UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17527

In the Matter of

KARL E. HAHN,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION AND MEMORANDUM OF LAW SUPPORTING ENTRY OF DEFAULT AND SANCTIONS AGAINST RESPONDENT KARL E. HAHN

Respectfully submitted,

DIVISION OF ENFORCEMENT

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I. Introduction

The Division of Enforcement (the "Division"), pursuant to Rules 155(a), 220(f), and 221(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) moves for entry of an Order finding Respondent Karl E. Hahn ("Hahn") in default and determining this proceeding against him upon consideration of the record. The Division further moves for appropriate sanctions against Hahn. The Division sets forth the grounds below.

II. History of the Case

On September 6, 2016, the Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings ("OIP") pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). *See Declaration of Gretchen Lundgren ("Decl.")* ¶ 3. In summary, the OIP alleges that Hahn, a registered representative of several dually-registered broker-dealers/investment advisers between 2008 and April 2010, engaged in dishonest and unethical business practices, and thereafter, in 2011, made material misrepresentations to the New Hampshire Secretary of State about his conduct. *Decl.* ¶ 4. On October 18, 2011, the New Hampshire Bureau of Securities Regulation ("Bureau") and Hahn executed a Consent Order in which Hahn was found in violation of securities laws, including rules making it unlawful for a person who receives consideration for advising an individual as to the value of securities, or their purchase or sale, to defraud that individual (RSA 421-B:4, I(a) and (b)). *Id.*

On September 19, 2016 counsel for the Division spoke with Hahn by telephone. Hahn stated that he was *pro se*, acknowledged receipt of the OIP, but explained that he would not to take any action in the matter while criminal charges were pending against him based on the

same conduct described in the OIP (*U.S.A. v. Hahn*, 1:15-cr-00050-SM, D.N.H.). *Decl.*, ¶ 5. Hahn said that he would explain his position to the Law Judge during the anticipated telephonic prehearing conference. Hahn provided the Division his email address to correspond with him on this matter. *Id.* The docket in Hahn's criminal matter indicates that Hahn's sentencing hearing is scheduled for December 21, 2016. *Decl.*, ¶ 6.

On September 20, 2016, the Court issued an Order setting a prehearing conference for October 11, 2016. *Decl.*, ¶ 7.

Due to an administrative error in assigning File Numbers, the OIP was re-issued on September 21, 2016, but the language of the OIP remained unchanged ("corrected OIP"). *Decl.*, ¶ 8. On September 21, 2016, the Commission's Office of the Secretary sent by Certified Mail Return Receipt Requested correspondence to Hahn that enclosed the corrected OIP. *Decl.*, ¶ 9. The Office of the Secretary mailed the correspondence to Hahn at his home address:

Karl E. Hahn
[redacted]
Manchester, CT [redacted]

The Office of the Secretary received confirmation that the corrected OIP was delivered on September 26, 2016. *Id.*

Likewise, on Monday, October 3, 2016, the Division caused a copy of the corrected OIP to be delivered by United Parcel Service to Hahn at his home address. *Decl.*, ¶ 10. The Division received confirmation that the corrected OIP was delivered on Tuesday, October 4, 2016. *Id.*

On October 5, 2011, the Division emailed Hahn the dial-in phone number for the prehearing conference, but received no response. *Decl.*, ¶ 11.

At the October 11, 2016, prehearing conference, Hahn did not dial-in or otherwise

participate or attempt to participate. *Decl.*, ¶ 12. On October 28, 2016, after Hahn failed to file his answer to the corrected OIP by the 20-day deadline on October 19, 2016, the Court issued an Order to Show Cause and Briefing Schedule. *Id.* Hahn was ordered to show cause by November 7, 2016 why the proceedings should not be determined against him for failure to answer the corrected OIP. *Decl.*, ¶ 13. Again, Hahn took no action in this matter. *Id.*

As a result, the Division now files this Motion and Memorandum of Law Supporting Entry of Default and Sanctions Against Respondent Karl E. Hahn.

