Initial Decision Release No. 1358
Administrative Proceeding
File No. 3-18229

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

In the Matter of

Demitrios Hallas

Initial Decision of Default
February 22, 2019

Appearances: David Stoelting and Michael Ellis for the Division of Enforcement, Securities and Exchange Commission

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for default and an associational bar. Respondent Demitrios Hallas will be barred 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.

Procedural Background

The Securities and Exchange Commission began this proceeding in September 2017 by issuing an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934.[1] This is a follow-on proceeding based on a final default judgment entered in September 2017 by the United States District Court for the Southern District of New York, enjoining Hallas from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5 and imposing disgorgement and a civil penalty.[2] The district court complaint

[1] OIP at 1; *see* 15 U.S.C. § 78*o*(b).

[2] *See United States v. Hallas*, No. 1:17-cv-2999 (S.D.N.Y.).

alleged that Hallas, who was a registered representative associated with broker-dealers, stole a client's investment funds and purchased and sold unsuitable securities for his customers without understanding the products or conducting adequate due diligence.

A different administrative law judge originally presided over this proceeding and issued an initial decision of default.[3] But the Commission vacated that decision following the Supreme Court's decision in *Lucia v. SEC*,[4] and the matter was reassigned to me to provide Hallas with the opportunity for a new hearing.[5] Hallas was directed to propose how further proceedings should be conducted,[6] but he never submitted a proposal or filed an answer and did not appear at the prehearing conference held on October 23, 2018.[7] I ordered Hallas to show cause why the proceeding should not be determined against him due to his failure to answer the OIP or otherwise defend the proceeding.[8] Hallas did not respond.

The Division filed a motion for default and an associational bar, supported by forty exhibits and the declarations of Kevin Fahey and Michael Ellis.[9] Hallas did not file an opposition to the Division's motion. In conducting this proceeding and considering the Division's motion, I have given no weight to the opinions, orders, or rulings issued by the prior administrative law judge.[10]

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[3] *Demitrios Hallas*, Initial Decision Release No. 1238, 2018 SEC LEXIS 603 (ALJ Feb. 27, 2018).

[4] 138 S. Ct. 2044 (2018); *see Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at *2–3 (Aug. 22, 2018).

[5] *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2–3 (ALJ Sept. 12, 2018).

[6] *Demitrios Hallas*, Admin. Proc. Rulings Release No. 6091, 2018 SEC LEXIS 2608, at *1 (ALJ Sept. 26, 2018).

[7] *Demitrios Hallas*, Admin. Proc. Rulings Release No. 6250, 2018 SEC LEXIS 2966, at *1 (ALJ Oct. 24, 2018).

[8] *Id.*

[9] The exhibits are cited as "Div. Ex. _." For consistency, citations are to the pagination added by the Division to the bottom right of each exhibit.

[10] *See Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at *4.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed.[11] Although Hallas participated in the investigation and gave testimony after receiving an investigative subpoena, he did not answer the OIP, submit a proposal for further proceedings, or otherwise participate in this proceeding. He is therefore in default, and I accept as true the allegations in the OIP and will rely on those allegations in conjunction with the other evidence in the record.[12] In making the findings below, I have applied preponderance of the evidence as the standard of proof.[13]

From May 2013 to May 2014, Hallas was a registered representative associated with Santander Securities LLC. From August 2014 to July 2015, Hallas was a registered representative associated with Forefront Capital Markets LLC. From August 2015 to November 2015, Hallas was a registered representative associated with PHX Financial, Inc.[14] Santander Securities, Forefront Capital Markets, and PHX Financial were each registered broker-dealers during the time Hallas was associated with them.[15]

Theft of Client Funds

Hallas misappropriated funds from a client of his named Kevin Fahey. Fahey began investing with Hallas in 2011. As Hallas moved from firm to firm, he met with Fahey to open accounts at Hallas's new employer and transfer funds there.[16] From March 2014 to May 2016, Fahey gave Hallas twelve checks totaling $170,750.[17] Fahey provided the checks to Hallas with the understanding that Hallas was investing the money in Fahey's

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11 17 C.F.R. § 201.323.

12 *See Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at *4; 17 C.F.R. §§ 201.155(a), .220(f).

13 *See John Francis D'Acquisto*, Investment Advisers Act of 1940 Release No. 1696, 1998 SEC LEXIS 91, at *9 (Jan. 21, 1998).

