INITIAL DECISION RELEASE NO. 477
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15057

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

In the Matter of	:	
	:	INITIAL DECISION
PETER SIRIS	:	December 31, 2012

APPEARANCES: Paul G. Gizzi and Osman E. Nawaz for the Division of Enforcement, Securities and Exchange Commission

M. William Munno and Kimberly E. White of Seward & Kissel LLP for Respondent Peter Siris

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Peter Siris (Siris) from the securities industry. He was previously enjoined from violating the antifraud and other provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on September 28, 2012, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The undersigned granted the parties leave to file Motions for Summary Disposition at a November 5, 2012, prehearing conference, pursuant to 17 C.F.R. § 201.250(a). Peter Siris, Admin. Proc. No. 3-15057 (A.L.J. Nov. 5, 2012) (unpublished). The Division of Enforcement (Division) timely filed its Motion for Summary Disposition on November 16, 2012, and Siris timely filed his Opposition on December 14, 2012. The Division filed a Reply on December 21, 2012. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the Division's Motion for Summary Disposition; (2) Siris's Opposition; (3) the Division's Reply; and (4) Siris's Answer 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 Siris was enjoined were decided against him in the civil case on which this proceeding is based. Any other facts in his 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 Siris was enjoined on September 18, 2012, from violating the antifraud and other provisions of the federal securities laws, in SEC v. Siris, No. 12-cv-5810 (S.D.N.Y.), based on his wrongdoing from 2007 through 2010 while he was associated with an unregistered investment adviser. The Division urges that collateral and penny stock bars be imposed on Siris. Siris argues that such sanctions are unnecessary to protect the public and will even lead to harm.[1] Siris also seeks to diminish his culpability in the events at issue in SEC v. Siris.

C. Procedural Issues

1. Official Notice

Official Notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in SEC v. Siris.

2. Collateral Estoppel

Siris presents extensive exhibits and arguments to diminish his own culpability in the events that led to SEC v. Siris and to inculpate others in the wrongdoing. However, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against a respondent, whether resolved by consent, like SEC v. Siris; by summary judgment; or after a trial. See Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104 (injunction entered by consent); John Francis D'Acquisto, Advisers Act Release No. 1696 (Jan. 21, 1998), 53 S.E.C. 440, 444 (injunction entered by summary judgment); James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2713 (injunction entered after trial); Demitrios Julius Shiva, Exchange Act Release No. 38389 (Mar. 12, 1997), 52 S.E.C. 1247, 1249 & nn.6-7. The fact that others may have contributed to the violation for which a respondent has been enjoined does not negate the violation and injunction. See James J. Pasztor, Exchange Act Release No. 42008 (Oct. 14, 1999), 54 S.E.C. 398 (sanctioning supervisor for violative trades carried out by registered representative at the direction of broker-dealer's owner).

3. Summary Disposition

Siris argues that there are genuine issues of material fact, such as whether Siris has acknowledged his misconduct, the sincerity of his assurances and sufficiency of his precautions against future violations, and whether permitting him to wind down his business will harm the investing public, that cannot be resolved by summary disposition. This argument is unavailing. Pursuant to 17 C.F.R § 201.250(a), the facts of Siris's pleadings "shall be taken as true," and pursuant to 17 C.F.R § 201.250(b), summary disposition may be granted "if there is no genuine

[1] However, Siris is prepared to affirmatively agree not to participate in offerings, not to accept consulting assignments, and not to purchase penny stocks. Opposition at 2.

issue with regard to any material fact." See also Conrad P. Seghers, Advisers Act Release No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2299-2303.

II. FINDINGS OF FACT

Siris, 68, resides in New York City. Answer at 6. Since 1998 Siris has been a managing member of Guerrilla Capital Management, L.L.C., which has been the investment manager to Guerrilla Partners, LP, a domestic fund, since it was formed in 1998 and to Hua-Mei 21st Century Partners, L.P., a China fund that focused on the Chinese microcap market, including reverse-merged companies, since it commenced operations in 2007. Answer at 4. He has also been the managing member of Hua-Mei 21st Century Partners, L.L.C., a consulting firm, since it was founded in 2006. Id. Neither Siris, nor either of the entities, nor Guerrilla Advisors, L.L.C., the general partner of both funds, are registered investment advisers. Answer at 5.

Siris has been in the in the financial industry for over forty years, with over thirty-eight years of experience in China. Answer at 8-9. For twelve years, until 2011, Siris wrote a column for the New York *Daily News* covering financial and economic news. Answer at 5. His record was unblemished until SEC v. Siris. Answer at 2. Siris lives frugally. Answer at Aff. at 3. Virtually all of his family's money is in Guerrilla Partners, LP, and Hua-Mei 21st Century Partners, L.P., (the Funds) so that his interests and the outside investors' interests are aligned. Answer at Aff. at 4. Siris has acknowledged and learned from his mistakes. Answer at 1, Answer at Aff. at 1-2, 23. Siris has taken corrective action: as of eighteen months ago, he discontinued investing in PIPEs and registered direct offerings; as of two years ago, he discontinued all consulting services of Hua-Mei 21st Century Partners, L.L.C.; he established compliance protocols, appointed a chief compliance officer, and set up safeguards, including maintaining a restricted list; and he established an email back-up system to ensure the maintenance of records of all communications. Answer at Aff. at 2-3; Opposition at 1-2. Siris wants the opportunity to wind down the Funds in an orderly fashion; he reduced the Funds' assets from approximately $101 million as of January 1, 2012, to approximately $70 million, of which nearly $46 million is cash, as of September 30, 2012. Answer at Aff. at 2.