III. Memorandum of Law

A. Entry of Default is Appropriate

Under Rule 155(a) of the Commission's Rules of Practice, a party who fails to file a timely answer or who fails to appear at a hearing "may be deemed to be in default" and the judge "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 . . . ." 17 C.F.R. § 201.155(a). Here, Hahn did not file an answer, did not participate in the October 11, 2016 prehearing conference, and did not show cause why this proceeding should not be determined against him. As a result, the Division respectfully moves this Court to enter a default judgment and order sanctions.

B. The Consent Order Provides a Basis for an Industry Bar and a Penny Stock Bar

1. Hahn's Conduct Resulted in a State Consent Order Imposing an Industry Bar in New Hampshire

Hahn agreed to findings of fact regarding two fraudulent schemes in the Consent Order which established violations of the anti-fraud provisions of the securities laws. *Decl.*, ¶ 14. First, while a registered representative for Deutsche Bank between 2008 and 2009, Hahn

introduced three of his customers to his neighbor, an insurance agent, to facilitate their purchase of high-value life insurance policies. *Decl.*, ¶ 15. Hahn provided these customers financial and investment advice, and acted as a financial manager over their assets. *Id.* Hahn's father, with whom Hahn lived, worked for the insurance agent for approximately one year around this time. *Id.* Even though Hahn's father had no involvement in the sale of the high-value life insurance policies, he received approximately $600,000 in commission from the insurance agent. *Id.* Hahn told the Bureau that he personally did not receive a commission from the sale of these policies; however, when deposed by the Bureau, he admitted that he borrowed between $300,000 and $400,000 from his father after his father received the commission. *Decl.*, ¶ 16. Hahn did not disclose this commission to his customers, and acknowledged that this transaction created a conflict of interest about which his customers should have been made aware. *Decl.*, ¶ 17.

Second, starting in March 2009, shortly before leaving Deutsche Bank for Oppenheimer, Hahn fraudulently induced a customer to participate in an investment offered outside of his employment from Deutsche Bank and Oppenheimer.[1] *Decl.*, ¶ 18. Hahn asserted his privilege against self-incrimination as to the facts set forth in the Consent Order (despite testifying about them in his deposition), but agreed that the following facts could be found as a result of the adverse inference drawn from the assertion of his Fifth Amendment privilege. *Id.* Hahn initiated this fraud by explaining to the customer that if the customer loaned three unidentified individuals $1.9 million for a real estate transaction, combined with Hahn's own $1.9 million loan to those individuals, within 90 days the customer would be repaid and receive a 20% return on his investment. *Decl.*, ¶ 19. To avoid detection by Deutsche Bank, Hahn

[1] This customer was one of the customers who purchased the high-value life insurance described above.

instructed the customer to transfer the funds from the customer's Deutsche Bank account into the customer's Bank of America account, and then to deposit the funds into Hahn's father's personal account. *Id.* Despite repeated requests for documentation of the investment, the customer never received any paperwork from Hahn. *Id.* By April 2010, the customer had not received his investment or return, and was told by Hahn that he needed to contribute an additional $385,000 for repairs to the properties purchased to complete the investment opportunity, which the customer then paid. *Decl.*, ¶ 20. In reality, the investment opportunity never existed and Hahn kept the customer's money. *Id.*

While being questioned under oath about the purported real estate transaction by the Bureau in January 2011, Hahn denied that he solicited or received $1.9 million from his customer to invest outside of Deutsche Bank. *Decl.*, ¶ 21. In February 2011, the Bureau received an email from Hahn's counsel stating that Hahn wished to "correct and supplement" statements made during his deposition. *Id.* The email explained that Hahn's customer asked him for ideas to substantially increase his returns in a short time frame, and Hahn recommended that he participate in real estate investments outside of Deutsche Bank. *Id.* Further, the email stated that the customer did withdraw $1.9 million from his Deutsche Bank account for this outside investment and that Hahn had effective control over these funds. *Id.*

