INITIAL DECISION RELEASE NO. 737
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15900

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of		
	:	INITIAL DECISION AS TO
JOHN J. BRAVATA,	:	JOHN J. BRAVATA and
RICHARD J. TRABULSY, and	:	ANTONIO M. BRAVATA
ANTONIO M. BRAVATA	:	January 16, 2015

APPEARANCES: Andrew O. Schiff for the Division of Enforcement, Securities and Exchange Commission

Respondent John J. Bravata, *pro se*
Respondent Antonio M. Bravata, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars John J. Bravata (John Bravata) and Antonio M. Bravata (Antonio Bravata) (collectively, Respondents) from the securities industry.[1] John Bravata was previously convicted of conspiracy to commit wire fraud and aiding and abetting wire fraud, and Antonio Bravata was convicted of conspiracy to commit wire fraud. They were also enjoined against violations of the antifraud and registration provisions of the securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on June 2, 2014, pursuant to Sections 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The proceeding is a follow-on proceeding based on *United States v. Bravata*, No. 2:11-cr-20314 (E.D. Mich. Dec. 11, 2013), *appeal docketed*, No. 13-2380 (6th Cir. Oct. 15, 2013),[2] in

[1] The proceeding has ended as to the third respondent, Richard J. Trabulsy. *See John J. Bravata*, Initial Decision Release No. 641, 2014 SEC LEXIS 2666 (A.L.J. July 24, 2014), *finality order sub nom. Richard J. Trabulsy*, Exchange Act Release No. 73154, 2014 SEC LEXIS 3479 (Sept. 19, 2014).

[2] Respondents have also filed a motion for a new trial. *United States v. Bravata*, ECF Nos. 379, 380.

which John Bravata was convicted of conspiracy to commit wire fraud and aiding and abetting wire fraud, and Antonio Bravata was convicted of conspiracy to commit wire fraud; and *SEC v. Bravata*, No. 09-cv-12950 (E.D. Mich. May 29, 2014), in which they were enjoined against violations of the antifraud and registration provisions of the securities laws. The Division of Enforcement (Division) filed a motion for summary disposition, pursuant to 17 C.F.R. § 201.250(a), in accordance with leave granted. *John J. Bravata*, Admin. Proc. Rulings Release No. 1636, 2014 SEC LEXIS 2595 (A.L.J. July 21, 2014). Respondents made filings dated September 10, October 10, October 27, and November 28, 2014.

This Initial Decision is based on the pleadings and Respondents' Answers to the OIP. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which Respondents were convicted were decided against them in the criminal and civil cases on which this proceeding is based. Any other facts in their pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Respondents were convicted of conspiracy to commit wire fraud and other offenses and enjoined against violations of the antifraud and registration provisions of the federal securities laws in *United States v. Bravata* and *SEC v. Bravata*, respectively. The Division urges that they be barred from the securities industry. Respondents oppose this.

C. Procedural Issues

1. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the courts' orders in *United States v. Bravata* and *SEC v. Bravata* and of Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *2 n. 1 (Apr. 18, 2013), *pet. for review denied*, 575 F. App'x 1 (D.C. Cir. 2014).

2. Collateral Estoppel

It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. *See Ira William Scott*, Advisers Act Release No. 1752, 1998 SEC LEXIS 1957, at *8-9 (Sept. 15, 1998); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 SEC LEXIS 193, at *7-8 (Feb. 12, 1998). Nor does the Commission permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by consent, by summary judgment, or after a trial. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *9-11 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *1-2 & n.1, *7 (Jan. 21, 1998) (injunction entered by summary judgment); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn. 13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997). *See also Marshall E. Melton*, Exchange Act Release No. 48228, 2003

SEC LEXIS 1767, at *2-10, 22-30 (July 25, 2003). If either Respondent is successful in overturning his conviction and injunction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).[3]

II. FINDINGS OF FACT

Respondents were convicted after a jury trial in 2013 of conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1349, 1343, and John Bravata was convicted of aiding and abetting wire fraud in violation of 18 U.S.C. §§ 1349 and 2 in *United States v. Bravata*. *United States v. Bravata*, ECF Nos. 333, 353. John Bravata was sentenced to 240 months of imprisonment followed by three years of supervised release and ordered to pay $44,533,437.86 in restitution. *Id.*, ECF No. 353. Antonio Bravata was sentenced to sixty months of imprisonment followed by three years of supervised release and ordered to pay $7,000,000 in restitution. *Id.*, ECF No. 333.

