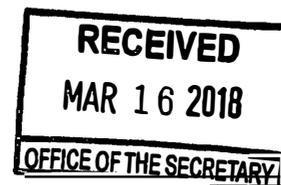


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-16795**

In the Matter of

JOSEPH J. FOX,

Respondent.

**DIVISION OF ENFORCEMENT'S RESPONSE
TO RESPONDENT JOSEPH J. FOX'S FEBRUARY 27, 2018 LETTER**

The Division of Enforcement ("Division") submits this response to Respondent Joseph J. Fox's ("Fox") February 27, 2018 letter to the Office of the Secretary.¹

Procedural History

On September 8, 2015, the Securities and Exchange Commission ("Commission") entered an order instituting proceedings ("OIP") against Fox. The OIP gave effect to the Division's and Fox's agreement to resolve these proceedings pursuant to a bifurcated process under which Fox consented (i) to an order imposing a cease-and-desist order prohibiting him from committing or causing any violations and any future violations of Section 5(a) and 5(c) of the Securities Act of 1933 and requiring him to pay disgorgement of \$125,210, prejudgment interest of \$5,426 and a civil penalty of \$75,000; and (ii) to additional proceedings to determine what, if any, additional remedial sanctions pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 are in the

¹ Fox did not serve his letter on the Division and the Division only discovered that it had been filed after checking the Commission's public website on March 8, 2018. As a result, we request a brief extension of the time from the five days set forth in Rule 154 of the Commission's Rules of Practice in which to file this response.

public interest. As part of his settlement offer, Fox also agreed that in the additional proceedings, he would be precluded from arguing that he did not violate the federal securities laws as described in the Order or from challenging the validity of the Order; that the findings in the Order would be accepted and deemed true by the hearing officer; and that the hearing officer could determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of depositions or investigative testimony and documentary evidence or in-person testimony at a public hearing.

On April 25, 2016, the administrative law judge (“ALJ”) issued an Initial Decision granting the Division’s Motion for Summary Disposition and finding that it is in the public interest to bar Fox for five years from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock. Fox then filed a motion to correct manifest errors, which was denied.

Following the denial of Fox’s motion to correct manifest errors, Fox filed a petition for review, the parties submitted briefs, and the Commission issued an Opinion on March 24, 2017 imposing industry and penny stock bars with a right to apply for reentry after five years. Fox then submitted a Motion for Reconsideration that was received by the Secretary’s Office on May 8, 2017.

Prior to ruling on the Motion for Reconsideration, the Commission remanded the case to the ALJ on November 30, 2017 with instructions to reconsider the record, including all substantive and procedural actions. *See Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 SEC LEXIS 3724 (Nov. 30, 2017). The Division and Fox each made

submissions and the ALJ engaged in a *de novo* review of the record. The ALJ issued an Order on February 2, 2018 ratifying all of his prior actions.

Fox Failed to Set Forth any Reason to Disturb the Commission's Prior Ruling

It is unclear whether Fox filed his February 27, 2018 letter and attachments in an attempt to petition the Commission for a second review of the ALJ's Initial Decision or in an attempt to reinstate his Motion for Reconsideration. In either event, Fox has not set forth any reason that warrants disturbing the Commission's March 24, 2017 Opinion in this matter.

The Commission should deny Fox another review of the Initial Decision. As noted in the ALJ's Order ratifying his Initial Decision, Fox's submissions "contain no new evidence" and he "does not advance any arguments that he has not raised before." The ALJ's and the Commission's prior decisions in this matter are correct and supported by the evidence. Fox's arguments to the contrary are meritless for the reasons provided in the Division's Motion for Summary Affirmance of Initial Decision dated June 30, 2016, the Division's Brief in Opposition to Respondent Joseph J. Fox's Petition for Review dated August 29, 2016, and the Division's Motion to Strike dated September 27, 2016 as well as the Commission's Opinion dated March 24, 2017.

The Commission should deny Fox's Motion for Reconsideration. A motion for reconsideration is an "extraordinary" remedy "designed to correct manifest errors of law or fact or to permit the presentation of newly discovered evidence." *Daniel Imperato*, Exchange Act Release No. 74886, 2015 WL 2088435, at *1 (May 6, 2015) (quoting *Steven Altman, Esq.*, Exchange Act Release No. 63665, 2011 WL 52087, at *1 (Jan. 6, 2011)). A party "may not use a motion for reconsideration to reiterate arguments previously made or to cite authority previously available, nor may they advance arguments that they could have made previously but

chose not to make.” *FCS Securities*, Exchange Act Release No. 65267, 2011 WL 4448864, at *1 (Sept. 6, 2011). Fox has not set forth any newly-discovered evidence, nor has he identified any manifest error of law or fact. Rather, he simply reiterates the same arguments that already have been rejected by the ALJ and the Commission on numerous occasions.

Finally, the Commission should deny Fox’s request for an in-person hearing in this matter. In his bifurcated settlement offer, Fox agreed to allow this matter to be decided without an in-person hearing. In addition, the parties have participated in pre-hearing conferences and filed numerous briefs at every phase of this proceeding and therefore, have been given ample opportunities to present their respective arguments. As a result, an in-person hearing at this late stage is not likely to aid the Commission in reaching its decision nor is it likely to present any new evidence or new arguments. Instead, it would only serve to cause further delays.

Dated: March 15, 2018

Respectfully submitted,



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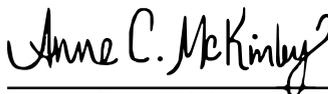
CERTIFICATE OF SERVICE

Anne C. McKinley, an attorney, certifies that on March 15, 2018, she caused true and correct copies of the Division of Enforcement's Response to Joseph J. Fox's February 27, 2018 Letter to be served on Respondent Joseph J. Fox by electronic mail and by UPS Overnight Delivery at the following addresses:

Mr. Joseph J. Fox

██████████
Los Angeles, CA ██████████
██████████@gmail.com

By:



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Dated: March 15, 2018