INITIAL DECISION RELEASE NO. 1402
ADMINISTRATIVE PROCEEDING
FILE NOS. 3-17874 and 3-17875

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

In the Matter of	:	
	:	SUPPLEMENTAL INITIAL DECISION
TALMAN HARRIS and	:	AS TO TALMAN HARRIS
VICTOR ALFAYA	:	September 2, 2020

APPEARANCES: Dugan Bliss and John O. Enright for the Division of Enforcement, Securities and Exchange Commission

Talman Harris, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Talman Harris from the securities industry. He was previously enjoined from violating the antifraud provisions of the federal securities laws and convicted of wire fraud and conspiracy to commit securities fraud and wire fraud.

I. INTRODUCTION

The Securities and Exchange Commission instituted proceedings against Respondents Talman Harris and Victor Alfaya with Orders Instituting Proceedings, pursuant to Section 15(b) of the Securities Exchange Act of 1934, on March 10, 2017, and the two proceedings were consolidated on March 13, 2017.[1] The proceeding is a follow-on proceeding based on *SEC v. Cope*, No. 1:14-cv-7575 (S.D.N.Y.), in which Respondents were enjoined from violating the antifraud provisions of the federal securities laws and on *United States v. Scholander*, No. 1:15-cr-335 (N.D. Ohio), in which Respondents were convicted of conspiracy to commit securities fraud and wire fraud, and Harris was convicted of wire fraud. On October 30, 2017, an Initial Decision imposed associational bars on Respondents. *Talman Harris*, Initial Decision Release No. 1213, 2017 SEC LEXIS 3450 (A.L.J.).

[1] The proceeding has ended as to Victor Alfaya. *See Talman Harris*, Initial Decision Release No. 1381, 2019 SEC LEXIS 1548 (June 28, 2019), *finality order sub nom. Victor Alfaya*, Exchange Act Release No. 87162, 2019 SEC LEXIS 3432 (Sept. 30, 2019).

On August 22, 2018, in light of *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the Commission ordered a new hearing in each pending proceeding, including this one, before an administrative law judge (ALJ) who had not previously participated in the proceeding, unless the parties expressly agreed to alternative procedures, including agreeing that the proceeding remain with the previous presiding ALJ. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at *2-3 (August 22 Order). Accordingly, the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018). Thereafter, the parties filed motions for summary disposition. *See Talman Harris*, Admin. Proc. Rulings Release No. 6531, 2019 SEC LEXIS 694 (A.L.J. Apr. 1, 2019).

A June 28, 2019, Initial Decision, based on the parties' motions for summary disposition,[2] barred Harris from the securities industry. *Talman Harris*, Initial Decision Release No. 1380, 2019 SEC LEXIS 1547. The Commission vacated that Initial Decision and remanded the proceeding. *Talman Harris*, Exchange Act Release No. 87425, 2019 SEC LEXIS 4280 (Oct. 30, 2019). The Commission found that the Initial Decision "stated only that Harris had been enjoined and convicted [and] did not describe Harris's underlying conduct" and remanded the proceeding to the undersigned "to identify the facts and circumstances of Harris's misconduct that lead her to conclude that the public interest warrants the imposition of sanctions." *Id.*, at *3. There were no findings of fact in either of the cases on which this proceeding is based. In the criminal case the jury returned a general verdict on each count, and in the civil case the court entered judgment on default. In view thereof, the parties were "invited to supplement their [previous] motions for summary disposition, with additional arguments and/or additional reference to 'undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noticed pursuant to Rule 323.'" *Talman Harris*, Admin. Proc. Rulings Release No. 6730, 2020 SEC LEXIS 3256, at *2 (Feb. 5, 2020) (quoting 17 C.F.R. § 201.250(b)). The Division affirmatively declined in its March 4, 2020, filing titled "Notice of Resting on Prior Briefing." Harris did not submit anything. A letter dated March 9, 2020, from *TheBlot* magazine editorial board was submitted in support of Harris. The Division replied to the letter in a letter dated March 27, 2020.

II. PROCEDURAL ISSUES

A. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of the docket reports and courts' orders and transcripts of testimony in *SEC v. Cope* and *United States v. Scholander*, and from 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. denied*, 575 F. App'x 1 (D.C. Cir. 2014).