Respondents were found to have violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and permanently enjoined from further violations in 2014 in *SEC v. Bravata*. *SEC v. Bravata*, ECF Nos. 648, 649, 670. John Bravata and a relief defendant were ordered, jointly and severally, to pay disgorgement of $5,201,494.89 plus prejudgment interest of $1,251,074.02, and Antonio Bravata was ordered to pay disgorgement of $444,384 plus prejudgment interest of $98,474.14. *Id.*, ECF No. 670 at 4. The court ordered John Bravata to pay a civil penalty of $1,820,000, and Antonio Bravata, a civil penalty of $130,000. *Id.*, ECF No. 670 at 4-5.

The events underlying *United States v. Bravata* and *SEC v. Bravata* involved Bravata Financial Group, LLC, formed by John Bravata in January 2003, and BBC Equities, LLC (BBC Equities), started by him in May 2006. *SEC v. Bravata*, ECF No. 648 at 3-4. John Bravata was associated with a registered broker-dealer, NYLIFE Securities, Inc., through October 2006.[4] The misconduct for which the Respondents were convicted and enjoined occurred from May 2006 to

[3] *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 (Securities Act) Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded district court's judgment that was basis for OIP); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for OIP); *Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending before Commission, reversed certain convictions and vacated and remanded other convictions, all of which were basis for OIP), *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012) (vacating bar issued in follow-on administrative proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).

[4] *See* John J. Bravata BrokerCheck Report *available at* http://brokercheck.finra.org (last visited Jan. 15, 2015).

July 2009.[5] *Id*. at 3, 5-14. Respondents and others solicited investors in BBC Equities at "free lunch" seminars, using false representations. *Id*. at 6-10. Unfortunately, BBC Equities was a Ponzi scheme. *Id*. at 10-12, 30. Additionally, Respondents siphoned off investor funds to make luxury purchases. *Id*. at 11-12, 16-17. The interests sold to investors in BBC equities were securities, and Respondents acted as unregistered broker-dealers in selling them. *Id.* at 30-34. The court said, "In finding John and Antonio Bravata guilty of conspiracy to commit wire fraud, the jury in the criminal case necessarily determined that both defendants 'did participate in a scheme to defraud investors of BBC, and to obtain money and property by means of false and fraudulent material pretenses, representations and promises.' . . . With respect to Antonio Bravata, the jury determined that he 'willfully agreed to participate and did participate in the aforementioned scheme beginning in 2007 and continuing up to and including July 2009.'" *Id*. at 15-16. The court further stated, "the jury's verdicts in the criminal action establish, at a minimum, that each defendant willfully participated in a scheme to defraud BBC Equities investors, and did so knowingly." *Id*. at 27.

III. CONCLUSIONS OF LAW

John Bravata and Antonio Bravata have each been convicted "within 10 years of the commencement of [this proceeding]" of a felony or misdemeanor that "involves the violation of section . . . 1343 . . . of title 18, United States Code" within the meaning of Sections 15(b)(4)(B)(iv) and 15(b)(6)(A)(ii) of the Exchange Act and Sections 203(e)(2)(D) and 203(f) of the Advisers Act and also "arises out of the conduct of the business of a broker [or] dealer" within the meaning of Sections 15(b)(4)(B)(ii) and 15(b)(6)(A)(ii) of the Exchange Act and Sections 203(e)(2)(B) and 203(f) of the Advisers Act. Further, Respondents have been permanently enjoined "in connection with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act.

Respondents argue that the government dropped a charge of securities fraud in *United States v. Bravata*, which they construe as an acquittal. However jeopardy cannot attach to a charge on which a defendant was not even tried. Even had they been convicted of securities fraud, imposing administrative sanctions following a conviction is not Double Jeopardy. *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *50-52 (Feb. 13, 2009) (citing *Hudson v. United States*, 522 U.S. 93, 98-99 (1997)), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *William F. Lincoln*, 1998 SEC LEXIS 193, at *15-21 (citing *Hudson*).[6]

Respondents also argue that the Commission lacks jurisdiction over them in that neither was a registrant or associated with a registrant. This argument is unavailing. John Bravata was associated with a registrant during part of the period of misconduct. Further, the court in *SEC v.*

[5] The Commission's complaint in *SEC v. Bravata* was filed on July 26, 2009. *SEC v. Bravata*, ECF No. 1. The Commission obtained a temporary restraining order, preliminary injunction, and asset freeze on July 27, 2009. *Id*., ECF No. 22.

