UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-20136

In the Matter of

NORMAN T. REYNOLDS, ESQ.

Respondent

THE OFFICE OF THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S PETITION TO LIFT THE TEMPORARY SUSPENSION ENTERED PURSUANT TO RULES 102(e)(3)(i)(A) AND (B) OF THE COMMISSION'S RULES OF PRACTICE

INTRODUCTION

On October 22, 2020, the Commission, pursuant to Rules of Practice 102(e)(3)(i)(A) and (B), 17 CFR 201.102(e)(3)(i)(A), (B), found it in the public interest to temporarily suspend Norman T. Reynolds, Esq. from appearing and practicing before it as an attorney. This order temporarily suspending him was based on a final securities fraud judgment against Reynolds issued by the United States District Court for the Southern District of New York ("District Court") in *SEC v. Mustafa David Sayid, Kevin Jasper and Norman T. Reynolds*, Case No. 1:17-cv-2630 (S.D.N.Y., 2017) ("underlying action"). The District Court found that Reynolds violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act").

On November 23, 2020, Reynolds filed a Petition to Lift the Temporary Practice Suspension and Request for a Hearing ("Petition"). The Commission should deny Reynolds'

petition because he has not advanced any meritorious arguments in support of the extraordinary relief he seeks, and it will serve the public interest to continue Reynolds' suspension pending the completion of this proceeding to determine the appropriate sanction to protect the Commission's processes. Absent a temporary suspension, Reynolds, an adjudged securities fraudster, would remain in a position to threaten the integrity of the Commission's processes and potentially harm investors during the time necessary for this proceeding to be resolved.

BACKGROUND[1]

I. Overview

Reynolds is licensed to practice law in Texas. For most of his career, he has been a corporate and securities lawyer. He played an integral role in a pump-and-dump securities fraud scheme masterminded by Mustafa David Sayid, a New York-based securities attorney. Sayid offered and sold 50 million restricted shares of common stock of Nouveau Holdings., Ltd. ("Nouveau") to three Belizean entities that were represented and controlled by stock promoters Michael Affa and Mitchell Brown. After the sale of these 50 million restricted shares, Sayid orchestrated Affa's and Brown's unlawful resale of at least four million of these shares in unrestricted form. In order for that to be possible, Nouveau's transfer agent, Transfer Online ("Transfer"), required an attorney opinion letter opining that the shares qualified for an exemption from registration. Without doing any of the necessary due diligence, and contrary to his prior suspicions, Reynolds wrote two letters to Transfer opining that the proposed issuances qualified for removal of restrictions under Rule 144 of the Securities Act. After Transfer received Reynolds' opinion letters and issued the shares to the Belizean entities, Affa and Brown

[1] The facts in this section are based on the Commission's filings in the civil action against Sayid and Reynolds and the Court's Opinion & Order ("Order") dated November 25, 2019.

conducted a paid promotional campaign (blasting emails touting Nouveau's stock to unsuspecting penny-stock investors), and sold the unrestricted Nouveau stock, reaping hundreds of thousands of dollars in profit.

II. The Fraudulent Scheme

A. The Debt Settlement Agreement

In 2012, Sayid began negotiating with stock promoters Affa and Brown to sell to certain Belizean entities that they represented $50,000 in debt that Nouveau owed to Sayid's law firm. Sayid negotiated the terms of the sale pursuant to a debt settlement agreement ("the DSA") that proposed a three-way transaction: (i) Sayid would assign the Nouveau debt to the Belizean entities; (ii) the Belizean entities would pay Sayid $50,000 in exchange for assignment of the debt, and (iii) Nouveau would pay the assigned debt by issuing 50 million shares of stock to the Belizean entities. [2]

B. The Attorney Opinion Letters

Nouveau did not have a registration statement in effect with the Commission during this time period. Thus, Nouveau's transfer agent, Transfer, would have been required to issue the Nouveau stock with a restrictive legend unless a stockholder provided an attorney opinion letter opining that the proposed restriction-free stock issuance would comply with the requirements of Rule 144. Brown asked Sayid to assist in obtaining an attorney opinion letter for the benefit of

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[2] Sayid and the Belizean entities negotiated the terms of the DSA through at least September 25, 2012, and the DSA was not finalized with the Belizean entities until at least that date. From April 2012 through August 2013, Sayid had conversations with Nouveau's president, Dale Henry ("Henry"), about the DSA. Sayid did not present Henry with a copy of the DSA, which was dated September 25, 2012, and signed by Sayid and the three Belizean entities, until August 2, 2013.

