SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 99493 / February 8, 2024

Admin. Proc. File No. 3-19798

In the Matter of

SERGEY PUSTELNIK a/k/a
SERGE PUSTELNIK

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violating the antifraud provisions of the federal securities laws. *Held*, it is in the public interest to bar respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

APPEARANCES:

Sergey Pustelnik a/k/a Serge Pustelnik, pro se.

Sarah S. Nilson, David J. Gottesman, and Olivia S. Choe for the Division of Enforcement.

On May 13, 2020, the Commission instituted an administrative proceeding against Sergey Pustelnik a/k/a Serge Pustelnik, under Section 15(b) of the Securities Exchange Act of 1934.[1] The Division of Enforcement now moves for summary disposition. Based on our review of the filings, we grant the Division's motion and bar Pustelnik from the securities industry and from participating in an offering of penny stock.

I. Background

Pustelnik was a registered representative associated with Lek Securities Corp., a broker-dealer based in New York City, from March 2011 until January 2015, when he consented to a bar from associating with any FINRA member in any capacity.[2] Between 2012 and 2016, Pustelnik was a co-owner of, and exercised control over, Vali Management Partners dba Avalon FA Ltd. ("Avalon"), a foreign day-trading firm. Pustelnik also worked on the Avalon account as a registered representative at Lek Securities for a portion of this time before FINRA barred him.[3]

On March 10, 2017, the Commission filed a complaint in federal district court alleging that Pustelnik (along with Avalon and its principal, Nathan Fayyer; and Lek Securities and its principal, Samuel Lek) violated the federal securities laws by engaging in two manipulative schemes: "layering" and the "cross-market strategy."[4] On November 12, 2019, a jury returned a

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[1] *Sergey Pustelnik a/k/a Serge Pustelnik*, Exchange Act Release No. 88862, 2020 WL 2502264 (May 13, 2020); 15 U.S.C. § 78*o*(b).

[2] *See* BrokerCheck Report for Sergey Pustelnik, https://files.brokercheck.finra.org/individual/individual_4439199.pdf; Letter of Acceptance, Waiver, and Consent ("AWC"), accepted by FINRA on Jan. 21, 2015, https://www.finra.org/sites/default/files/fda_documents/2011029713003_FDA_JS305277%20%282019-1563025757222%29.pdf (consenting to entry of adverse findings and bar and agreeing that the AWC could be considered in future regulatory actions). We take official notice of these documents pursuant to Commission Rule of Practice 323. 17 C.F.R. § 201.323; *see Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at *1 n.1 (Mar. 17, 2016) (taking official notice of BrokerCheck records); *Bruce Zipper*, Exchange Act Release No. 90737, 2020 WL 7496222, at *4 n.7 (Dec. 21, 2020) (taking official notice of settlement in AWC). We also take official notice of the district court orders and judgments and the documents from our proceedings that the Division submitted to support its motion. *See Am. Inv. Serv., Inc.*, Exchange Act Release No. 43991, 2001 WL 167861, at *1 n.1 (Feb. 21, 2001) (recognizing the Commission's authority to take official notice of federal district court orders); 17 C.F.R. § 201.323 (applying to "any matter in the public official records of the Commission").

[3] *SEC v. Lek Sec. Corp.*, 612 F. Supp. 3d 287, 290 (S.D.N.Y. 2020) (ordering relief), *subsequently modified as to monetary relief by* 2021 WL 751395 (S.D.N.Y. Feb. 9, 2021), *aff'd* No. 21-453, 2022 WL 2155094 (2d Cir. June 15, 2022), *cert. denied*, 143 S. Ct. 788 (2023).