In addition to violating the securities laws, Hahn's conduct constituted multiple violations of Deutsche Bank policies. *Decl.*, ¶ 22. Since Hahn's father lived with him and was financially dependent upon him, Hahn was required to disclose the commission given to his father and his use of his father's bank account as an investment account. *Id.* He failed to do so, and also failed to obtain permission to keep a client's investment funds in an account which was not a "designated broker" account. *Id.*

As a result of this conduct, Hahn consented to the permanent revocation of his broker-

dealer representative license with Oppenheimer and a lifetime bar from securities licensure in New Hampshire. *Decl.*, ¶ 23. Hahn was also fined $15,000. *Id.*

2. The Law Provides for Sanctions

The Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A) based upon the entry of the Consent Order. Section 15(b)(6)(A)(i) authorizes the Commission, if it finds that it is in the public interest to do so, to censure, place limitations on the activities of, or suspend or bar from association with a broker, dealer, or other enumerated entities, or from participating in an offering of penny stock,[2] any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a broker or dealer, who has committed or omitted any act or omission enumerated in various subsections of Section 15(b)(4). Although Section 15(b)(4)(H), the subsection addressing state orders, is not referenced, Section 604 of the Sarbanes-Oxley Act of 2002 (P.L. 107-204) ("SOX") authorizes the Commission to bring a Section 15(b) proceeding against broker-dealers and their associated persons on the basis of final orders by state commissions. The lack of a cross-reference in Section 15(b)(6)(A)(i) to Section 15(b)(4)(H) is due to an error in the recodification of Exchange Act Section 15(b)(6) in the United States Code at 15 U.S.C. § 78o(b)(6).[3]

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[2] A penny stock bar is authorized under Exchange Act Section 15(b)(6) even when misconduct did not involve penny stocks if the respondent was associated with a broker at the time of the misconduct. *See George Louis Theodule,* Initial Decision Release No. 607, at 6 n.6, 2014 WL 2447731 (June 2, 2014).

[3] Notwithstanding the inconsistency between SOX Section 604 as that portion of Public Law 107-204 appears in the Statutes at Large and Exchange Act Section 15(b)(6)(A)(i) as codified in the U.S. Code in Section 78o(b)(6)(A)(i) of Title 15, there is authority for proceeding with an action against Hahn based on Section 15(b). While the statutory text contained in the U.S. Code is considered *prima facie* evidence of what the law is, the Statutes at Large are "legal evidence" of the law. 1 U.S.C. § 112. Where there is an inconsistency between the Code and the Statutes at Large, the law in the Statutes at Large prevails over the Code. *Stephan v. United States*, 319 U.S. 423, 426 (1943) ("[T]he Code cannot prevail over the Statutes at Large when the two are inconsistent."). In determining what the law is, a court will look to the law's intent through the law in the Statutes at Large. *Washington-Dulles Transp., Ltd. v. Metro. Washington Airports Auth.*, 263 F.3d 371, 378-79 (4th Cir. 2001).

Likewise, Section 203(f) of the Advisers Act allows the Commission, if it finds that it is in the public interest to do so, to censure, place limitations on the activities of, or suspend or bar from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, who has committed or omitted any act or omission enumerated in various subsections of Section 203(e) of the Advisers Act, including Section 203(e)(9). Section 203(e)(9) pertains to persons subject to a final order of a state securities commission or like agency that (A) bars such person from association with an entity regulated by such commission or from engaging in the businesses of securities or insurance, among others, or (B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

C. Hahn's Conduct Justifies Imposition of an Industry Bar and Penny Stock Bar

Section 15(b)(6)(A) of the Exchange Act and Section 203(f) of the Advisers Act both provide that the Commission shall sanction a respondent if such sanction is in the public interest. The facts stated above demonstrate that this Court should impose an industry bar and a penny stock bar upon Hahn.

To determine whether an industry bar and a penny stock bar are in the public interest, this Court must consider the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir.