the Belizean entities to send to Transfer. On July 29, 2013, four days before Sayid sent the DSA to Henry, Sayid emailed Reynolds, requesting two attorney opinion letters, one for the Nouveau purchasers and one for Sayid. Attached to that email was an unsigned copy of the DSA. Sayid copied Reynolds on his August 2, 2013 email to Henry with the attached September 25, 2012 DSA. When Sayid emailed asking Reynolds for the opinion letters, Reynolds (after reviewing the DSA) responded that Sayid's proposed transaction did not meet the one-year holding period under Rule 144. Specifically, on August 5, 2013, Reynolds sent Sayid an email reading:

> "Unless I'm missing something, you have not held the securities for one year. Since the issuer is a non-reporting company, a minimum of one year must elapse before you can sell the securities under Rule 144. You acquired the securities on September 25, 2012."

That day, Sayid replied to Reynolds, asserting that his debt was over three years old and that he had an opinion letter from another lawyer who approved a similar transaction. Sayid attached an opinion letter from a lawyer named Thomas Boccieri, and told Reynolds, "Please use the same opinion as it was presented to two different transfer agents and passed with flying colors." Reynolds reviewed that letter but did not accept its analysis, writing to Sayid, "I am not convinced that your Engagement Letter constitutes a security in the context of Rule 144. I could write an opinion on September 25, 2013. If you need an opinion now, I suggest you use Mr. Boccieri." Sayid responded that he had started negotiating the sale of his debt in February 2012, and Sayid further asserted that "[w]e have several executed copies of the debt settlement agreement," and then listed five particular agreements by date: June 4, 2012, June 7, 2012, July 17, 2012, September 7, 2012, and September 25, 2012. He added that "I can forward them to you as well. The three (3) investors have stated that they wanted the earliest executed copy (June 4, 2012) to be forwarded. I forwarded the latest executed copy (September 25, 2012) to you as opposed to the earliest. Please let me know if you would like the earlier executed copies of the

[DSA]" When Reynolds asked that Sayid send him all five executed (signed) DSAs, Sayid mailed Reynolds and attached four unsigned DSAs and asserting that: "I have signature pages for the July 17th, 2012, September 7, 2012 and, of course, September 25, 2012. I will continue to look for the signature pages for the June 2012 dates."

Despite not being provided with the requested June or July 2012 signature pages, and despite his prior statements that he couldn't issue the requested opinion letters, on August 9, 2013, Reynolds emailed Sayid a signed opinion letter (the "Rule 144 Letter"). This Rule 144 Letter was addressed to Transfer and stated that "On July 17, 2012, more than one year ago, that certain Debt Settlement Agreement * * * was executed by [Noveau], [Sayid], and the [three Belizean entities]." The Rule 144 Letter repeatedly described the sale and assignment of debt as having occurred on July 17, 2012. In his email to Sayid, Reynolds requested that Sayid "Please check my facts. If they are correct, you may send the letter to Transfer." According to Reynolds, his basis for using the July 17, 2012 date for the execution, as opposed to the other dates Sayid had represented the DSA had been executed, was to ask Sayid which date to use.

After receiving Reynolds' opinion letter, Sayid emailed Henry on the next day, August 10, 2013, and requested that Henry execute a signature page for the DSA dated July 17, 2012, stating that "Reynolds wants to use the July 17, 2012 Debt Settlement Agreement as opposed to the September 25, 2012 version." On or about August 10, 2013, Henry signed the DSA backdated to July 17, 2012 and returned it to Sayid, who forwarded the executed copy to Reynolds on August 11, 2013. The next day, August 12, 2013, Reynolds reminded Sayid that Reynolds needed the signatures of the Belizean nominee entities "as well," and Sayid responded the same day emailing Reynolds a signature page of the Belizean nominee entities backdated to July 17, 2012. On August 11, 2013, before Sayid had provided Reynolds with the signature page

for the Belizean entities, Sayid sent Reynolds' Rule 144 Letter to Henry requesting that he send it on to Transfer "to free up the shares." Henry sent it to Transfer which, on August 27, 2013, issued three million shares of unrestricted Nouveau stock to the three Belizean entities.