[4] Compl., *SEC v. Lek Sec. Corp.*, Case No. 1:2017cv01789, ¶¶ 1-3 (S.D.N.Y. filed Mar. 10, 2017), ECF No. 1. Layering involves the use of non bona fide orders to obtain more favorable prices on bona fide orders, and cross-market strategy involves the use of stock trades with no legitimate economic reason to profit in associated options trading. *Id.* ¶¶ 2-3.

special verdict form finding Pustelnik liable on all counts.[5] The jury found that Pustelnik violated antifraud provisions of the federal securities laws[6] and aided and abetted Avalon and Fayyer in their violations of these provisions and an antimanipulation provision.[7] The jury also found that Pustelnik was liable as a control person of Avalon for its violations of Exchange Act antifraud and antimanipulation provisions and knew, or was reckless in not knowing, that Avalon was violating these provisions.[8]

On March 20, 2020, the court enjoined Pustelnik from violating Exchange Act Sections 9(a)(2) and 10(b), Rule 10b-5, and Securities Act Section 17(a), and ordered him, jointly and severally with Avalon and Fayyer, to pay disgorgement of nearly $4.5 million plus prejudgment interest, and personally to pay civil penalties of $5 million.[9] On February 9, 2021, the district court entered an amended final judgment which again enjoined Pustelnik, but eliminated disgorgement and increased the civil penalty to $7.5 million.[10] On June 15, 2022, the Second Circuit affirmed the district court's order.[11]

On May 13, 2020, the Commission issued an order instituting proceedings ("OIP") against Pustelnik to determine whether remedial action was appropriate.[12]

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5 The jury also found Avalon and Fayyer liable on all counts. *See SEC v. Lek Sec. Corp.*, Case No. 1:2017cv01789 (S.D.N.Y. Nov. 12, 2019), ECF No. 527 (finding also that orders placed by Avalon constituted layering and cross-market strategies and that both schemes manipulated the securities markets). Lek Securities and Samuel Lek settled with the Commission before trial.

6 Exchange Act Section 10(b), 15 U.S.C. § 78j(b); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5; Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

7 Exchange Act Section 9(a)(2), 15 U.S.C. § 78i(a)(2) (prohibiting certain manipulative practices); Exchange Act Section 20(e), 15 U.S.C. § 78t(e) (providing for aiding and abetting liability), Securities Act Section 15(b), 15 U.S.C. § 77*o*(b) (same with respect to Securities Act).

8 S*ee* Exchange Act Section 20(a), 15 U.S.C. § 78t(a) (governing control person liability).

9 *Lek Sec. Corp.*, 612 F. Supp. 3d at 299; *see also SEC v. Lek Sec. Corp.*, Case No. 17-cv-1789 (DLC) (S.D.N.Y. Apr. 14, 2020), ECF No. 580 (final judgment).

10 *SEC v. Lek Sec. Corp.*, Case No. 17-cv-1789 (DLC) (S.D.N.Y. Feb. 9, 2021), ECF No. 593; *SEC v. Lek Sec. Corp.*, No. 1:17cv1789, 2021 WL 751395 (S.D.N.Y. Feb. 9, 2021) (associated order discussing disgorgement following *Liu v. SEC*, 140 S. Ct. 1936 (2020)).

11 *Lek Sec. Corp.*, 2022 WL 2155094.

12 *Pustelnik*, 2020 WL 2502264; *see also Sergey Pustelnik a/k/a Serge Pustelnik*, Exchange Act Release No. 91399, 2021 WL 1139270 (Mar. 24, 2021) (amending OIP to add reference to amended final judgment).

II. Analysis

A. Summary disposition is appropriate.

Under Rule of Practice 250(b), a motion for summary disposition may be granted if "there is no genuine issue with regard to any material fact" and the moving party is "entitled to summary disposition as a matter of law."[13] "[S]ummary disposition is ordinarily appropriate in follow-on proceedings" such as this one, where a respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction.[14] Here, Pustelnik was enjoined by a district court and cannot relitigate the court's findings in this proceeding.[15] And while Pustelnik argues that he should not be sanctioned, he does not argue that an in-person hearing is necessary. We therefore find, for the reasons below, that the Division has satisfied its burden under the summary disposition standard, that summary disposition is appropriate, and that an in-person hearing is unnecessary in this case.

B. Relief is available under Exchange Act Section 15(b)(6)(A).

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from the securities industry and from participating in any offering of a penny stock if it finds, on the record after notice and opportunity for hearing, that (1) the person has been enjoined from engaging in any conduct or practice in connection with the purchase or sale of any security; (2) the person was associated with a broker or dealer at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[16]

The record establishes, and Pustelnik does not dispute, that the first two of these elements are met. Because the district court enjoined Pustelnik from violating Exchange Act Section 10(b) and Rule 10b-5, Pustelnik has been enjoined from engaging in any conduct or practice "in

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[13] 17 C.F.R. § 201.250(b); *see also ERHC Energy, Inc.*, Exchange Act Release No. 90517, 2020 WL 6891409, at *2 (Nov. 24, 2020) (discussing standard).

