INITIAL DECISION RELEASE NO. 1408
ADMINISTRATIVE PROCEEDING
FILE NO. 3-18422

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

In the Matter of	:	
	:	INITIAL DECISION
JOSHUA D. MOSSHART	:	February 11, 2021

APPEARANCES: Gary Y. Leung for the Division of Enforcement, Securities and Exchange Commission

Joshua D. Mosshart, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision suspends Joshua D. Mosshart from the securities industry for twelve months. He was previously enjoined from violating the registration provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted proceedings against Respondent Joshua D. Mosshart with an Order Instituting Proceedings, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, on April 5, 2018. The proceeding is a follow-on proceeding based on *SEC v. Enviro Board Corp.*, No. 2:16-cv-6427 (C.D. Cal.), in which he was enjoined from violating the registration provisions of the federal securities laws.

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. Accordingly, the proceeding was reassigned and then assigned to the undersigned on March 18, 2019. *Pending Admin. Proc.*, Admin. Proc. Rulings Release Nos. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018); 6505, 2019 SEC LEXIS 512 (C.A.L.J. Mar. 18, 2019).

The parties filed motions for summary disposition, pursuant to 17 C.F.R. § 201.250(b), and responsive pleadings.[1] The Division of Enforcement requested that Mosshart be barred from the securities industry, arguing that his conduct underlying the injunction was egregious and recurrent. Mosshart requested that the proceeding be dismissed, arguing that he did not engage in conduct that violated the registration provisions. Accordingly, the undersigned resolved some, but not all, of the allegations of the OIP. *Joshua D. Mosshart*, Admin. Proc. Rulings Release No. 6787, 2020 SEC LEXIS 4145 (A.L.J. Sept. 10, 2020) (Summary Disposition Order). The Summary Disposition Order concluded that neither party's request could be granted on the then-current record, but that there was no genuine issue with regard to a number of material facts within the meaning of Rule 250(b).[2]

The Summary Disposition Order concluded that there is no genuine issue with regard to these material facts: Mosshart was enjoined from violating Section 5 of the Securities Act of 1933, which makes unlawful the offer or sale of securities not registered with the Commission for which no exemption is available, and from violating Section 15(a) of the Exchange Act, which makes it unlawful for a person not associated with a registered broker or dealer to effect transactions in or induce the purchase or sale of any security. Mosshart was associated with several registered broker-dealers between 1999 and 2012, most recently, LPL Financial LLC, which is also a Commission-registered investment adviser, from July 2, 2004, until November 13, 2012, and was not so associated thereafter. Enviro Board securities were not registered with the Commission and no exemption was available. Mosshart provided information concerning Enviro Board securities to several investors, referred them to the company's founders, and was compensated when at least one made an investment. These proven activities occurred in 2011 and 2012, and the proven amount of such compensation was $40,000. The loss of $400,000 by one customer is also proven. The proven activities occurred during Mosshart's association with LPL; still at issue is whether or not LPL knew of and approved them such that they were within the scope of his association with LPL during the time he was so associated. Mosshart, who was employed as president of Enviro Board as of January 1, 2012, for an annual salary of $120,000, also engaged in other activities on behalf of the company, such as public relations, lobbying, and sales. Enviro Board paid a total of $553,355 for Mosshart's services between May 2011 and May 2013.

The parties were ordered to confer on further procedures. Mosshart requested the undersigned to decide the proceeding based on the then-current record, and the Division requested the opportunity to make a further evidentiary submission. The Division was given the opportunity to submit further evidence by November 16, 2020, and Mosshart, to file a response by November

[1] *See Joshua D. Mosshart*, Admin. Proc. Rulings Release Nos. 5716, 2018 SEC LEXIS 1084 (C.A.L.J. May 7, 2018); 6157, 2018 SEC LEXIS 2779 (A.L.J. Oct. 10, 2018) (amending briefing schedule); 6422, 2018 SEC LEXIS 3628 (A.L.J. Dec. 21, 2018) (setting supplemental briefing schedule); 6440, 2019 SEC LEXIS 82 (A.L.J. Feb. 4, 2019) (extending supplemental briefing schedule); 6700, 2019 SEC LEXIS 4245 (A.L.J. Oct. 28, 2019) (construing Mosshart's filings as a cross-motion for summary disposition seeking dismissal of the proceeding and inviting responsive pleadings). Division of Enforcement's motion was filed on May 21, 2018.