Siris was (and is) permanently enjoined from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder – as well as registration provisions – Section 5 of the Securities Act and Section 15(a) of the Exchange Act – and Rule 105 of Regulation M; he was also ordered to pay a civil penalty of $464,011.93 and, jointly and severally with co-defendants Guerrilla Capital Management, LLC, and Hua Mei 21st Century, LLC, to disgorge $592,942.39 in ill-gotten gains plus prejudgment interest of $70,488.83. SEC v. Siris, No. 12-cv-5810 (S.D.N.Y. Sept. 18, 2012). The wrongdoing that underlies Siris's injunction included actions concerning China Yingxia International, Inc.; the company's stock is penny stock, and the Funds purchased its restricted shares and warrants in a private placement offering. Answer at 6, 10-12; Answer at Aff. at 4-6. The company proved to be fraud-ridden. Answer at 12-24; Answer at Aff. at 7-11. Additional wrongdoing related to other microcap Chinese companies. Answer at 24-38; Answer at Aff. at 11-23.

Siris acknowledged that he was not permitted to contest the factual allegations of the Commission's complaint and agreed not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis. SEC v. Siris, No. 12-cv-5810 at 11

(S.D.N.Y. Sept. 18, 2012). Siris, however, presents extensive material concerning his actions from 2007 through 2010 to diminish his own culpability in the events that led to SEC v. Siris and to inculpate others in the wrongdoing. Answer, passim; Opposition, passim.

III. CONCLUSIONS OF LAW

Siris has been permanently enjoined "from engaging in or continuing any conduct or practice in connection with any such activity" as an investment adviser[2] "or 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.

IV. SANCTION

The Division requests an industry bar, to include so-called collateral and penny stock bars. As discussed below, these sanctions will be imposed.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act. 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, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 698. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46.

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Melton, 56 S.E.C. at 698. "An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules, or regulations." Id. at 709. The Commission considers an antifraud injunction to be particularly serious. Id. at 710. 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 Richard C. Spangler, Inc., Exchange Act Release No. 12104 (Feb. 12, 1976), 46 S.E.C. 238, 252.

[2] Guerrilla Capital Management, L.L.C., was, and is, an investment adviser within the meaning of the Advisers Act, and Siris, an associated person of an investment adviser. See Advisers Act Sections 202(a)(11), 202(a)(17), 203(f).

B. Sanctions

Siris's conduct was egregious and recurrent. At a minimum, a reckless degree of scienter is a necessary element of his violations of the antifraud provisions of the Exchange Act. While Siris is remorseful and articulates recognition of the wrongful nature of his conduct, he also blames others.

Respondent's previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. The violations are recent. The degree of harm to investors and the marketplace is indicated in the $464,011.93 civil penalty that Siris was ordered to pay and the $592,942.39 in disgorgement that he and co-defendants were ordered to pay. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct – Siris and the outside investors in the Funds – 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, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1145, aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., Exchange Act Release No. 11773 (Oct. 24, 1975), 46 S.E.C. 78, 100. Thus, Siris' desire to participate personally in winding down the Funds cannot weigh against imposition of bars. Bars are also necessary for the purpose of deterrence. Arthur Lipper Corp., 46 S.E.C. at 100.

Siris argues that his conduct was not as bad as that of respondents in various follow-on cases cited by the Division. He does not, however, cite any follow-on case in which a respondent had been enjoined against violations of the antifraud provisions and received no sanction or a sanction less than a bar. None exists. From 1995 to the present there have been over thirty follow-on proceedings based on antifraud injunctions in which the Commission issued opinions. All of the respondents were barred[3] – thirty-one unqualified bars and three bars with the right to reapply after five years.[4]

[3] The historic cases imposed industry-specific bars, such as a bar from association with an investment adviser on a respondent who had been associated with an investment adviser at the time of his violation. However, Siris's conduct underlying the injunction, as well as the date of the injunction, extended beyond the July 22, 2010 effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which provided collateral bars in each of the several statutes regulating different aspects of the securities industry. Additionally, the Commission has determined that sanctioning a respondent with a collateral bar for pre-Dodd-Frank 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 (Dec. 13, 2012).

[4] Those three were Richard J. Puccio, Exchange Act Release No. 37849 (Oct. 22, 1996), 52 S.E.C. 1041, Martin B. Sloate, Exchange Act Release No. 38373 (Mar. 7, 1997), 52 S.E.C. 1233, and Robert Radano, Advisers Act Release No. 2750 (June 30, 2008), 93 SEC Docket 7495. The Commission's opinions do not make clear the factors that distinguished these cases from those in which unqualified bars were imposed, but there is little difference between a "bar" and a "bar with the right to reapply in five years."

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), and Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), PETER SIRIS IS 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.[5]

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

[5] Thus, he 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).