[14] *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *7 (Feb. 15, 2017); *see also Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5 (Feb. 4, 2008), *petition denied*, 561 F.3d 548, 555 (6th Cir. 2009).

[15] *Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *4 (June 17, 2011) (applying doctrine of collateral estoppel in follow-on proceeding instituted based on injunction); *cf. Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) (holding that evidence respondent submitted to show that he "did not commit insider trading with *scienter*" "constituted an impermissible collateral attack on the consent judgment" underlying the follow-on proceeding and thus the Commission "could properly refuse to consider it") (emphasis in original).

[16] 15 U.S.C. § 78*o*(b)(6)(A)(iii) (cross-referencing Section 15(b)(4)(C), 15 U.S.C. § 78*o*(b)(4)(C)).

connection with the purchase or sale" of any security.[17] Pustelnik also does not dispute that the district court found that he engaged in misconduct while associated with a broker-dealer.[18]

C. Industry and penny stock bars are in the public interest.

In determining whether any remedial action is in the public interest, we consider 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.[19] Our public interest inquiry is flexible, and no one factor is dispositive.[20] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[21]

Weighing these factors, we conclude that indefinitely barring Pustelnik from the securities industry and participating in the offering of penny stock is warranted to protect the investing public.[22]

1. Pustelnik's misconduct was egregious, recurrent, and done with a high degree of scienter.

We find no genuine dispute that Pustelnik's misconduct was egregious and recurrent. Indeed, as the district court concluded, Pustelnik's conduct was "plainly egregious."[23] Pustelnik engaged in market manipulation on a "massive scale" and recruited other traders to assist in the

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17 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

18 *Lek Sec. Corp.*, 612 F. Supp. 3d. at 291 (finding that the evidence "demonstrated Defendants' widespread and longstanding use" of manipulation "from 2012 through 2016"); *see also supra* note 2 and accompanying text (discussing association with Lek Securities); *SEC v. Lek Sec. Corp.*, 612 F. Supp. 3d at 290 (identifying Lek Securities as a broker-dealer).

19 *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

20 *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

21 *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

22 Although Pustelnik ended his association with the firm in January 2015, we may consider his subsequent misconduct, which continued through 2016, in determining appropriate sanctions. *Cf. Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *5 & n.21 (Jan. 14, 2011) (considering respondent's post-OIP criminal conviction in assessing sanctions); *Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 WL 21468604, at *5 n.20 (June 26, 2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions").

23 *Lek Sec. Corp.*, 612 F. Supp. 3d at 296; *see also Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *4 (Mar. 26, 2010) (relying on "court's numerous detailed findings with respect to factors similar to the *Steadman* factors").

fraud "over the course of many years and millions of trades."[24] Together with Fayyer and Avalon, Pustelnik "coordinated nearly every facet" of a plan to manipulate the market, including by assisting traders to circumvent internal controls Lek Securities implemented to detect layering.[25]

In finding his conduct to be egregious, we reject Pustelnik's attempts to downplay his role in the misconduct. He claims that he had no supervisory responsibilities or control over Avalon's improper trading and no authority to stop it. But the jury specifically found that Pustelnik personally violated the securities laws, was liable as a control person of Avalon, and knowingly or recklessly provided substantial assistance in support of Avalon's violations, and as noted above, Pustelnik may not collaterally attack those findings in this proceeding.