[2] Rule 250(b) provides for summary disposition based on "undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noticed pursuant to Rule 323."

30, 2020. *Joshua D. Mosshart*, Admin. Proc. Rulings Release No. 6795, 2020 SEC LEXIS 4795 (A.L.J. Nov. 2, 2020). The Division submitted its Supplemental Submission on November 16, and Mosshart submitted a letter in support of his request that the proceeding be dismissed. The Division's Supplemental Submission is supported by the Declaration of Gary Y. Leung, with attached Exhibits 1-6. Mosshart did not file a response to the Supplemental Submission.

B. Allegations and Arguments of the Parties

The Division requests that Mosshart be barred from the securities industry, arguing that his conduct underlying the injunction was egregious and recurrent. Mosshart seeks dismissal of the proceeding, arguing that he did not engage in conduct that violated the registration provisions and that the compensation he received from Enviro Board was for services such as sales and marketing.

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 court's orders in *SEC v. Enviro Board Corp.*, 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. denied*, 575 F. App'x 1 (D.C. Cir. 2014).

B. Collateral Estoppel

Mosshart is estopped from relitigating the judgment in *SEC v. Enviro Board* in this proceeding. It is well established that the Commission does not 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 *10 (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*, Exchange Act Release No. 38389, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997); *see also Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003). However, an injunction entered by default, like the injunction against Mosshart in *SEC v. Enviro Board*, without more, usually cannot be the basis for sanctions in an administrative proceeding. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657 (Apr. 23, 2015) (remanding proceedings to administrative law judge); *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010 (Feb. 4, 2010) (remanding proceedings to administrative law judge); *see also Gary L. McDuff*, Exchange Act Release No. 78066, 2016 SEC LEXIS 2121 at *29-30 (June 14, 2016) (noting the limited preclusive effect of an injunction entered on default; that a respondent in a follow-on proceeding may introduce evidence regarding the circumstances surrounding the underlying conduct to address whether sanctions should be imposed in the public interest; and that an administrative law judge must give careful scrutiny to any prior testimony that was not subject to cross-examination).

III. FINDINGS OF FACT

A. Findings of Fact Established Previously in the Summary Disposition Order

The following facts were found in the Summary Disposition Order:[3]

Mosshart has been in the securities industry since at least 1999; he was associated with several registered broker-dealers between 1999 and 2012; and from July 2, 2004, to November 13, 2012, he was associated with LPL Financial LLC, a registered broker-dealer and Commission-registered investment adviser and has not been associated with a registrant thereafter. He was permitted to resign from LPL on November 13, 2012, and was barred, on consent, from association with any FINRA member firm in any capacity.

In the underlying civil case, Mosshart was enjoined against violations of Section 5 of the Securities Act and Section 15(a) of the Exchange Act, on default, and ordered to pay disgorgement of $293,655 plus prejudgment interest of $30,240.41 and a civil penalty of $293,655. Although he failed to respond to the summons, Mosshart participated in the proceeding, and the court denied his motion to set aside the default. The court noted Mosshart's arguments that he did not sell securities, that he only provided arms-length referrals, and that his conduct was approved by his then-employer, LPL. However, the court concluded that Mosshart failed to establish that he had a meritorious defense since, to support his assertions, he provided declarations from only two investors, one of whom was his father, while the complaint alleged that he had referred at least eighteen individuals to Enviro Board. The court found that "Mosshart was put on notice that he was being sued in early September and chose not to participate in the action for months despite conceding that he became aware of the lawsuit as early as October 8, 2016." Mosshart appealed the court's denial of his motion to set aside the default; the United States Court of Appeals for the 9th Circuit dismissed the appeal for failure to prosecute.

Enviro Board

The remaining defendants in *SEC v. Enviro Board* were Enviro Board, Glenn B. Camp, and William J. Peiffer. Camp and Peiffer founded and controlled Enviro Board. A 2010 Private Placement Memorandum represented that Enviro Board planned to develop a technology that would allow it to manufacture low-cost, environmentally friendly building panels out of straw and other agricultural waste fiber. The complaint alleged that the company never constructed a mill capable of commercial manufacturing production and that Camp and Peiffer made false and misleading statements about the status of commercialization efforts and financial projections to investors.[4]

Enviro Board securities were not, and are not, registered with the Commission. Mosshart does not argue that the securities were exempt from registration, and there is no evidence in the

[3] Citations to the evidence on which the findings of fact are based are found in the Summary Disposition Order. *See Joshua D. Mosshart*, 2020 SEC LEXIS 4145, at *8-14.