On September 6, 2013, Sayid emailed Reynolds requesting another Rule 144 legal opinion letter for Nouveau stock to be issued to the Belizean nominee entities through the DSA, stating that he needed another legal opinion "identical in form to the previous one that you issued." Later that day, Reynolds provided Sayid with a second Rule 144 letter addressed to Transfer which also concluded that the proposed issuance of unrestricted Nouveau stock to the Belizean entities complied with the requirements of Rule 144 because the sale and assignment had occurred on July 17, 2012 which met the one year holding period. Henry sent the second Rule 144 letter to Transfer which then released approximately five million unrestricted shares of Nouveau stock to the three Belizean entities. Sayid paid Reynolds $350 for each Rule 144 letter.

i. The Promotion and Sale of Nouveau Stock

Based on the DSA and Reynolds' Rule 144 opinion letters, approximately 8 million shares were issued to the Belizean entities that Affa controlled. To facilitate the deposit of the shares into trading accounts, Sayid provided Affa and Brown with affiliate letters and conversion letters for the Belizean entities to execute. At least five million of the purportedly restriction-free Nouveau shares were deposited in accounts of the Belizean entities controlled by Affa.

Around September 9, 2012, Brown and Affa facilitated a publicity campaign to tout Nouveau stock and to generate investor interest. Affa and Brown paid multiple promoters approximately $220,000 to send out email blasts in September 2013 to lists of penny-stock investors. These emails touted Nouveau stock to investors. Brown and Affa paid some of the

promoters before the promotional campaign started. They paid other promoters only "on the come" or after Affa's entities sold Nouveau stock during and following the campaign.

In total, the Belizean entities sold approximately four million of the restriction free shares issued to them pursuant to the DSA and Reynolds' opinion letters. The sales of Nouveau stock by the Belizean entities generated approximately $275,000 in proceeds.

ii. Reynolds' Role in the Fraud

As detailed above, Reynolds played a critical role in this fraud. His two Rule 144 letters, based on the backdated DSA, allowed Transfer to remove the restrictive legends and the Belizean entities to receive free-trading Nouveau stock. Reynolds was initially suspicious of the execution date of the DSA but never bothered to follow up on his suspicions. Rather, he acted with scienter because (i) Sayid presented him with obviously conflicting and suspicious information concerning the execution date of the DSA, (ii) he had an ethical and legal duty to have a reasonable basis for opining on the DSA's effective date, and (iii) he conducted no investigation to discover the truth of the conflicting dates, effectively ignoring them and allowing Sayid to choose which date to use.

II. The District Court's Orders and Findings

On April 12, 2017, the Commission filed its civil injunctive action against Sayid, Reynolds, and others in the District Court, alleging that they engaged in a fraudulent scheme to effect illegal, unregistered sales of Nouveau shares. On November 25, 2019, the District Court granted the Commission's motion for summary judgment, finding that Sayid and Reynolds had engaged in violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and Sections 5 and 17(a) of the Securities Act. The District Court found that Reynolds was a

"necessary and substantial" participant in the unlawful offer and sale of unrestricted Nouveau stock to the Belizean entities, and its later resale. Further, the District Court found that "Reynolds's avoidance of the truth of the DSA's execution date in the face of decades of experience drafting Rule144 letters and his heightened duty to reasonably investigate such a crucial – and ultimately false - fact, * * * was reckless."

On July 22, 2020, in the remedies stage of this matter, the District Court permanently enjoined Reynolds from violating Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and Sections 5 and 17(a) of the Securities Act. In addition, the Court issued a permanent penny stock bar, permanent injunction against participating in the preparation or issuance of any opinion letter in connection with the offer or sale of securities pursuant to, or claiming an exemption under, Section 4(1) of the Securities Act of 1933 and Rule 144 thereunder, and an officer and director ban against Reynolds, along with ordering him to pay disgorgement and civil penalties. On September 9, 2020, the Court issued an Amended Final Judgment in this matter against Reynolds.

ARGUMENT

Reynolds' petition makes several meritless arguments. First, he argues that the facts before the Commission do not warrant permanent injunctive relief primarily because his law practice no longer focuses on advising companies on securities related issues. Second, his petition contests the validity of the District Court's injunctions and findings. As explained below, Reynolds' arguments are meritless, and he cannot contest the District Court's findings and injunctions in this proceeding.