[2] Harris's only filing in that phase of the proceeding was a submission dated October 9, 2018, in which he "den[ied] all of the charges in this civil matter" and proposed dismissal by summary disposition in accordance with 17 C.F.R. § 201.250. He also stated that he was not afforded an attorney. However, a respondent in an administrative proceeding does not have a right to a government-appointed attorney. *See Boruski v. SEC*, 340 F.2d 991, 992 (2d Cir. 1965); *V.F. Minton Sec., Inc.*, Exchange Act Release No. 32074, 1993 SEC LEXIS 642, at *18 (Mar. 31, 1993), *pet. denied*, 18 F.3d 937 (5th Cir. 1994) (unpublished table decision).

B. Collateral Estoppel

Harris is estopped from relitigating *SEC v. Cope* and *United States v. Scholander* in this proceeding. It is well established that the Commission does not permit criminal convictions or civil injunctions to be collaterally attacked in its administrative proceedings. *See Ira William Scott*, Investment Advisers Act of 1940 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) (criminal convictions); *see also Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *11 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *10 (Sept. 17, 1992); *John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *7 (Jan. 21, 1998); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, Exchange Act Release No. 38389, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997) (civil proceedings) (injunctions). Nor does the pendency of an appeal preclude the Commission from follow-on administrative proceedings. *See Joseph P. Galluzzi*, 2002 SEC LEXIS 3423, at *10 n.21; *Charles Phillip Elliott*, 1992 SEC LEXIS 2334, at *11.

TheBlot's letter attacks the criminal and civil cases on which this proceeding is based as well as a FINRA proceeding against Harris based on an unrelated fact situation. The letter states that Harris is Black, and that FINRA orchestrated the campaign against him, based on lies, for racist reasons. The letter also incorrectly states that Harris's conviction was overturned by the U.S. Court of Appeals for the Sixth Circuit.

The Court of Appeals reversed the conviction on one count (obstruction of justice) and remanded for a retrial on that count or resentencing on the remaining four counts, at the government's option; remanded for a hearing pursuant to *Remmer v. United States*, 347 U.S. 227 (1954), as to whether Harris was prejudiced by jury misconduct (extraneous influence on one juror); and affirmed the convictions on the remaining counts, except that, if following a *Remmer* hearing, the district court found that Harris was prejudiced by juror misconduct, he would be entitled to a new trial on all counts. *United States v. Harris*, 881 F.3d 945 (6th Cir. 2018). Following the August 2, 2018, *Remmer* hearing, the court found no basis for a new trial, and Harris was resentenced on January 17, 2019. *United States v. Scholander*, 2018 U.S. Dist. LEXIS 138064 (Aug. 15, 2018), ECF No. 364; Order Denying Motion for New Trial Pursuant to Rule 33 (Oct. 24, 2018), ECF No. 377; Order Denying Motion for Reconsideration (Nov. 20, 2018), ECF No. 385; Amended Judgment in a Criminal Case (Jan. 25, 2019), ECF No. 398, *appeal dismissed sub nom. United States v. Harris*, No. 19-3088 (6th Cir. Feb. 11, 2019), ECF No. 5 (granting Harris's motion to dismiss his appeal).

III. FINDINGS OF FACT

Harris was convicted of conspiracy to commit securities fraud and wire fraud, in violation of 18 U.S.C. § 1349, and wire fraud, in violation of 18 U.S.C. § 1343. Amended Judgment in a Criminal Case, *United States v. Scholander* (Jan. 25, 2019), ECF No. 398,[3] *appeal dismissed sub nom. United*

[3] The amended criminal judgment reflected his resentencing as ordered in *United States v. Harris*, 881 F.3d 945 (6th Cir. 2018).

States v. Harris, No. 19-3088 (6th Cir. Feb. 11, 2019), ECF No. 5 (granting Harris's motion to dismiss his appeal). He was sentenced to thirty-seven months of imprisonment followed by five years of supervised release and ordered to pay, jointly and severally with other defendants, restitution of $843,423.91. He was enjoined, by default, against violations of the antifraud provisions of the federal securities laws, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933, and barred from participating in an offering of penny stock; he was also ordered to pay disgorgement of $775,104 plus prejudgment interest of $201,984.17 and a civil penalty of $1,000,000. Final Judgment as to Defendants Talman Harris and Victor Alfaya, *SEC v. Cope* (Feb. 7, 2017), ECF No. 294.

