

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

**ADMINISTRATIVE PROCEEDING
File No. 3-17676**



In the Matter of

**OTC GLOBAL PARTNERS, LLC
and RAIMUNDO DIAS,**

Respondents.

**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT RAIMUNDO DIAS**

The Division of Enforcement ("Division") submits the following Motion for Summary Disposition against Respondent, Raimundo Dias ("Dias" or "Respondent"). This motion addresses the permanent penny stock bar the Division seeks for Respondent's violation of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), as a result of which Respondent, along with fellow Respondent OTC Global Partners, LLC ("Global Partners") (collectively "Respondents"), earned \$39,241 from illegal stock sales. For the reasons stated below, a permanent penny stock bar should be imposed against Dias.

I. PROCEDURAL AND FACTUAL HISTORY

A. Procedural History

On November 14, 2016, the Securities and Exchange Commission (“Commission”), having accepted Respondents’ Offer of Settlement executed on August 23, 2016 (“Offer”), issued its Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-And Desist Order and Notice of Hearing (“OIP” or “Order”). In the OIP, the Commission: (a) found that Respondents willfully violated Sections 5(a) and 5(c) of the Securities Act -- a finding Respondents neither admitted nor denied; (b) ordered Respondents to cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act; (c) ordered Respondents to pay, jointly and severally, disgorgement of \$39,241, prejudgment interest of \$3,258.17, and a civil money penalty in the amount of \$45,000 in installments over the course of one year, and; (d) ordered that the hearing officer hold further proceedings to determine whether, pursuant to Section 15(b) of the Exchange Act, it is in the public interest to bar Dias 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 the purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

In connection with additional proceedings, the OIP provided:

(a) Dias agrees that he will be precluded from arguing that he did not violate the federal securities laws described in this Order;

(b) Dias agrees that he may not challenge the validity of this Order;

(c) Solely for the purposes of such additional proceedings the allegations of the Order shall be accepted as and deemed true by the hearing officer; and

(d) The hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

B. Allegations in the OIP

From at least 2013, Global Partners through its respective principal, Dias, reaped at least \$39,241 from the illegal sale of unregistered securities in the form of penny stocks. OIP III.B. at ¶¶4, 5. Dias, 45 years old, resides in Boca Raton, Florida, and is the sole manager of OTC Global Partners, LLC. OIP at III.A. ¶1. OTC Global Partners is a Florida limited liability company located in Boca Raton, Florida. *Id.*, ¶2. It provided investor relations services to small-cap publicly traded companies several years ago, and since that time, has been occasionally utilized by Respondent Dias to purchase and sell securities for its own account. *Id.*

On July 14, 2011, the former CEO (“Former CEO”) of a company (“Issuer A”) took over Issuer A’s predecessor company, which was in the HVAC / plumbing industry. OIP at III.B. ¶ 1. At the time, the only officer of the predecessor company was Shareholder A. *Id.* While Shareholder A was winding down the predecessor company’s business affairs, he received convertible notes in lieu of a \$150,000 annual salary that was due to him. *Id.* at ¶ 2. As the company’s sole officer, he issued and signed notes to himself for the years 2008 through 2010, and each note represented \$150,000 in salary due to Shareholder A, for a total of \$450,000. *Id.* These notes were convertible into shares of stock at a conversion rate of \$0.0001, allowing the note holder to convert every dollar of debt to 10,000 shares. *Id.* Accordingly, these three notes

entitled Shareholder A to 4.5 billion Issuer A shares. *Id.* Based on this conversion rate, Shareholder A was the beneficial owner of Issuer A stock during the relevant time period. *Id.*

On March 8, 2013, at the Former CEO's suggestion, Shareholder A assigned a \$50,000 portion of his 2009 convertible note to Respondents in exchange for \$3,334. *Id.* at ¶ 3. From March 2013 through March 8, 2014, Respondents converted the note assignment into millions of free-trading Issuer A shares that they sold into the market. *Id.* at ¶ 4. No registration statement was filed as to any of the shares that Respondents converted and subsequently sold into the public market, and no exemption from registration was applicable to the transactions. *Id.* Through the sale of Issuer A stock, Respondents reaped illegal stock sale proceeds of \$39,241. *Id.* at ¶ 5. As a result of the conduct described above, Respondents willfully violated Sections 5(a) and 5(c) of the Securities Act, which prohibit any person from using the mails or any means or instrumentality of interstate commerce to sell a security when a registration statement is not in effect for that security, or to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security when a registration statement has not been filed as to such security. *Id.* at ¶ 6.