[4] Enviro Board, Camp, and Peiffer settled. The court enjoined all three from violations of the antifraud provisions of the securities laws and Enviro Board and Camp from violation of the registration provisions; ordered an officer and director bar against Camp and Peiffer; and ordered each of the three to pay a civil penalty and disgorgement.

record that an exemption was available. However, he believed that the securities were exempt from such registration. Peiffer advised Mosshart and others in June 2011 that securities counsel had advised Enviro Board that transactions in Enviro Board stock were not required to be registered, pursuant to Section 4(2) of the Securities Act, and no SEC filing was necessary. While Securities Act Section 5 is a strict liability statute that does not require any form of intent to violate, Mosshart's belief that the transactions were exempt is relevant to the sanctions analysis below.

Mosshart's Activities for Enviro Board

Camp and Mosshart initially discussed Mosshart's working for Enviro Board sometime in 2011, leading to Enviro Board's January 1, 2012, agreement with Malia Ventures, Inc.,[5] for the services of Mosshart. Mosshart was engaged as president for an annual salary of $120,000, payable in equal monthly installments, plus 10% of sales, subject to certain conditions. Mosshart's activities for the company included public relations, lobbying, and sales. The January 1, 2012, agreement also provided that Enviro Board would pay Malia 10% of financing resulting from parties introduced by Mosshart who made an investment of debt or equity capital. That agreement also awarded Mosshart a stock option to acquire 150 shares for $1 at any time ninety-one days after the date he made introductions resulting in the sale of $2,600,000. Likewise, the June 2013 agreement between Enviro Board on the one hand and Mosshart and Malia on the other provided for Enviro Board to pay Malia 10% of financing by parties introduced by Mosshart who made an investment of debt or equity capital. Mosshart owned one share of Enviro Board stock as of April 13, 2011, and an additional 150 shares as of November 7, 2012.[6] It is found that payments to Mosshart, including the 150 shares, were payment for raising money. It is found as undisputed, based on the January 2012 agreement proffered by the Division and the June 2013 agreement proffered by Mosshart, that Mosshart was to receive transaction-based compensation for investments made by parties whom he referred to Peiffer and Camp.

The Division alleges that Mosshart referred to Enviro Board at least eighteen individuals who purchased nearly $5 million of the company's securities, beginning in May 2011. The material under consideration establishes that Mosshart introduced four individuals – Tina Brodie, Ilona

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[5] Mosshart was the sole shareholder of Malia Ventures, Inc., f/k/a Malia Ventures LLC, of which he was the manager and sole member. Mosshart and Malia received $553,355 from Enviro Board between May 11, 2011, and May 9, 2013.

[6] Mosshart claims that each share was valued at $20,000. He does not explain the basis for the valuation, and Enviro Board was not listed on the Pink Sheets or elsewhere or otherwise publicly quoted.

In March 2017, Mosshart reached an agreement with Enviro Board, Camp, and Peiffer regarding a lawsuit in state court and *SEC v. Enviro Board*. Mosshart agreed to quitclaim all right, title, and interest in Enviro Board stock and specified Enviro Board property rights and to dismiss all claims against the other parties to the agreement. Enviro Board agreed to use its best efforts to settle *SEC v. Enviro Board*, to obtain a dismissal in favor of Mosshart, and to obtain for Mosshart a dollar for dollar credit for any payments by Enviro Board, Camp, and Peiffer of disgorgement and civil penalties with the proviso that they would not indemnify Mosshart. Enviro Board also agreed to execute a promissory note in favor of Mosshart in the amount of $222,655.

Chandler, Roy Christofferson, and Joseph Mavilia – for investments that totaled $430,000. Brodie invested $400,000 on January 10, 2012, in an Enviro Board bond; the three others invested a total of $30,000 in May and June 2011. Thus, based on the January 1, 2012, agreement, it is found that Enviro Board paid Mosshart $40,000 – 10% of the Brodie investment.[7] Enviro Board paid Mosshart, via Malia, $50,000 – $40,000 plus his $10,000 monthly salary – on January 12, 2012, the same day that Brodie's $400,000 check, dated January 10, 2012, was posted.