Because Section 604(c) directs that a reference to subparagraph (G) in Section 15(b)(6)(A)(i) be substituted with a reference to subparagraphs (G) and (H), there is clear evidence that Congress specifically intended in SOX Section 604 to authorize the Commission to bring 15(b)(6) proceedings against associated persons of broker-dealers on the basis of final orders by a relevant state agency. Hahn was associated with Oppenheimer and Deutsche Bank, broker-dealers/investment advisers registered with both the SEC and New Hampshire during the period of time in which the misconduct took place. Further, Section 15(b)(4)(H) contains language identical to that in Section 203(e)(9) of the Advisers Act. For the same reasons as discussed above, the Order satisfies Section 15(b)(4)(H).

1979). *See, e.g., Douglas L. Swenson, CPA*, Admin. Proc. Rulings Release No. 795, 2015 SEC LEXIS 1957, at *13 (May 19, 2015). Those factors include "the egregiousness of the [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." *Id.* at *13-14 (*citing Steadman*, 603 F.2d at 1140).

In this case, it is beyond question that the public interest would be served by imposing an industry bar and a penny stock bar upon Hahn. Conduct that violates the antifraud provisions of the securities laws is "especially serious and is subject to the severest of sanctions under the securities laws." *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *29-30 (July 25, 2003).

Hahn's conduct was egregious, persistent, and purposeful. First, Hahn took advantage of the trust three of his customers placed in him when he referred them to his neighbor for high-value life insurance policies. Little did Hahn's customers know that he was benefitting financially from this referral through a $600,000 commission to his father. Hahn specifically hid the commission arrangement from his customers, not to mention his employer, Deutsche Bank. Hahn's actions could be nothing other than a knowing and intentional scheme to benefit himself at the cost of full disclosure to his customers and employer.

Similarly, with respect to the purported real estate transaction, Hahn preyed upon his customer with the lure of a quick and satisfying return on his money. To avoid detection by his employer, Hahn instructed his customer to use the customer's Bank of America account to transfer funds to Hahn's father's personal account. Even after taking the initial payment of $1.9 million from his customer, Hahn concocted additional reasons the customer needed to put more

money into the investment before receiving his return, ultimately draining another $385,000 from the customer. Hahn lied to his customer numerous times to keep his fraudulent scheme afloat and to continue to drain his customer of millions of dollars.

Hahn did not respond to the corrected OIP, participate in the prehearing conference, or show cause why this proceeding should not be determined against him. As such, he cannot be viewed as having recognized the wrongful nature of his conduct or providing any assurances against future violations.

In fact, there is an inference that there is a reasonable likelihood of future violations, given the repeated and egregious nature of his conduct. *See SEC v. Keller Corp.*, 323 F.2d 397, 402 (7th Cir. 1963) (improper past conduct "gives rise to the inference that there [is] a reasonable likelihood of future violations," even if a defendant has ceased his illegal activities prior to the commencement of an action).

Finally, the *Steadman* factors weigh in favor of an industry bar because Hahn's entire professional career has been as a registered representative for a broker-dealer and investment adviser. This line of work put Hahn in contact with investors who trusted and relied on him for complete and accurate information and advice about their investment decisions. Hahn severely abused his position by manipulating and deceiving his customers time and again for his own personal benefit. Allowing Hahn to remain in the industry would no doubt provide him with additional opportunities to engage in the same sort of fraudulent conduct he committed in the past.

IV. Conclusion

For all of these reasons, the Court should impose an industry bar and a penny stock bar upon Hahn pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.

Respectfully submitted,

DIVISION OF ENFORCEMENT

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Dated: November 30, 2016

Certificate of Service

I certify that on November 30, 2016, in addition to filing the same with the Secretary of the Commission, I caused true and correct copies of the Division of Enforcement's Motion And Memorandum of Law Supporting Entry of Default and Sanctions Against Respondent Karl E. Hahn, and Declaration of Gretchen Lundgren in Support, to be served on the following party and other persons entitled to notice:

Honorable Brenda P. Murray
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Karl E. Hahn
[redacted]
Manchester, CT [redacted]
(Respondent)
(via overnight delivery)

Gretchen Lundgren, Counsel