Pustelnik further seeks to mitigate his conduct by claiming that he did not engage in *other* forms of fraud and market manipulation. And, he asserts, "the only witnesses or victims of potential harm were highly sophisticated high-frequency trading firms employing trading algorithms, and not the general public." But it is not mitigating that he did not engage in other misconduct.[26] Nor is it mitigating that he purportedly did not harm the general public.[27]

We also find no genuine dispute that Pustelnik acted with a high degree of scienter. The district court found that Pustelnik engaged in "recurrent behavior meant to cheat the market,"[28] and the jury found that he violated Exchange Act Section 10(b) and Rule 10b-5, which require a finding of scienter.[29] Pustelnik also knew as early as 2012 that FINRA was investigating trades he and his co-defendants placed through Lek Securities, but they nevertheless increased their use of layering (the very practice FINRA was investigating).[30] And Pustelnik attempted to conceal his ties to Avalon and Fayyer, withheld incriminating evidence, and gave false testimony.[31]

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24 *Lek Sec. Corp.*, 612 F. Supp. 3d at 296.

25 *Id.*

26 *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 WL 1362796, at *12 (May 15, 2009) (stating that "securities professionals should not be rewarded for complying with securities laws").

27 *Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *13 & n.60 (Jan. 9, 2015) (explaining that both sophisticated and unsophisticated investors are entitled to the protections of the securities laws); *see also Lek Sec. Corp.*, 612 F. Supp. 3d at 296 (finding that Pustelnik's manipulation "distorted the market").

28 *Lek Sec. Corp.*, 612 F. Supp. 3d at 297; *id.* at 296 (finding that Pustelnik's "fraudulent behavior" was "intentional").

29 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

30 *Lek Sec. Corp.*, 612 F. Supp. 3d at 296-97.

31 *Id.* at 297 (finding that Pustelnik's scienter was illustrated by his efforts to conceal his activity and connections to the schemes and citing *United States v. Triumph Capital Grp., Inc.*, 544 F.3d 149, 160 (2d Cir. 2008) ("[E]fforts to obstruct the investigation evidence a consciousness of guilt . . . .")).

Indeed, while the schemes were ongoing, Pustelnik assured Lek that he was not engaging in layering, while recruiting traders to do precisely that.[32] Pustelnik cannot collaterally attack the findings in the injunctive action that he violated the securities laws with scienter.[33]

Pustelnik nevertheless seeks mitigation because, he claims, at the time of his misconduct, he believed that he was offering lawful assistance to Avalon's traders and relied on repeated assurance from Lek Securities and its outside counsel that Avalon's trading was legal. In support, Pustelnik has submitted an unsigned copy of a letter from Samuel Lek to FINRA purportedly prepared by Lek Securities' outside counsel stating that, "based on information available to" it, Lek Securities was "not able to reasonably conclude or otherwise suspect that Avalon has engaged in market manipulation." Although Pustelnik presents his argument as a mitigating factor, his contention that he acted in good faith impermissibly collaterally attacks the district court's finding that he acted with scienter. But even if we were to assume that Pustelnik indeed relied on Lek Securities and its counsel,[34] Pustelnik deceived Lek Securities about the trading at issue. For these reasons, we do not find that his claimed reliance on its guidance and that of its counsel mitigates Pustelnik's misconduct.[35]

Pustelnik also included with his answer to the OIP several "expert reports" that the district court did not admit but, he claims, "showcase the difference of expert opinion" on Avalon's trading. But to the extent he is trying to argue that these reports caused him to believe his conduct was not improper, or that he otherwise acted in good faith, he impermissibly challenges the district court's scienter findings.[36] In any event, because the expert reports were not created until after the Commission filed suit against him, Pustelnik could not have relied on them when he engaged in his misconduct.

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32 *Id.*

33 *See supra* note 15 and accompanying text.

34 The district court excluded Pustelnik's reliance on counsel defense from trial. *See SEC v. Lek Sec. Corp.*, Case No. 17-cv-1789 (DLC), 2019 WL 5703944, at *4 (S.D.N.Y. Nov. 5, 2019) (granting the Commission's motion *in limine* to prohibit Pustelnik from "relying on or referring in any way to the Lek Defendants' consultations with counsel" because, among other things, "legal advice given to another does not establish good faith as a matter of law").

35 *Cf. United States v. King*, 560 F.2d 122, 132 (2d Cir. 1977) (rejecting attempt of defendant who knew that factual representations were untrue to "screen himself by trying to rely on advice of counsel"); *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 642 (D.C. Cir. 2008) (noting, in part, that where petitioner "could not have had a genuine belief in" his statements' "completeness and accuracy," he could not rely on legal advice to negate scienter). For this reason, Pustelnik's claimed reliance on Lek Securities' compliance operations is also unavailing.