14 OIP at 1.

15 Div. Exs. 4 at 3, 7 at 6; 8 at 6; 9 at 6.

16 Fahey Decl. ¶¶ 5–6.

17 *Id.* ¶ 11.

retirement account.[18] Instead of investing the money, Hallas deposited it into his personal bank account.[19] Hallas used the money for his personal expenses, including credit card and student loan debt, bills, utilities, rent, and lifestyle expenses.[20]

In his investigative testimony, Hallas claimed that the money Fahey gave him was a "personal loan" and that Hallas planned to make monthly payments to Fahey under a loan agreement.[21] But Fahey disputed this account, as Hallas never told Fahey that the money would be treated as a loan and used for Hallas's personal debts and expenses.[22]

Hallas later acknowledged that he took Fahey's money unlawfully. On October 24, 2018, he pleaded guilty in New York state court to felony grand larceny.[23] In his plea colloquy, Hallas admitted that he "did steal approximately $170,750 from Kevin Fahey without permission or authority to do so."[24]

Fahey was not a sophisticated investor and did not have a high income. His investment with Hallas represented twenty years of careful savings and was the only money he had for retirement.[25] Hallas's theft caused Fahey significant financial stress.[26]

Unsuitable Investments

Hallas recommended and executed trades in unsuitable investments for five customers, including Fahey. The unsuitable investments were in daily leveraged exchange traded funds and exchange traded notes. These complex products are highly volatile and have significant risk. The prospectus for one

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18 *Id.*

19 Div. Ex. 10 at 53.

20 *Id.* at 54–55.

21 *Id.* at 49–51.

22 Fahey Decl. ¶¶ 10–13.

23 Div. Ex. 3 at 1–3, 13.

24 *Id.* at 14.

25 Fahey Decl. ¶ 4.

26 *Id.* ¶ 15.

of these funds states, in bold type, that it "seeks daily inverse leveraged investment results and does not seek to achieve its stated investment objective over a period of time greater than one day."[27] Accordingly, this investment "is different and much riskier than most exchange-traded funds" and is designed for use by "knowledgeable investors" who understand the risks involved and actively manage their portfolios.[28] Hallas's customers were not sophisticated investors. They told the Division that Hallas made all of the investment decisions and did not explain leveraged exchange traded products or the risks involved in those investments.[29]

Although these daily leveraged investments were intended to be held for one day or less, Hallas held some positions for weeks at a time.[30] From September 2014 to October 2016, Hallas executed at least 172 purchases of daily leveraged investments.[31] Of these, at least 100 were held for more than one day.[32] When asked why a particular fund was held for nearly a month, Hallas said he was "[n]ot really sure" and speculated that "[m]aybe [he] was on vacation or something."[33] Hallas also acknowledged making excessive trades in his clients' accounts to generate more commissions.[34]

Disciplinary History

In 2014, the Financial Industry Regulatory Authority (FINRA) initiated a disciplinary complaint against Hallas. Hallas settled the complaint and, without admitting or denying the allegations, agreed to the imposition of sanctions.[35] FINRA suspended Hallas for thirty days, imposed a $5,000 fine, and ordered him to pay restitution of $6,110.[36]

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27 Div. Ex. 24 at 4.

28 *Id.*

29 Fahey Decl. ¶ 10; Ellis Decl. ¶¶ 5–8.

30 *See* Ellis Decl. ¶ 45; Div. Ex. 37; *see, e.g.*, Div. Exs. 19 at 22; 23 at 14.

31 Div. Exs. 17, 18.

32 *Id.*

33 Div. Ex. 10 at 34.

34 *Id.* at 78–79.

35 Ex. 6 at 2.

36 *Id.* at 9.

FINRA brought another disciplinary complaint in 2017. This complaint alleged that Hallas failed to appear and provide testimony as part of a FINRA investigation.[37] Hallas did not appear to contest the allegations, and FINRA issued a default decision barring him "from associating with any FINRA member firm in any capacity."[38]

The Commission's Civil Case

On April 25, 2017, the Commission filed a civil complaint against Hallas in United States District Court for the Southern District of New York. The Commission's complaint alleged that Hallas violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5. The factual allegations of the complaint are that Hallas purchased and sold the unsuitable daily leveraged products previously discussed without a reasonable basis for doing so and misappropriated $170,750 from a client.[39] Hallas did not respond to the suit, and the district court entered a corrected default judgment against him on September 27, 2017. The court permanently enjoined Hallas from violating Section 17(a), Section 10(b), and Rule 10b-5 and imposed a civil penalty of $260,193.39, an equal amount of disgorgement, and prejudgment interest.[40]

Criminal Case

In 2018, Hallas was charged in the Superior Court of Westchester County, New York, with grand larceny in the third degree, a felony offense.[41] On October 24, 2018, Hallas pleaded guilty to the charge. Hallas acknowledged his guilt in open court and admitted to stealing $170,750 from Fahey.[42] Per his plea agreement, Hallas will be sentenced to interim probation for one year to be followed by an additional four years of probation.[43] He was additionally ordered to pay restitution to Fahey, with

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37 Div. Ex. 31 at 1.