[6] The Commission has even brought an administrative proceeding and imposed sanctions on a respondent who was tried, on the same facts, and acquitted of securities fraud and all other charges. *See Vladlen "Larry" Vindman*, Securities Act Release No. 8679, 2006 SEC LEXIS 862, at * 18-19 & n.21 (Apr. 14, 2006). The criminal case was *United States v. Vindman*, No. 1:04-cr-43 (E.D.N.Y.)

Bravata specifically found that Respondents were unregistered brokers. Their convictions arose "out of the conduct of the business of a broker" within the meaning of Exchange Act Sections 15(b)(4)(B)(ii) and 15(b)(6)(A)(ii). Although Antonio Bravata was not a registrant or associated with a registrant, the Commission has authority to bar persons from the securities industry based on their association with unregistered brokers. *See Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) ("It is well established that we are authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding."); *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 SEC LEXIS 3125 (Dec. 2, 2005), *recons. denied*, Exchange Act Release No. 53651, 2006 SEC LEXIS 861 (Apr. 13, 2006) (unregistered associated person of an unregistered broker-dealer barred from association with a broker or dealer).

Respondents argue that they have not been found to have violated any security related provision. This is patently not so in view of *SEC v. Bravata*. Further, the Commission has the authority to bar individuals based on convictions involving dishonesty that are not even securities-related. *See Kornman v. SEC*, 592 F.3d 173, 180 (citing with approval the Commission's policy that "the importance of honesty for a securities professional is so paramount that [the Commission has] barred individuals even when [a respondent's] conviction was based on dishonest conduct unrelated to securities transactions or securities business") (quoting *Gary M. Kornman*, 2009 SEC LEXIS 367, at *23); *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *20-21 & n.27 (Jan. 14, 2011) (holding conviction for tax violation relevant to determine whether an individual is fit to work in an industry where honesty and rectitude concerning financial matters is critical); *Ahmed Mohamed Soliman*, Exchange Act Release No. 35609, 1995 SEC LEXIS 968, at *78 (Apr. 17, 1995) (revoking registration and imposing broker-dealer and investment adviser bars based on a misdemeanor conviction for submitting false documents to the Internal Revenue Service); *Bruce Paul*, Exchange Act Release No. 21789, 1985 SEC LEXIS 2094, at *4-5 (Feb. 26, 1985) (imposing broker-dealer bar with right to reapply for conviction of making false statements on income tax returns); *Benjamin Levy Sec., Inc.*, Exchange Act Release No. 14368, 1978 SEC LEXIS 2430, at *4-5 (Jan. 12, 1978) (imposing broker-dealer and investment adviser bars and other sanctions based on conviction for making false statements in a loan application). The securities business is "a field where opportunities for dishonesty recur constantly." *Soliman*, 1995 SEC LEXIS 968, at *10.

IV. SANCTION

As the Division requests, a collateral bar will be ordered.[7]

[7] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. Respondents' convictions occurred after July 22, 2010. Additionally, even considering that their underlying wrongdoing occurred before that date, the Commission has determined that sanctioning a respondent with a collateral bar for pre-Dodd-Frank Act wrongdoing is not impermissibly retroactive, but rather provides prospective relief from harm to investors and the markets. *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855 (Dec. 13, 2012); *see also Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155; *Johnny Clifton*, Securities Act Release No. 9417, 2013 SEC LEXIS 2022 (July 12, 2013); *Alfred Clay Ludlum, III*, Advisers Act Release No. 3628, 2013 SEC LEXIS 2024 (July 11, 2013).

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. §§ 78*o*(b)(6), 80b-3(c). The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46. The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

As described in detail in the Findings of Fact, each Respondent's conduct was egregious and recurrent, over a period of three years, and involved a high degree of scienter. Each willfully participated in a scheme to defraud BBC Equities investors, and did so knowingly. Their previous occupation, if they were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, each could re-enter the securities industry. The violations are not only recent but continued until stopped by enforcement action: the complaint, temporary restraining order, preliminary injunction, and asset freeze in *SEC v. Bravata*. There is a complete absence of recognition by either Respondent of the wrongful nature of his conduct. The degree of direct financial harm to investors is quantified in the millions of dollars in restitution each was ordered to pay, and, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). A conviction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, JOHN J. BRAVATA and ANTONIO M. BRAVATA ARE EACH BARRED from associating with any 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.[8]

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge

[8] Thus, each will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging 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, pursuant to Exchange Act Section 15(b)(6)(A), (C).