36 *See supra* note 15 and accompanying text.

2. Pustelnik's occupation will likely present opportunities for future violations, and an indefinite bar is in the public interest due to the risk he would reoffend if provided the chance.

We also find no genuine dispute that, absent a bar, Pustelnik is likely to work in the securities industry, which would present the opportunity for future violations.[37] Pustelnik claims that he has been out of the financial industry for over five years. But the Division submitted an April 2021 press release that identifies Pustelnik as a "cofound[er]" of "a proprietary cryptocurrency trading firm," a fact he does not dispute, and that touts his "decades of experience trading and managing" "complex financial instruments." It is thus likely that Pustelnik's occupation will present an opportunity for future violations.

We further find that there is no genuine dispute that Pustelnik's recognition of the wrongful nature of his conduct does not warrant a lesser sanction. Pustelnik concedes in his brief that the district court found that his conduct was illegal, that he is not "blameless," and that "serious mistakes were made." But Pustelnik also asserts that primary responsibility for wrongdoing "must lie" with Lek Securities as the "genuine gatekeeper" charged with preventing violations.[38] We find that such a qualified recognition of the wrongful nature of his conduct does not outweigh the aggravating factors here.

Pustelnik also does not provide assurances against future violations that outweigh our concern that he will reoffend absent a bar. He asserts, for example, that in 2015 he enrolled in a "leading law school" "to better understand laws and regulations" so that his future conduct would be "fully compliant." But Pustelnik violated the federal securities laws while in law school and gave false testimony after he graduated in 2018.[39] Pustelnik further asserts that, during 14 years in the securities industry, he "did not receive a single customer complaint" and his record was "completely unblemished." But during this time, FINRA barred Pustelnik by consent after he refused to cooperate with an investigation.[40] And even if Pustelnik's record

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[37] *See, e.g., Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (imposing a bar based in part on the finding that "there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again").

[38] We recognize that Pustelnik's appeal of the district court's findings was ongoing at the time of briefing in this matter. We have not considered the fact of that then on-going appeal and his claims in it on our assessment here of his willingness to accept responsibility.

[39] *See, e.g., Lek Sec. Corp.*, 612 F. Supp. 3d at 291 (stating that "Defendants employed [manipulative] schemes for more than five years, from 2012 through 2016"); *id.* at 290 (stating that trial commenced on October 21, 2019); *id.* at 297 (finding that Pustelnik gave false testimony under oath during trial).

[40] *Cf. The Dratel Grp.*, Exchange Act Release No. 77396, 2016 WL 1071560, at *15 (Mar. 17, 2016) (finding that, even if applicants had settled proceedings for reasons of efficiency, they were part of applicants' disciplinary history and relevant to sanctions determinations).

were spotless, any associated mitigative weight would be outweighed by the many aggravating factors described herein.[41]

3. Indefinite industry and penny stock bars are in the public interest.

Pustelnik asserts that any sanction that extends beyond a broker-dealer bar would not be in the public interest, because his misconduct related solely to his association with a broker-dealer and because, he claims, he has not associated with firms in other segments of the securities industry or participated in penny stock activities.[42] But Pustelnik violated broad antifraud provisions applicable beyond just the broker-dealer industry, and he continued his misconduct after ending his employment with a registered broker-dealer. The market manipulation in which he engaged is troubling in any securities industry sector, including the penny stock market.[43] And Pustelnik's willingness to mislead Lek Securities, the Commission, and the district court[44] indicates a lack of honesty and integrity, which reflects a serious risk that he would again violate the securities laws if given the chance.[45] These and the other

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[41] *Cf. Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *42 (May 29, 2015) (finding that "factors supporting a bar outweigh[ed] the lack of prior misconduct").