II. MEMORANDUM OF LAW

A. **Applicable Legal Standard**

The federal securities laws provide that the Court may order a penny stock bar “against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock,¹ conditionally or unconditionally, and permanently or for such period of time as the court shall determine.” 15 U.S.C. § 77t(g), 78u(d)(6)(A). A person who was participating in an offering of penny stock “includes any person engaging in activities with a

¹ A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. § 240.3a51-1.

broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock.” 15 U.S.C. § 78u(d)(6)(B). When determining whether a penny stock bar is warranted, courts have considered the same factors that govern the imposition of an officer or director bar. *See SEC v. Universal Exp., Inc.*, 475 F. Supp. 2d 412, 429-30 (S.D.N.Y. 2007) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979)). The factors are: (1) the egregiousness of the underlying securities violation; (2) the defendant's “repeat offender” status; (3) the defendant's role or provision 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. *Id.*

B. Legal Argument

The *Steadman* factors strongly favor the issuance of a permanent bar prohibiting Dias from participating in any offering of a penny stock. At all times relevant to this suit, the Issuer A shares were “penny stocks” within the meaning of the Exchange Act because they were equity securities priced at less than five dollars without any applicable statutory exception. 15 U.S.C. § 78c (51)(A); 17 C.F.R. § 240.3a51-1. As the sole manager of Global Partners, Dias was responsible for purchasing Shareholder A’s convertible note for \$3,334, converting the note assignment into millions of free-trading Issuer A shares, not filing a registration statement for those shares, and then selling them for a substantial profit.² There was no exemption from registration applicable to these transactions and Dias has agreed that he is precluded from

² The elements of a *prima facie* case for a violation of Securities Act Section 5 are that: (1) the respondents, directly or indirectly, sold or offered to sell securities; (2) through the use of interstate facilities or the mails; (3) when no registration statement was in effect or filed as to those securities. *Universal*, 475 F. Supp. 2d at 422. A showing of scienter, *i.e.*, an intent to deceive, manipulate, or defraud, is not required. *Id.*

arguing that he did not violate federal securities laws. OIP at IV. Hence, Dias was willfully³ violating Sections 5(a) and 5(c) of the Securities Act by actively engaging in the sale of millions of unregistered Issuer A penny stock. *In Re Kirby*, 2003 WL 71681, at *11 (holding that “[t]he registration requirements are the heart of the securities regulatory system,” and as such, the lack of regard and willful violation of Section 5(a) and 5(c) is egregious behavior justifying strong remedial measures).

Furthermore, Dias has utilized Global Partners to engage in the financial service industry for several years, and has provided investor relations services to small-cap publicly traded companies in the past. It thus follows that Dias is experienced, and his failure to file a registration statement evidences a level of scienter that suggests he may continue to devise ways to subvert the federal securities laws in the future.⁴ In addition, Dias’ continued ownership of Global Partners at the relatively young age of forty-five presents him the opportunity to continue to violate the securities laws relating to penny stocks. Thus, this Court should permanently enjoin Dias from participating in any offering of a penny stock in any capacity because it is necessary to deter him from future misconduct and protect the public. *S.E.C. v. Sky Way Glob.*, No. 8:09-CV-455-T-23TBM, 2010 WL 3276461, at *1-2 (M.D. Fla. Aug. 18, 2010) (ordering a permanent penny stock bar after defendant failed to register as a broker dealer); *S.E.C. v. Converge Glob., Inc.*, No. 04-80841CV, 2006 WL 907567, at *5 (S.D. Fla. Mar. 10, 2006) (imposing a permanent penny stock bar based on defendant’s scheme to defraud over-the-

³ Willfulness is shown where a person intends to commit an act that constitutes a violation; there is no requirement that the actor also be aware that he is violating any statutes or regulations. *Wonsover v. S.E.C.*, 205 F.3d 408, 413-14 (D.C. Cir. 2000); *In Re Kirby*, AP File No. 3-9602, 2003 WL 71681 at *10 (Jan. 9, 2003) (Commission Opinion).

⁴ Even if it is assumed *in arguendo* that Dias is not experienced, then a permanent bar would still be warranted because it is necessary to deter future misconduct and it does not appear that penny stocks are Dias’ only source of income. *Kirby*, 2003 WL at *10-11 (barring respondent from association with any broker or dealer and from participating in any penny stock offering even though he claimed to rely on the advice of others, had no prior disciplinary record, and was the sole means of support for his family).

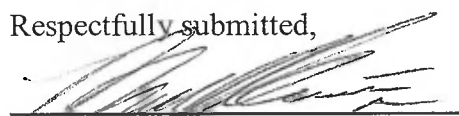
counter purchasers, his long career and experience in the financial services industry, and the likelihood that defendant's occupation will present future opportunities to violate securities laws); *See also, Kirby*, 2003 WL at *11 (permanently barring the respondents from participation in penny stock offerings based upon their violation of Securities Act Sections 5(a) and 5(c), but permitting them to reapply after five years in an effort to impress the importance and ensure future compliance with regulatory requirements); *S.E.C. v. Elliot*, No. 09 CIV. 7594 KBF, 2012 WL 2161647, at *10, 13 (S.D.N.Y. June 12, 2012) (enjoining defendants from engaging, participating or advising in the sale of penny stocks for a period of three years despite finding that their violation of Section 5 and other misconduct warranted a permanent injunction).

III. CONCLUSION

The Commission respectfully requests the Division's Motion for Summary Disposition be granted and that a permanent penny stock bar be imposed on Respondent, Dias.

Respectfully submitted,

By:


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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by Email and U.S. Mail on this 27th day of December, 2016, on the following persons entitled to notice:

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Room 2557
Washington, D.C. 20549
(also via email to ALJ@sec.gov)

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