INITIAL DECISION RELEASE NO. 1061
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17252

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

In the Matter of	:	INITIAL DECISION MAKING FINDINGS
	:	AND IMPOSING SANCTION BY DEFAULT
STEPHAN VON HASE	:	September 16, 2016

APPEARANCES: Jonathan S. Polish and Daniel J. Hayes for the Division of Enforcement, Securities and Exchange Commission

James A. McGurk for Respondent Stephan von Hase

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Stephan von Hase from the securities industry. He was previously enjoined against violations of the antifraud and registration provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on May 13, 2016, 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 *SEC v. Benger*, No. 1:09-cv-00676 (N.D. Ill.), *appeal docketed*, No. 16-1886 (7th Cir. Apr. 22, 2016), in which von Hase was enjoined against violations of the antifraud provisions of the Exchange Act and the Securities Act of 1933 (Securities Act) and against violations of the registration provisions of the Exchange Act.

Two prehearing conferences, at which von Hase appeared through counsel, were held, on June 7 and 28, 2016; at the conferences, the due date for von Hase's Answer to the OIP was postponed, first to June 27, and then to July 12, 2016. *Stephan von Hase*, Admin. Proc. Rulings Release Nos. 3901, 3956; 2016 SEC LEXIS 2023 (June 7, 2016), 2016 SEC LEXIS 2292 (June 29, 2016). Contingent on von Hase's filing an Answer, the Division was granted leave to file a motion for summary disposition pursuant to 17 C.F.R. § 201.250. *Id.* No Answer was filed, and von Hase was ordered to show cause, by July 22, 2016, why he should not be deemed to be in default and the proceeding determined against him. *Stephan von Hase*, Admin. Proc. Rulings Release No. 3992, 2016 SEC LEXIS 2461 (July 15, 2016). Again contingent on an Answer, the Division was invited

to file a motion for summary disposition by July 29; absent an Answer, it was invited to file a motion for default, specifying the sanctions it seeks, by that date. *Id*. at *1 n.1. The Division filed such a motion, in the alternative, on July 29, requesting that von Hase be barred from association with a broker, dealer, investment adviser, municipal securities dealer,[1] or transfer agent.

To date, von Hase has not filed an Answer, a response to the Order to Show Cause, or an opposition to the Division's July 29 motion. Thus, he has failed to answer or otherwise to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Accordingly, von Hase is in default, and the undersigned finds that the allegations in the OIP are true as to him. *See* OIP at 5; 17 C.F.R. §§ 201.155(a), .220(f).

B. 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. Benger*, of the Commission's public official records, 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 *1 n.1 (Apr. 18, 2013), *pet. for review denied*, 575 F. App'x 1 (D.C. Cir. 2014).

2. Pending Appeal

The pendency of an appeal does not preclude the Commission from action based on an injunction. *See Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992). If von Hase is successful in overturning his injunction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).[2]

[1] The motion uses the term "municipal advisor," rather than "municipal securities dealer." Motion at 18. The undersigned has construed this to be a typographical error in that the Division's request for a collateral bar is otherwise tailored to comply with the ruling of the U.S. Court of Appeals for the D.C. Circuit regarding retroactive application of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which authorized collateral bars. *See Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015), *pet. for rehearing en banc denied*, 2015 U.S. App. LEXIS 16375 (Sept. 14, 2015), *cert. denied*, 136 S. Ct. 1492 (2016).

[2] *See Jilaine H. Bauer, Esq.*, 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.

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II. FINDINGS OF FACT

Von Hase and his entity CTA Worldwide Services, S.A. (CTA), were enjoined in *SEC v. Benger*, from committing violations of Exchange Act Sections 10(b) and Rule 10b-5, of Exchange Act Section 15(a), and of Securities Act Section 17(a); the court also imposed a penny stock bar on them and ordered them, jointly and severally, to pay disgorgement of $3,031,999.45 plus prejudgment interest of $759,151.46 for a total of $3,791,150.91 and to pay a civil penalty of $400,000. *SEC v. Benger*, ECF No. 565 at 1-3. The judgment was entered by default, following extensive litigation of the case and delaying tactics by von Hase between 2009 and 2015. *Id*., ECF No. 557 at 4-5, 23-24; docket report, *passim*.

As discussed *infra*, the following additional facts are established as alleged in the OIP: Von Hase is a German citizen and was sole owner of CTA. Through CTA, he was the distribution agent for several of the penny stocks sold through the boiler room operation that he owned and operated. He was also the president of Chicago-based Marblehead Financial Group, Inc., an investment adviser registered with the State of Illinois. Prior to his association with Marblehead and CTA, he was associated with various securities and commodities firms. He is not currently associated with a registered broker-dealer.

Von Hase and others conceived, structured, and carried out an elaborate boiler room scheme that enriched themselves and their boiler room operatives while defrauding investors. They concealed their involvement in the operation and insulated themselves from the fallout when the defrauded investors learned that most of their investment proceeds were being siphoned to von Hase and others involved in the boiler room operation. Specifically, in 2008, von Hase purchased a boiler room operation for which he agreed to pay $2.5 million over a period of time. He also served as a "distribution agent" in the scheme, which involved the offer and sale of "Regulation S" stock in several penny stock issuers.[3] All but one of the issuers were based in the United States and, with limited exceptions, the stock of each was quoted through the OTC Bulletin Board or "Pink Sheets" in the United States. During the relevant period, the stock of most if not all of the issuers traded at under $5 per share and otherwise met the definition of a "penny stock" under the federal securities laws.