Brodie, recently widowed, met Mosshart in October 2011; he told her that he knew of a safe investment for the proceeds of her husband's life insurance, directed her to Enviro Board's website, and introduced her to Camp; she lost the entire $400,000 despite efforts to obtain payment, including suing Enviro Board, which defaulted. Chandler, Christofferson, and Mavilia did not place securities orders with Mosshart; Mosshart referred each one to Camp and provided information about Enviro Board at his or her request.

Mosshart was associated with LPL, a registered-broker dealer, until November 13, 2012. At issue is whether LPL knew of and approved Mosshart's activities with regard to Brodie, Chandler, Christofferson, and Mavilia. With reference to Exchange Act Section 15(a), which makes it unlawful to operate as an unregistered broker, Mosshart maintains that LPL was aware of his involvement with Enviro Board and approved it; he maintains that he informed LPL that his LPL clients were interested in investing in Enviro Board. To the contrary, according to FINRA's letter regarding Mosshart's acceptance, waiver, and consent (AWC), "[i]n May 2011, Mosshart sought permission from LPL to be an Enviro Board sales representative. . . . Although LPL approved this outside business activity, it specifically advised Mosshart that he was not to solicit any individuals to invest in Enviro Board." However, "[f]rom May 2011 through November 13, 2012, while associated with LPL, Mosshart referred about 20 investors . . . to Enviro Board . . . [and] received about $485,000 in referral fees." While the conclusion of the AWC is that, as of and after May 2011, Mosshart was not acting as a registered representative associated with LPL when he solicited any clients to invest in Enviro Board, he is not estopped from arguing the contrary in this proceeding. He agreed that he "may not take any action or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. . . . [However, n]othing in this provision affects [his] . . . right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party."

B. Additional Findings of Fact

As stated in the Summary Disposition Order, still left open was whether it can be found, *in this proceeding*, that Mosshart also violated Exchange Act Section 15(a), which depends on the scope of his association with LPL. Further, even if it is established that he was not acting within the scope of that association, it must be established that he was acting as an unregistered broker to conclude that he violated Section 15(a).

[7] Mosshart's comment on the payment for Brodie's investment was "Tina Brodie didn't know about my compensation for my services because we didn't have her Life Insurance monies at LPL[.] All of my clients get a consolidated monthly statement with fees and commission charges. My employment agreement with Enviro Bard was separate from LPL."

The Division's November 16, 2020, Supplemental Submission is supported by the Declaration of Gary Y. Leung, with attached exhibits. To avoid confusion with exhibits in previous submissions, these will be referred to as "Third Suppl. Leung Decl. Ex __." Where Bates numbers are cited, leading zeros are omitted. Mosshart's January 2019 "Supporting Evidence & Statement" included numerous exhibits, which will be referred to as "Resp. Ex. _." His November 16, 2020, letter (2020 Letter) and June 2018 "Respondent's Answer" (Opposition) did not include any exhibits.

In his letter, Mosshart argues that the Division grossly misrepresented the facts. He argues that he merely referred investors to Enviro Board – did not negotiate terms, sign contracts, or have custody of funds – and, therefore, did not solicit them; thus, he was not selling away. *See generally* 2020 Letter. He also described his efforts to ensure that the clients were fully informed about the investment, including advising them to consult their CPAs and bankers, and described his due diligence concerning Enviro Board. *Id*. at 2. He also states, "I would never say I was paid $501,056 in commission when I had an employment agreement with Enviro Board in which [I] received $10,000 per month in salary [which] would account for over 2/3rd's of the money earned." *Id*. at 2. This statement is inaccurate. Mosshart submitted a signed statement, dated May 16, 2013, to FINRA in connection with its examination No. 20120351723. Third Supp. Leung Decl. Ex. 5. In it he listed "the dates of all referrals and all fees and commissions paid to me." *Id*. at F2130-31. The *commissions* that he listed total $501,056: $373,369 in 2011, $119,187 in 2012 (including $4,000 after November 13, when he was no longer associated with LPL, for two referrals), and $8,500 in 2013 for three referrals. *Id*. He listed a total of more than thirty referrals to twenty-five customers during 2011, 2012, and 2013. *Id*. Somewhat inconsistently, he now claims that he referred fifteen investors in addition to Tina Brodie over three years. 2020 Letter at 2.

Mosshart had more than 100 household clients at LPL; he claims he discussed referrals with "less than" five of them. *Id*. at 1. Brodie had been an existing client at LPL. Opp. at 6-7. Mosshart did not negotiate terms of investments in Enviro Board, sign contracts, or have custody of funds. Opp. at 2; 2020 Letter at 3-4.