38 Div. Ex. 32 at 1.

39 Div. Ex. 2 at 9–13.

40 Div. Ex. 29.

41 Div. Ex. 30; *see* Div. Ex. 3 at 7.

42 Div. Ex. 3 at 9–10, 13–14.

43 *See id.* at 2–3.

$10,000 due immediately and $2,000 due per month—increasing to $3,000 per month after the first year—until the full amount of $170,582.28 is paid.[44]

Conclusions of Law

The Division seeks a collateral and penny stock bar against Hallas. A collateral bar, also referred to as an industry bar, is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct.[45] The Exchange Act gives the Commission authority to impose collateral and penny stock bars against a respondent if (1) the respondent was associated with or seeking to become associated with a broker or dealer at the time of his misconduct; (2) the respondent has, as relevant here, been enjoined from any conduct in connection with the purchase or sale of a security; and (3) imposing a bar is in the public interest.[46]

Hallas Was Associated with a Broker-Dealer

Hallas was a registered representative associated with three registered broker-dealers while he committed the misconduct. This element is satisfied.

Hallas Was Enjoined

The United States District Court for the Southern District of New York enjoined Hallas against future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5. This injunction meets the requirements of Exchange Act Section 15(b)(6)(A)(iii)[47] and satisfies this element.

Hallas's criminal conviction for felony larceny of investment funds could potentially also satisfy this element.[48] But since Hallas's conviction post-dates the OIP, I do not rely on it in determining whether this element is met.

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44 *See id.*

45 *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *1 & n.1 (Oct. 29, 2014).

46 15 U.S.C. § 78*o*(b)(4)(C), (b)(6)(A)(iii).

47 *Id.*

48 *See id.* § 70*o*(b)(4)(B)(iii).

I will, however, consider the conviction in weighing the public interest.[49]

The Public Interest Favors a Bar

To determine whether to impose a bar, I must consider the public-interest factors discussed in *Steadman v. SEC*.[50] The public-interest factors include:

> 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.[51]

The Commission also considers the deterrent effect of administrative sanctions.[52] This public interest inquiry is "flexible … and no one factor is dispositive."[53] Before imposing a bar, an administrative law judge must specifically determine why the Commission's interests in protecting the investing public would be served by imposing an industry bar.[54]

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[49] *Scammell*, 2014 SEC LEXIS 4193, at *16 & n.22.

[50] 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Scammell*, 2014 SEC LEXIS 4193, at *23.

[51] *David R. Wulf*, Exchange Act Release No. 77411, 2016 SEC LEXIS 1074, at *13–14 (Mar. 21, 2016).

[52] *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *48 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). General deterrence can be considered but is not determinative in assessing whether the public interest weighs in favor of imposing a bar. *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

[53] *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009) (quoting *David Henry Disraeli*, Securities Act Release No. 8880, 2007 SEC LEXIS 3015, at *61 (Dec. 21, 2007), *pet. denied*, 334 F. App'x 334 (D.C. Cir. 2009)), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

[54] *Mark Feathers*, Exchange Act Release No. 73634, 2014 SEC LEXIS 4722, at *4 (Nov. 18, 2014); *see Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7–8 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 SEC LEXIS 1886 (May 26, 2016).

In this case, the public interest and the Commission's interest in protecting the public favor an industry bar. Hallas's conduct was egregious. Fahey gave Hallas his hard-earned retirement money to invest, and Hallas instead used it to pay his personal debts and expenses. This is among the worst things a securities professional can do, and caused significant financial harm to his client, who was counting on that money to fund his retirement. Misappropriation of client funds is quintessentially egregious conduct, and Hallas's conduct was sufficiently egregious to warrant a felony conviction.

