Ex. 4 at 10, Ex. 11. In May 2011, WFP deregistered as a broker-dealer, and its investment adviser registration was canceled in February 2013. *Id.*, Ex. 4 at 10, 18. Between August 2010 and May 2011 (during the Stead Offering), Schooler owned at least 50% of WFP. *See* Resp.'s Answer ¶ II.A.1. Schooler's opposition does not deny these facts, and even states that "a permanent bar will preclude Schooler from participation in the profession he has worked in his entire professional life." Opp. at II.D., p. 6.

impermissible), *notice of finality*, Release No. 4270 (Nov. 17, 2015), __ S.E.C. Docket __, 2015 WL 7253000. Summary disposition is thus appropriate here because the facts have been litigated in an earlier judicial proceeding, an injunction was entered by the district court, and the sole determination concerns the appropriate sanction. *See, e.g., In re Omar Ali Rizvi*, Initial Dec. Rel. No. 479 (Jan. 7, 2013), 105 S.E.C. Docket 1529, 2013 WL 64626, at *3 ("Commission has repeatedly upheld use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction"), *notice of finality*, Release No. 69019, 105 S.E.C. Docket 3126, 2013 WL 772514 (Mar. 1, 2013); *see also In re 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 re-litigate issues decided in the underlying civil proceeding."), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

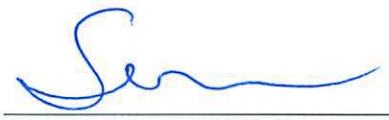
## III. CONCLUSION

Accordingly, the Division respectfully requests that its motion for summary disposition be granted, and that permanent associational and penny stock bars be imposed against Schooler, pursuant to Section 15(b) of the Exchange Act, and Section 203(f) of the Advisers Act.

Dated: May 19, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT



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## Certificate of Service

I certify that on May 19, 2016, I caused the foregoing to be served on the following persons by the method of delivery indicated below.

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| Brent J. Fields, Secretary<br>Securities and Exchange Commission<br>100 F. Street, N.E., Mail Stop 1090<br>Washington, D.C. 20549 | (by United Parcel Service)<br><br>(original and three copies) |
| Honorable Carol Fox Foelak<br>Administrative Law Judge<br>100 F Street, N.E., Mail Stop 2557<br>Washington, D.C. 20549-2557<br>Email: alj@sec.gov | (by United Parcel Service and by email) |
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Magnolia M. Irwin