Mosshart clearly received transaction-based compensation ("commissions") and evidenced other indications of broker status. There were more than a few isolated transactions ("referrals"). The transactions included previous customers of his at LPL. As a long-time associated person of broker-dealers, he had a history of selling securities of other issuers.

IV. CONCLUSIONS OF LAW

Mosshart 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 Sections 203(e)(4) and 203(f) of the Advisers Act. Some of the misconduct underlying the civil case occurred while Mosshart was associated with a registered broker-dealer and investment adviser.

Specifically, Mosshart was enjoined, on default, from violating Securities Act Section 5(a) and Exchange Act 15(a) and the evidence *in this proceeding*, in which he appeared and participated, shows that he violated those provisions.

As concluded previously in the Summary Disposition Order, Mosshart violated Securities Act Section 5 in advising Brodie concerning Enviro Board and referring her to Camp to make an investment. His receipt of transaction-based compensation for that referral makes clear that his conduct was an offer for sale of Enviro Board securities within the meaning of Section 5. *Joshua D. Mosshart*, 2020 SEC LEXIS 4145, at *14.

Section 15(a)(1) of the Exchange Act makes it unlawful for any entity to effect transactions in securities, by jurisdictional means, without registering as a broker or dealer. 15 U.S.C. § 78o(a)(1). "Broker" is defined in Section 3(a)(4) of the Exchange Act as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). Scienter is not required to establish a violation of Section 15(a)(1). *SEC v. Montana*, 464 F. Supp. 2d 772, 785 (S.D. Ind. 2006).

Activities of a broker are characterized by "a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Servs., Inc. v. Secs. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976). Other relevant factors include whether the alleged broker: "1) is an employee of the issuer; 2) received commissions as opposed to salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors." *SEC v. Zubkis*, No. 97-cv-8086, 2000 WL 218393, at *9 (S.D.N.Y. Feb. 23, 2000) (quoting *SEC v. Hansen*, No. 83-cv-3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984)). *Accord SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) ("[F]actors . . . includ[e] regular participation in securities transactions, employment with the issuer of the securities, payment by commission as opposed to salary, history of selling the securities of other issuers, involvement in advice to investors and active recruitment of investors."). However, "transaction-based compensation" is "one of the hallmarks of being a broker-dealer." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011) (quoting *Cornhusker Energy Lexington, LLC v. Prospect Street Ventures*, No. 8:04-cv-586, 2006 WL 2620985, at *6 (D. Neb. Sept. 12, 2006)). "Activities that are indicative of being a broker include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation." *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 SEC LEXIS 662, at *75 (Feb. 20, 2015).

It is concluded that Mosshart was acting as a broker in his activities "referring" investors to Enviro Board. He received transaction-based compensation. While associated with LPL, where he had a book of business of 100 clients, he sold the securities of other issuers. He was an active finder of investors in that he referred some of his LPL clients, including Brodie, to Enviro Board. On the other hand, he did not handle client funds and was only tangentially involved in negotiations between the issuer and the investor when he referred potential investors to Peiffer and Camp. Without regard for whether he was acting outside the scope of his association with LPL when he was associated with LPL, by acting as a broker when he was no longer associated with a registered broker-dealer, he violated Exchange Act Section 15(a).

V. SANCTION

A twelve-month suspension from the securities industry 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), 80(b)(3). 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). When there is no genuine issue with regard to any material fact in a follow-on proceeding like this one, the weighing of factors relating to the choice of the appropriate sanction is an issue committed to the agency's discretion and does not require a hearing. *See Seghers v. SEC*, 548 F. 3d 129, 134-36 (D.C. Cir. 2008).