In the criminal case, Harris was convicted after a jury found him guilty of one count of conspiracy, occurring between 2006 and 2014, to commit securities fraud, 18 U.S.C. § 1348, and wire fraud, 18 U.S.C. § 1343, in violation of 18 U.S.C. § 1349; and three counts of wire fraud, occurring in 2010, 2011, and 2012, in violation of 18 U.S.C. § 1343. Superseding Indictment, *United States v. Scholander*, ECF No. 155 at 12-28; Jury Verdict Forms, ECF No. 223 at 1-4.

According to the Commission's official records and FINRA records, Harris was associated with several registered broker-dealers between 1999 and 2015 (some of which FINRA expelled on various dates between 2001 and 2018).[4] FINRA barred him from association with a broker-dealer in any capacity; the sanction was upheld on appeal. *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209 (Mar. 31, 2016), *pet. denied sub. nom. Harris v. SEC*, 712 F. App'x 46 (2d Cir. 2017). In denying Harris's petition for review of the Commission's decision sustaining FINRA's sanction, the court noted that FINRA: (1) found that Harris and his business partner violated Exchange Act Section 10(b), and FINRA Rules 2010 and 2020, by recommending that customers purchase certain securities without disclosing that they had received a $350,000 "advisory fee" from the issuer two months earlier; and (2) barred him in light of the violations and several aggravating factors. *Harris*, 712 F. App'x at 47. The court also noted the Commission decision's consideration of the aggravating factors, including Harris's providing inaccurate or misleading information and testimony to FINRA investigators. *Id*. at 49. Harris did not contest the finding that he testified falsely. *Id*.

The fact situation underlying *SEC v. Cope* and *United States v. Scholander* was a scheme controlled by Izak Zirk de Maison f/k/a Izak Zirk Engelbrecht (Zirk de Maison). The scheme involved price manipulation, inappropriate removal of restrictive legends, and matched trades of shares of thinly traded penny stocks that Zirk de Maison had obtained. The final step in the scheme was for Zirk de Maison's shares to be sold to a customer of a cooperating registered representative who would receive an enormous commission that was not disclosed to the customer. For example, between about February 2008 and June 2011, Zirk de Maison arranged for Harris and his partner William Scholander to buy shares in Lenco Mobile Inc. for their customers and paid them commissions of 30%-50%. Div. Mot. for Summ. Disp., Ex. 4 at 2.

Harris's criminal trial in *United States v. Scholander* took place over ten days between August 23 and September 7, 2016. Trial Tr., *United States v. Scholander*, ECF Nos. 317-26. The government called twelve witnesses – two FBI agents; an attorney with FINRA's Criminal

[4] *See* Talman Anthony Harris BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited August 31, 2020).

Prosecution Assistance Group; Zirk de Maison and three other participants in the scheme, including Harris's partner Scholander; Zirk de Maison's administrative assistant; and four customers. *Id*. Harris called one witness, customer Daniel Finn. Trial Tr. 1479, ECF No. 325.

Harris's cross-examination of the four participants who testified for the government – Zirk de Maison and stockbrokers Gregory Goldstein, Guy Durand, and Scholander – highlighted the effect that their testimony might have on their criminal liability, suggesting that they might recount facts in the light most unfavorable to the defendant. Durand, who admitted that he took payments from Zirk de Maison that were not disclosed to customers, was interviewed several times by the FBI but was never charged and made no agreements. Trial Tr. 917-18, 925-26, 937, 941, ECF No. 322. The remaining three – who had pleaded guilty pursuant to cooperation agreements that offered the possibility of reduced sentences – were awaiting sentencing by the same judge who was presiding at Harris's trial.[5] Trial Tr. 366-72, 697-99, 1200-06, ECF Nos. 319, 321, 323. Additionally, Scholander testified that between the September 9, 2015, date of his arrest and his first meeting with the government he had learned that Harris had received considerably more money than he from Zirk de Maison, despite their agreement to split the payments 50/50. Trial Tr. 1228-29, ECF No. 323. To consider the record in *United States v. Scholander* in the light most favorable to Harris in this proceeding, the undersigned has disregarded the testimony of these witnesses except to the extent necessary to support the elements of the offenses of conviction. The undersigned has, however, considered the testimony of the sole witness called by Harris.