[42] Pustelnik acknowledges that the Commission may impose a collateral bar and a bar from participating in a penny stock offering. *See Bartko v. SEC*, 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) (recognizing that Dodd-Frank made available "industry-wide" bars without requiring an "industry-specific 'nexus'" to each component of the bar). Although Pustelnik identifies cases in which the Commission imposed less than full industry bars, those are inapposite because they involved conduct that occurred before the Dodd-Frank Act was enacted in July 2010. *See Marshall E. Melton*, Exchange Act Release No. 48228, 2003 WL 21729839, at *10 (July 25, 2003); *Edward Tamimi*, Exchange Act Release No. 63605, 2010 WL 5239275, at *1, *3 (ALJ Dec. 23, 2010); *Edward Tamimi*, Exchange Act Release No. 63183, 2010 WL 4247337, at *1 (Oct. 27, 2010) (instituting proceedings to consider conduct dating from 2007 and 2008).

[43] *Cf. Korem*, 2013 WL 3864511, at *6 ("Korem's deliberate attempt to deceive the investing public by manipulating the market for his own personal gain and concealing his fraudulent actions raises significant doubts about his integrity and his fitness to remain in the securities industry in any capacity."); *SEC v. Bronson*, 14 F. Supp. 3d 402, 404 (S.D.N.Y. 2014) (noting that penny stocks "are particularly susceptible to market manipulation"); Pub. L. No. 101–429, title V, § 502, Oct. 15, 1990, 104 Stat. 951 (containing Congressional finding that "many professionals who have been banned from the securities markets have ended up in [penny stock] promoter and consultant roles, contributing substantially to fraudulent and abusive schemes").

[44] *Lek Sec. Corp.*, 612 F. Supp. 3d at 297 (finding that, while the defendants' manipulative schemes were ongoing, Pustelnik falsely "assured Lek that they were not engaging in layering," and that he later "gave false testimony under oath during the SEC investigation and at trial").

[45] *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *7 (Feb. 13, 2009) ("The securities industry presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence."), *pet. for rev. denied*, 592 F.3d 173 (D.C. Cir. 2010).

considerations discussed above thus raise significant doubts about Pustelnik's fitness to remain in the securities industry in any capacity.

Pustelnik further argues that we should not bar him without a right to apply for readmission because the Commission has ordered less restrictive relief in other proceedings. For example, he cites to the settled order related to this case in which the Commission barred Samuel Lek from the securities industry with the right to apply for reentry after ten years. But sanctions imposed in one case may not be readily compared to those imposed in another,[46] particularly where the parties agreed to them as part of a settlement.[47] In any event, as the district court found, because Pustelnik concealed his involvement in the layering scheme from Lek and Lek Securities, Pustelnik's misconduct was not comparable to Lek's.[48] Pustelnik also fails to establish that any of the other cases he cites in which the Commission imposed lesser sanctions is similar to this one. Indeed, he contends that the Commission generally imposes an industry bar without an express right to apply for reentry only when a respondent engaged in "egregious" misconduct. But he did just that. Our decision to impose industry and penny stock bars on Pustelnik is thus not "out of line with [our] decisions in other cases."[49]

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The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that Pustelnik is "unfit to participate in the securities industry" and that his "participation in it in any capacity would pose a risk to investors."[50] Indeed, there is no genuine dispute that Pustelnik engaged in a massive market manipulation scheme, in which he recruited other traders to assist in the fraud over many years and millions of trades. We therefore grant the Division's motion for summary disposition and conclude that it is in the public interest to bar Pustelnik from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[51]

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46 *See PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *9 (Apr. 11, 2008) (citing *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 186-87 (1973); *Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004)), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

47 *Joseph John VanCook*, Exchange Act Release No. 61039A, 2009 WL 4026291, at *19 (Nov. 20, 2009), *petition denied*, 653 F.3d 130 (2d Cir. 2011).

48 *Lek Sec. Corp.*, 612 F. Supp. 3d at 298.

49 *Collins v. SEC*, 736 F.3d 521, 526 (D.C. Cir. 2013).

50 *Tagliaferri*, 2017 WL 632134, at *6 (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

51 *Id.* (imposing associational bars where they were necessary to protect the public).

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99493 / February 8, 2024

Admin. Proc. File No. 3-19798

In the Matter of

SERGEY PUSTELNIK a/k/a
SERGE PUSTELNIK

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Sergey Pustelnik a/k/a Serge Pustelnik is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Sergey Pustelnik a/k/a Serge Pustelnik is barred 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 purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Vanessa A. Countryman
Secretary