I. Reynolds Is Not Entitled to the Extraordinary Relief of Having His Temporary Suspension Lifted.

The Commission should deny Reynolds' request to lift the temporary suspension. While Rule of Practice ("Rule") 102(e)(3) provides that the Commission may lift a temporary suspension, it does not expressly set forth the standard for determining whether to grant such interim relief. As such relief is analogous to a stay pending appeal, the Commission should apply the traditional analysis it employs for considering requests for stays under Rule 401(d), 17 CFR 201.401(d). Thus, the Commission should consider whether: (1) there is a strong likelihood of success on the merits; (2) absent a stay, the movant will suffer irreparable injury; (3) there will be substantial harm to the public if a stay is not issued; and (4) a stay will serve the public interest. *See In the Matter of JD American Workwear, Inc.,* Release No. 34-43295, 73 SEC Docket 749, 2000 WL 1335438, *1 n.2 (Sept. 15, 2000) (applying this four-part analysis to determine whether a stay was appropriate under Rule 401(d)).

The Office of the General Counsel ("OGC") is unaware of any instance in which the Commission has lifted a temporary suspension imposed under Rule 102(e)(3) pending the outcome of an administrative proceeding to determine the appropriate sanction to be imposed. In view of Reynolds' misconduct, which the District Court found violated anti-fraud provisions of the Securities Act and the Exchange Act, he is far from an appropriate candidate for such unprecedented relief. Moreover, consideration of the four factors relevant to Reynolds' request to lift the temporary suspension demonstrates that he is not entitled to such relief.

A. Reynolds is Unlikely To Succeed on the Merits of his Arguments.

Reynolds' petition presents two types of arguments: (1) permanent injunctive relief is not warranted because his law practice no longer focuses on securities related issues; and (2)

attacks on the District Court's injunctions and findings. The latter argument is utterly meritless, as Reynolds is precluded here from relitigating the District Court's findings and permanent injunction against him. And as to the former, his arguments are manifestly insufficient to demonstrate that he is likely to succeed on the merits. Reynolds, therefore, has not shown that he will establish in this administrative proceeding that no suspension is warranted in light of his securities law violations and the injunctions entered against him.

1. Reynolds' Attacks on the District Court's Injunctions and Findings Are Impermissible.

Reynolds devotes considerable effort to disputing the District Court's injunction and findings. Petition at 2-4. First, he seeks to minimize the securities fraud violations found by the District Court regarding his "statements in two legal opinion letters." *Id.* at 2. He claims that "the Commission has not shown that the Respondent was connected to the larger scheme described in the complaint filed in the District Court Action." *Id.* Third, he claims that the District Court relied on "supplementary" facts put forth by the Commission that he disputed during the remedies phase of this case. *Id.* Lastly, he claims that "although the District Court found him liable, the record as a whole does not support the imposition of permanent injunctive relief." Petition at 3.

It is crystal clear, however, that Reynolds cannot relitigate these issues, or the permanent injunction issued by the District Court in this proceeding. Rule 102(e)(3)(iv) provides, that "the petitioner may not contest any finding made against him or her . . . in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated." The Commission has "long refused to permit a respondent to re-litigate issues that were addressed in previous civil proceedings against the respondent." *See, e.g., Matter of Demetrious*

Julius Shiva, 52 S.E.C. 1247, 1997 WL 112328, at *2 (Mar. 12, 1997) (rejecting attempts to challenge injunction and noting that "we have long refused to permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against the respondent"); *Matter of Joseph P. Galluzzi*, 2002 WL 1941502, at *3 (Aug. 23, 2002) ("a party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding."). The appropriate forum for Reynolds to contest the District Court's injunctions and/or findings is the court of appeals. *See, e.g., Matter of Jose P. Zollino*, Exchange Act Release No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2007 WL 98919, at *4 n.20 (refusing to consider respondent's challenges to underlying injunctive and criminal proceedings in follow-on industry bar proceeding and observing that, "those matters are properly addressed to the appellate court."); *Matter of Michael Batterman*, 84 SEC Docket 1349, 2004 WL 2785537, at * 3 (Dec. 3, 2004) (challenges to the basis of a prior proceeding are properly addressed to the appellate court). Thus, even if Reynolds' challenges to the District Court's injunctions and findings were meritorious – which they are not – he cannot litigate them in this Rule 102(e)(3) proceeding.