As noted above, the jury convicted Harris on two types of criminal counts. First, to convict Harris of conspiracy to commit securities fraud or wire fraud, the jury was required to find beyond a reasonable doubt that two or more people conspired, or agreed, to commit securities or wire fraud and that Harris knowingly and voluntarily joined the conspiracy. *See* 18 U.S.C. § 1349; *United States v. Rogers*, 769 F.3d 372, 377 (6th Cir. 2014); Trial Tr. 1535, 1545, 1553, 1556 (jury instructions), ECF No. 325.[6] The jury must therefore have found that there was some agreement to carry out the alleged scheme, and that Harris knowingly and voluntarily agreed to participate in the scheme. Trial Tr. 1545-

[5] Scholander was sentenced on January 30, 2017, to twenty months of imprisonment followed by five years of supervised release and ordered to pay, jointly and severally with Harris and Zirk de Maison, restitution of $843,423.91. Judgment in a Criminal Case, *United States v. Scholander*, ECF No. 298. Goldstein was sentenced on February 1, 2017, to thirty-three months of imprisonment followed by five years of supervised release and ordered to pay, jointly and severally with other defendants, restitution of $6,307,693.53. Judgment in a Criminal Case, *United States v. Goldstein*, No. 1:15-cr-328 (N.D. Ohio), ECF No. 29. Zirk de Maison was sentenced on February 1, 2017, to 151 months of imprisonment followed by five years of supervised release and ordered to pay, jointly and severally with other defendants, restitution of $39,105,515.63. *United States v. De Maison*, No. 1:15-cr-117 (N.D. Ohio), ECF No. 85. Originally from South Africa, he had been incarcerated as a flight risk since the September 18, 2014, date of his arrest and expected to be deported eventually. Order of Detention, *United States v. De Maison*, No. 5:14-mj-382 (C.D. Calif. Sept. 19, 2014), ECF No. 9; Trial Tr. 404, 766-67, *United States v. Scholander*, ECF Nos. 319, 322.

[6] It is presumed that juries follow the court's instructions. *See CSX Transp., Inc. v. Hensley*, 556 U.S. 838, 841 (2009) (per curiam). "In the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment." *United States v. Fabric Garment Co.*, 366 F.2d 530, 534 (2d Cir. 1966), *quoted in Eric S. Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *14 n.23 (Aug. 26, 2011).

63 (jury instructions), ECF No. 325. Second, to convict Harris of wire fraud, the jury was required to find beyond a reasonable doubt that (1) Harris knowingly participated in, devised, or intended to devise a scheme to defraud in order to obtain money or property – that is, to defraud investors; (2) the scheme included a material misrepresentation or concealment of a material fact; (3) Harris had intended to defraud; and (4) Harris used relevant jurisdictional means in furtherance of the scheme. *See* 18 U.S.C. § 1343; *United States v. Faulkenberry*, 614 F.3d 573, 580-81 (6th Cir. 2010); Trial Tr. 1561, 1565 (jury instructions), ECF No. 325. The three wire fraud counts were each tied to a specific wire communication, respectively, on or about November 19, 2010, July 16, 20111, and April 14, 2012 – which the jury necessarily found occurred, as it was instructed to consider each count separately. *See* Superseding Indictment, *United States v. Scholander*, ECF No. 155 at 28; Trial Tr. 1563-65 (jury instructions), ECF No. 325.

Harris's witness, his customer Daniel Finn, was first cold-called by Harris in 2006 or 2007 and invested a relatively modest sum with him about a year later. Trial Tr. 1480-81, 1501-02, ECF No. 325. He eventually invested much more. Trial Tr. 1481. At the time, he was unaware of the 30%-50% commissions, which Harris never disclosed to him. Trial Tr. 1482, 1507-08. It made no difference to him; he was only concerned with his own return on the investment. Trial Tr. 1482, 1489, 1506. He bought Lenco as recommended by Harris, eventually sold it after analyzing its business model, and lost a substantial sum on the investment. Trial Tr. 1486-88, 1505. He did not blame Harris for the loss. Trial Tr. 1488-89. He was friendly with Harris, who visited with him at his residence in Ireland, and whom he visited in New York. Trial Tr. 1502-05.

IV. CONCLUSIONS OF LAW

Harris has been permanently 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 has been convicted within ten years of the commencement of this proceeding of a felony that "involves the purchase or sale of any security" and that "arises out of the conduct of the business of a broker [or] dealer" within the meaning of Sections 15(b)(4)(B)(i), (ii), (iv) and 15(b)(6)(A)(ii) of the Exchange Act. The misconduct underlying the criminal and civil cases occurred while Harris was associated with a registered broker-dealer.