Hallas also invested five clients' money in highly volatile products unsuitable to his clients' investment goals. He admitted that he engaged in excessive trading in those accounts to generate more commissions. While not as severe as outright theft, this was also a serious abuse of his clients' trust.[55] Such an abuse of the trust placed in him as a securities professional is egregious.[56]

Hallas's conduct was recurrent. He took twelve checks from Fahey, slowly converting Fahey's money to his personal use over two years. He also inappropriately bought daily leveraged products for his clients on at least 172 occasions.

Hallas's conduct showed a high degree of scienter. He pleaded guilty to grand larceny, which under New York law requires the "intent to [wrongfully] deprive another of property."[57]

By pleading guilty to grand larceny, Hallas accepted responsibility for at least some of his conduct and acknowledged the wrongful nature of his conduct. The Division argues that he did not acknowledge his wrongful conduct in his guilty plea, but except in unusual circumstances not present

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[55] *See Ralph Calabro*, Securities Act Release No. 9796, 2015 SEC LEXIS 2175, at *164 (May 29, 2015) (holding that churning a client's account to generate commissions constituted egregious conduct).

[56] *Derek L. DuBois*, Exchange Act Release No. 48332, 2003 SEC LEXIS 3166, at *16 (Aug. 13, 2003).

[57] N.Y. Penal Law §§ 155.05(1), .35(1); *see People v. Guzman*, 416 N.Y.S.2d 23, 25 (N.Y. App. Div. 1979).

here, a guilty plea requires an acknowledgement of culpability.[58] Hallas, however, has made no assurances against future violations.

The Division acknowledges that Hallas is not currently working in the securities industry,[59] and it would be difficult for him to do so since he is barred from associating with any FINRA member. The Division asserts, however, that as of November 2018, Hallas held himself out on what appears to be his LinkedIn profile page as a financial services representative with FINRA licenses.[60] This evidence, in light of the fact that Hallas's conduct from 2014 to 2016, while he was associated with three separate broker-dealers, led to a civil injunction and criminal conviction, shows that the public would be at risk of further wrongdoing should Hallas work again in the securities industry.[61]

Considering all these factors together, I find that the appropriate sanction is a full collateral and penny stock bar. Hallas's repeated knowing and egregious conduct significantly harmed investors. Hallas's conviction for dishonest conduct and the district court's injunction against further violations of the antifraud provisions of the federal securities laws weigh strongly in favor of a bar.[62] Finally, imposing a bar will serve the Commission's interest in deterring Hallas specifically and others generally

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[58] *See*, *e.g.*, *North Carolina v. Alford*, 400 U.S. 25, 38–39 (1970); *People v. Alexander*, 97 N.Y.2d 482, 487 (N.Y. 2002) ("[U]nlike an ordinary guilty plea, an *Alford* plea does not involve a recitation of guilt.").

[59] Mem. at 21.

[60] *Id.*; *see* Div. Ex. 34 at 1.

[61] *See Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 SEC LEXIS 96, at *38 (Jan. 16, 2008). In weighing the public interest, I have not relied on evidence that Hallas settled a complaint with FINRA. Div. Ex. 6; *see R.B. Webster Invs., Inc.*, Exchange Act Release No. 34659, 1994 SEC LEXIS 2868, at *23 n.37 (Sept. 13, 1994) (holding that when assessing sanctions, the Commission does not consider settled proceedings in which the "plain language of the consent order unequivocally states that it may not be used in another proceeding").

[62] *See Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *30 (July 25, 2003); *John S. Brownson*, Exchange Act Release No. 46161, 2002 SEC LEXIS 3414, at *8 (July 3, 2002), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

from engaging in similar misconduct.[63] A bar in these circumstances is "a legitimate prophylactic remedy consistent with [the Commission's] statutory obligations."[64]

Order

The Division of Enforcement's motion for default and sanctions is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934, Demitrios Hallas is BARRED 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.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[65] Under 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.[66] 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 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 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 occurs, the initial decision shall not become final as to that party.

Hallas may move to set aside a default. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate.[67] A motion to

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63 *Brownson*, 2002 SEC LEXIS 3414, at *8

64 *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *28 (Jan. 14, 2011).

65 *See* 17 C.F.R. § 201.360.

66 *See* 17 C.F.R. § 201.111.

67 17 C.F.R. § 201.155(b).

set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. Such motion, if filed, should be directed to the Commission, as the hearing officer may only set aside a default "prior to the filing of the initial decision."[68]

James E. Grimes
Administrative Law Judge

[68] *Id.*