2. Reynolds' Arguments Against "Permanent Injunctive Relief" Here Lack Merit.

Reynolds also argues that permanent injunctive relief is not appropriate here. To the extent that he is referring to the permanent injunctive relief that the District Court imposed, it bears repeating that he cannot relitigate that determination here. And, to the extent Reynolds means to argue that he should not be subject a Rule 102(e) suspension, even during the pendency of this proceeding, that argument is likewise meritless.

Reynolds' argument primarily relies on his assertion that while, prior to this case, his "practice focused almost exclusively on corporate or securities law matters," the focus of his law

practice has shifted significantly since March 2019 so that he no longer practices in those areas. Pet. at 1.

This argument must be accorded scant weight. First, the Commission has no way to gauge or ascertain what Reynolds' future legal practice will involve. In addition, his assurances that his legal practice no longer involves advising companies in securities matters - without more - is insufficient to warrant the extraordinary relief requested in his Petition. *See SEC v. Fehn*, 97 F.3d. 1276, 1296 (9th Cir. 1996) ("the sincerity of Fehn's assurances against future violations is difficult to gauge, but we note that sincere assurances of an intent to refrain from * * * future violations are insufficient, without more, to mitigate against an injunction."). Moreover, it is instructive that Reynolds already raised this issue with the District Court during the remedies phase of this matter, and the District Court permanently enjoined him from future violations. The findings of the District Court – including that Reynolds engaged in securities fraud – provide an ample basis to ultimately issue a Rule 102(e) suspension.[3]

For these reasons, Reynolds cannot show a likelihood of success on the merits sufficient to lift the temporary suspension.

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[3] *See, e.g., Randall Goulding, Esq.*, Administrative Proceeding File No. 3-19697, Initial Decision at 7 (SEC ALJ Oct. 29, 2020) ("[t]he Commission considers violations of the antifraud provisions to be particularly reprehensible). *See Chris G. Gunderson, Esq.*, Exchange Act Release No. 61234, 2009 SEC LEXIS 4322 at *21, *27-28 (Dec. 23, 2009) (permanently disqualifying, from appearing or practicing before the Commission, attorney who was permanently enjoined from violating the antifraud and registration provisions); *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5").

B. Reynolds Has Not Demonstrated that He Will Suffer Irreparable Injury Absent a Stay of the Temporary Suspension.

Reynolds does not argue that he will suffer irreparable injury absent a stay of the temporary suspension. In fact, he does not allege that he will suffer any harm whatsoever – he merely requests that the suspension be lifted. Consequently, this factor weighs against issuing a stay of the temporary suspension.

C. There is Benefit, Not Substantial Harm, to the Public If the Temporary Suspension is Maintained Pending a Hearing on the Appropriate Sanction.

Reynolds committed securities fraud, in violation of core provisions of the Securities Act and the Exchange Act. Absent continuation of the temporary suspension, there is nothing to protect the public from further harm if he is allowed to practice before the Commission as an attorney while this proceeding is adjudicated. Thus, keeping the temporary suspension in place pending a hearing on the appropriate sanction will benefit rather than harm the public. This factor therefore weighs against issuing a stay of the temporary suspension.

D. The Public Interest Will Be Protected by Maintenance of the Temporary Suspension Pending a Hearing on the Appropriate Sanction.

In its October 22, 2020 Order Instituting Proceedings and Imposing Temporary Suspension, the Commission found it "in the public interest" that Reynolds be temporarily suspended. Reynolds has not identified any changes in circumstances that would suggest that it has now become in the public interest to permit him to appear and practice before the Commission. Nor has he offered any reason to question the Commission's previous determination that temporarily suspending him would serve the public interest. The public interest thus also weighs against issuance of a stay of the temporary suspension.

In sum, all four factors the Commission considers in determining whether to grant a stay of the temporary suspension weigh against granting Reynolds that extraordinary relief.

Conclusion

The Commission should deny Reynolds' petition to lift his suspension and set this matter for a hearing to determine the appropriate sanction.

DATED: December 1, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2020, I caused a true and correct copy of the Office of Litigation and Administrative Practice's Opposition to Respondent's Petition to Lift the Temporary Suspension Entered Pursuant to Rule 102(e)(3)(A) and (B) of the Commission's Rules of Practice to be served upon the parties and persons entitled to notice below, by email and by mailing through the U.S. Postal Service by first class mail:

Norman T. Reynolds, Esq.

[redacted]

[redacted]

Round Top, Texas [redacted]

Philip J. Holmes