

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19740**

<p><b>In the Matter of</b></p> <p><b>DONALD J. FOWLER,</b></p> <p><b>Respondent.</b></p>
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**REPLY MEMORANDUM OF LAW OF THE DIVISION OF ENFORCEMENT IN  
SUPPORT OF THE DIVISION’S MOTION FOR SUMMARY DISPOSITION**

Respondent Donald J. Fowler’s *pro forma* filing dated August 5, 2020 purports to oppose the Division’s motion for summary disposition pursuant to Rule 250 of the Commission’s Rules of Practice.<sup>1</sup> Fowler, however, does not dispute any of the factual grounds for the Division’s motion. Instead, Fowler merely states that the motion should be denied due the pendency of Fowler’s appeal of the District Court’s judgment against him. Just last month, however, in denying Fowler’s motion for a stay, the Commission rejected this identical argument. *See Donald J. Fowler*, Rel. No. 89226, 2020 WL 3791560, \*1 (July 6, 2020) (Order Denying Motion to Stay Proceedings) (“We have repeatedly held that ‘the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related ‘follow-on’ administrative proceedings.’”).

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<sup>1</sup> The Commission’s July 6, 2020, Order required Fowler to file his opposition to the Division’s motion by August 5, 2020. Two days after this deadline—and without seeking or obtaining leave of the Commission—Fowler filed a 155-page “Supplement” containing his Second Circuit brief and appendix. The August 7 “Supplement” violates Rule of Practice 450, which states that “[n]o briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission.” Fowler also did not file a motion under Rule of Practice 452 to submit “additional evidence.” As a result, the “Supplement” should be stricken from the record.

Fowler's reliance on a meritless argument underscores the fact that he has no viable defense to the Division's motion. As Fowler does not dispute, the evidence presented by the Division in support of its motion for summary disposition is clearly sufficient to warrant full collateral and penny stock bars. The jury's verdict stated that Fowler, with scienter, defrauded thirteen customers by recommending an unsuitable investment strategy, making material misrepresentations and omissions, and engaging in unauthorized trades. Div. Ex. 1 at 3.<sup>2</sup> The Court, in its remedies decision, found that Fowler acted with a "high degree of scienter" and imposed a third-tier civil penalty of nearly \$2 million, ordered disgorgement of commissions earned plus prejudgment interest, and enjoined Fowler from future violations of the antifraud provisions of the federal securities laws. *Id.* at 9-11. The District Court called the evidence against Fowler "powerful," "persuasive" and "damning." *Id.* at 3. The District Court further found that Fowler "presents a continuing risk to customers" as well as "a danger to future customers." *Id.* at 11.

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<sup>2</sup> The Division Exhibits cited herein are attached to the Declaration of David Stoelting dated June 15, 2020.

In conclusion, for the foregoing reasons, as well as in the Division's opening brief dated June 15, 2020, the Division respectfully requests that the Commission grant the Division's motion for summary disposition and impose full industry bars and penny stock bars against Fowler.

Dated: August 19, 2020  
New York, NY

Respectfully submitted,

DIVISION OF ENFORCEMENT

*/s David Stoelting*

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David Stoelting  
Jorge G. Tenreiro  
Kristin M. Pauley  
U.S. Securities and Exchange Commission  
200 Vesey St., Suite 400  
New York, NY 10281  
(212) 336-0174 (Stoelting)  
(212) 336-9145 (Tenreiro)  
(312) 886-3936 (Pauley)

**Certificate of Service**

In accordance with the Commission Order in *In re: Pending Administrative Proceedings* dated March 18, 2020, and the *Joint Stipulation Regarding Extension of Time for Respondent to File Answer and Notice of Parties' Agreement on Service of Papers* dated April 30, 2020, I hereby certify that copies of the *Reply Memorandum of Law of the Division of Enforcement In Support of the Division's Motion For Summary Disposition* dated August 19, 2020, was served on the following:

To the Office of the Secretary:  
By email ([apfilings@sec.gov](mailto:apfilings@sec.gov))

To the Respondent:  
By email ([jdellaportas@emmetmarvin.com](mailto:jdellaportas@emmetmarvin.com) and [bkhinchuk@emmetmarvin.com](mailto:bkhinchuk@emmetmarvin.com))

/s

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David Stoelting, Counsel for the Division of Enforcement