As the distribution agent, von Hase helped plan and facilitate the penny stock offerings. He helped prepare, distribute, and process the three contract documents used in the offerings: an escrow agreement, a distribution agreement, and a share purchase agreement (SPA). After identifying penny stock companies willing to participate in Regulation S stock offerings, von Hase provided the companies with distribution agreements. In the agreements, von Hase offered to deploy his overseas boiler room sales force to sell the company's shares to foreign investors in exchange for sales commissions exceeding 60%.

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).

[3] "Regulation S" provides an exemption from registration with the Commission for securities offerings in which (among other things) all investors are located outside the United States. Stock sold under this exemption is sometimes referred to as "Regulation S stock."

Von Hase hid from investors his involvement in the offerings and his commissions. In an email, von Hase reminded one issuer that the investor "does not know any think [sic] about CTA or myself, please keep it so." Although the distribution agreement spelled out the identity and responsibilities of von Hase, and detailed his exorbitant commissions, neither the distribution agreement nor the information in it was ever disclosed to investors. To the contrary, the only document provided to investors – the SPA – falsely represented that investors would be charged only a nominal fee (no more than 1%) and that the rest of their investment money would go to the issuers.

Von Hase hired a network of sales agents located outside the United States to solicit investments in the issuers' stock from overseas investors. These boiler room operators preyed largely upon less sophisticated foreign investors, including elderly Europeans, employing high pressure sales tactics and myriad misrepresentations to induce the purchase of the restricted stocks.

Some of the boiler rooms retained by von Hase were on the United Kingdom's Financial Services Authority warning list of firms that were suspected of boiler room activity and were not authorized to do business in the U.K. During their cold call sales pitches, some of the agents falsely claimed to work for legitimate U.K.-based brokerage firms.

Von Hase took pains to maintain his and the offshore boiler room agents' anonymity. The agents used aliases in their dealings with investors and routinely told prospective investors that they worked for companies that either did not exist or that existed but with which the agents had no affiliation. The agents maintained offshore bank accounts located in countries known for their strong bank secrecy laws. Von Hase tried to recruit new agents through internet postings, assuring at least one potential agent that he would help both to establish leads and to set up the technology needed to obscure the location from which the agent's calls were originating.

Von Hase had regular contact with the overseas sales agents. He supplied them with information about the issuers to be used in their sales pitches to investors.

An individual who agreed to invest in the Regulation S stock was sent an SPA documenting the purchase. In most cases, the SPA directed the investor to send his or her investment funds and portions of the signed SPA to a designated escrow agent. The SPAs were generally the only documents provided to investors in connection with their purchases. Von Hase used U.S.-based escrow agents, including an American law firm, which gave investors an added measure of security and comfort about their overseas investment. The escrow agents received and processed investors' signed SPAs; received investor funds into escrow accounts in the United States; disbursed investor funds to the issuers and others receiving sales commissions; and sent share certificates to investors to finalize their purchases of stock. The escrow agents received commission payments for this.

The purchase and sale of each Regulation S stock transaction occurred in the United States, where the escrow agents and all but one of the issuers were located. Pursuant to the language in the distribution and escrow agreements, the escrow agent disbursed more than 60% of the investor proceeds to itself, the boiler room operators, and von Hase, while remitting less than 40% of the proceeds to the issuers. This distribution of the investor proceeds was hidden from the defrauded investors, who instead were led to believe by the SPAs and the boiler room agents that all of their investments would go to the issuer, less a nominal transaction fee.

Von Hase raised at least $16.7 million from investors through these penny stock offerings. Of that amount, von Hase received, either directly or indirectly through CTA, over $6 million in commissions.

III. CONCLUSIONS OF LAW

Von Hase has been enjoined "from engaging in or continuing any conduct or practice 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

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

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. §§ 78*o*(b)(6), 80b-3(f). 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)), *aff'd on other grounds*, 450 U.S. 91 (1981). 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 *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 (Jan. 31, 2006). 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 the Findings of Fact, von Hase's conduct was egregious and recurrent, with several issuers, and involved a high degree of scienter. His occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could resume engaging in the securities industry. The violations are neither recent nor distant in time. Von Hase has not recognized the wrongful nature of his conduct. The more than $3 million in disgorgement that he was ordered to pay is a measure of the direct harm to the marketplace. Further, 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). An injunction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *29-30. Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on antifraud injunctions in which the Commission issued opinions, and all of the respondents were barred[4] – thirty-four unqualified bars and three bars with the right to reapply after five years.[5] Further, in every such case that followed the statutory provision of collateral bars, the Commission imposed a collateral bar rather than an industry specific bar, reasoning that the antifraud provisions of the securities laws apply broadly to all securities-related professionals and violations demonstrate unfitness for future participation in the securities industry, even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 SEC LEXIS 1926 (May 27, 2016).

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, STEPHAN VON HASE IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent.

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 a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such

[4] In the cases authorized before the effective date of the Dodd-Frank Act, which authorized collateral bars, the Commission 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.

[5] Those three were *Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987 (Oct. 22, 1996), *Martin B. Sloate*, Exchange Act Release No. 38373, 1997 SEC LEXIS 524 (Mar. 7, 1997), and *Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504 (June 30, 2008). 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."

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.[6]

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Carol Fox Foelak
Administrative Law Judge

[6] A respondent may also file a motion to set aside a default pursuant to 17 C.F.R. § 201.155(b). *See Alchemy Ventures, Inc.*, Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *13 & n.28 (Oct. 17, 2013); *see also David Mura*, Exchange Act Release No. 72080, 2014 SEC LEXIS 1530 (May 2, 2014).