V. SANCTION

A collateral bar will be ordered.[7]

A. Sanction Considerations

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

[7] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. At least some of the conduct that led to the cases against Harris occurred after July 22, 2010. *See Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017) (holding that a collateral bar cannot be imposed when the violative conduct on which a follow-on proceeding was based ended before the July 22, 2010, effective date of the Dodd-Frank Act).

> 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*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5 (July 25, 2003). 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, Harris's conduct was egregious and recurrent, over a period of several years between at least 2008 and 2012, and involved a high degree of scienter as indicated by the fact that his misconduct included wire fraud and conspiracy to commit securities fraud and wire fraud. His conduct during that time included his participation in Zirk de Maison's arrangement for Harris and his partner to buy shares in Lenco for their customers and in return for commissions of 30%-50%. A specific example of his conduct was omitting to disclose to customer Daniel Finn that he and his partner would receive a 30%-50% commission on Finn's purchase of Lenco on his recommendation. This omission – to disclose an enormous commission that would affect the stockbroker's desire to recommend the stock as well as the price charged to the customer – was an omission to disclose a material fact. Even if the omission made no difference to Finn, as he testified, the standard of materiality is whether or not a *reasonable* investor or prospective investor would have considered the information important in making an investment decision. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32, 240 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). "[T]here must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc.*, 485 U.S. at 231-32 (quoting *TSC Indus., Inc.*, 426 U.S. at 449); *accord Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 38 (2011); *SEC v. Steadman*, 967 F.2d 636, 643 (D.C. Cir. 1992).[8]

[8] Investor sophistication may influence whether an allegedly misleading or omitted fact would have assumed actual significance in the deliberations of the reasonable investor. *See McGonigle v. Combs*, 968 F.2d 810, 817 (9th Cir. 1992). Moreover, investor sophistication is a relevant consideration in assessing the adequacy of a defendant's disclosure. *United States v. Litvak*, 808 F.3d 160, 185 (2d Cir. 2015). Nonetheless, while Finn was able to analyze Lenco's business and eventually decide it was a poor investment, his lack of concern over the commission showed an unawareness as to its economic effect on the return on his investment, his stated sole concern.

Harris's occupation, which included fifteen years as a registered representative associated with broker-dealers, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could engage in fraud in the securities industry. The violations are relatively recent. Consistent with a vigorous defense of the charges in the proceedings brought against him, Harris has not otherwise recognized the wrongful nature of his conduct or made assurances against future violations. The $843,423.91 that he and others were ordered to pay in restitution and the disgorgement of $775,104 that he was ordered to pay are measures 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 maintain honest securities markets, an industry-wide bar is appropriate.

The Commission considers fraud 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 fifty litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred[9] – at least fifty unqualified bars and three bars with the right to reapply after five years.[10] 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).

Lastly, Harris's disciplinary history, including his false testimony to FINRA investigators, while not a predicate for this proceeding, is an aggravating factor that supports an industry-wide bar. *See Ross Mandell*, Exchange Act Release No. 71688, 2014 SEC LEXIS 849, at *23 (Mar. 7, 2014) ("Mandell's disciplinary history is an aggravating factor that strongly weighs in favor of an

[9] 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.

[10] 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."

industry-wide collateral bar."), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 SEC LEXIS 1886 (May 26, 2016); *Johnny Clifton*, Exchange Act Release No. 69982, 2013 SEC LEXIS 2022, at *56 & n.97 (July 12, 2013) (considering, as an aggravating factor in determining whether to impose a bar, the respondent's admissions about the conduct underlying his settlement of a FINRA disciplinary action); *cf. Lawton*, 2012 SEC LEXIS 3855, at *46 ("Regulatory efforts to detect violative conduct require full cooperation by persons associated with each of the professions covered by the collateral bar. Persons who fail to cooperate with such efforts may be deemed 'presumptively unfit for employment in the securities industry' because such non-cooperation 'frustrates . . . efforts to detect misconduct, and such inability in turn threatens investors and markets.'" (omission in original)).

VI. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 TALMAN HARRIS 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.[11]

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 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.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

[11] Thus, Harris will be barred from acting as 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).