The Commission rarely imposes an industry bar in a litigated administrative proceeding for violating registration provisions absent an antifraud violation.[8] Such a sanction is typically imposed where the respondent has also violated, or aided and abetted violation of, the antifraud provisions. *See David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472 (Oct. 29, 2015) (violation of antifraud, broker-dealer registration, and securities registration provisions), *set aside on other grounds*, 844 F.3d 1168 (10th Cir. 2016); *Maria T. Giesige*, Exchange Act Release No. 60000, 2009 SEC LEXIS 1756 (May 29, 2009) (violation of antifraud, broker-dealer registration,

[8] To the extent that the Division cites to settlements to support its request for a bar, it goes without saying that a settlement is not precedent, as the Commission has stressed many times. *See Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987, at *10-11 (Oct. 22, 1996) (citing *David A. Gingras*, Exchange Act Release No. 31206, 1992 SEC LEXIS 2537, at *20 (Sept. 21, 1992), and cases cited therein); *Robert F. Lynch*, Exchange Act Release No. 11737, 1975 SEC LEXIS 599, at *12 n.17 (Oct. 15, 1975) (citing *Samuel H. Sloan*, Exchange Act Release No. 11376, 1975 SEC LEXIS 1742, at *12 n.24 (Apr. 28, 1975); *Haight & Co., Inc.*, Exchange Act Release No. 9082, 1971 SEC LEXIS 436, at *67-69 (Feb. 19, 1971), *aff'd without opinion*, (D.C. Cir. 1971); *Security Planners Assocs., Inc.*, Exchange Act Release No. 9421, 1971 SEC LEXIS 1035, at *13-14 (Dec. 17, 1971)); *see also Mich. Dep't of Natural Res. v. FERC*, 96 F.3d 1482, 1490 (D.C. Cir. 1996), and cases cited therein (settlements are not precedent). Indeed, Commission settlement orders contain a disclaimer to this effect: "The findings herein are made pursuant to [Respondent's] Offer of Settlement and are not binding on any other person or entity in this or any other proceeding."

and securities registration provisions); *Paul Carroll Ferguson*, Exchange Act Release No. 6009, 1959 SEC LEXIS 549 (July 7, 1959) (violation of antifraud, broker-dealer registration, and other provisions; respondent's registration as a broker-dealer revoked); *Gregory & Co.*, Exchange Act Release No. 5680, 1958 SEC LEXIS 251 (Apr. 18, 1958) (violation of antifraud, broker-dealer registration, and other provisions; respondent's application for registration as a broker-dealer denied); *The Whitehall Corp.*, Exchange Act Release No. 5667, 1958 SEC LEXIS 246 (Apr. 2, 1958) (violation of antifraud, broker-dealer registration, and other provisions; respondent's application for registration as a broker-dealer denied).

Even those few cases in which a respondent was barred in the absence of fraud involved conduct that was much more serious, long-running, and otherwise harmful to the markets than Mosshart's conduct. *See Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 SEC LEXIS 698 (Feb. 27, 2014) (registered representatives sold large amounts of unregistered penny stocks on behalf of highly questionable customers, and manager failed reasonably to supervise them with a view toward detecting and preventing their registration violations; all aided and abetted and caused broker-dealer's failure to file Suspicious Activity Reports; registered representatives barred; manager barred with a right to reapply in a non-proprietary, non-supervisory capacity after two years), *pet. denied*, 649 F. App'x 546 (9th Cir. 2016). Lesser sanctions have been imposed for less impactful violations in the absence of fraud. *See Russo Secs., Inc.*, Exchange Act Release No. 44186, 2001 SEC LEXIS 2771 (Apr. 17, 2001) (broker-dealer violated net capital and related recordkeeping and reporting provisions; chief financial officer suspended for one year; firm had included in its net capital calculations stock that it did not even have and that had no ready market; firm had negative net capital for three months).

B. Sanction

As described above, Mosshart's conduct was recurrent, took place during a three-year period, and involved about twenty-five customers. Although he is not charged with fraud, by acting as a broker for transactions in unregistered securities and referring investors to Camp and Peiffer, he facilitated the fraud as to those investors and their resulting losses. Scienter is not an element of violation of Securities Act Section 5 or Exchange Act Section 15(a). Mosshart believed that the Enviro Board securities were exempt from registration, but was at least negligent in his violation of Exchange Act Section 15(a). His previous occupation in the securities industry, which included twelve years as a registered representative associated with broker-dealers, would present opportunities for future violations if he were allowed to continue that work in the future. Consistent with a defense of the charges against him, he has not displayed a recognition of the wrongful nature of his conduct or made assurances against future violations. His misconduct is no longer recent, having ended in 2013. This consideration and the absence of a violation of the antifraud provisions militate against a bar. A twelve month suspension is sufficient as a sanction and as a deterrent. A "collateral" suspension from the industry is appropriate because the need for compliance with statutes and regulations applies to all elements of the securities industry, even if the violative conduct is limited to the professional capacity in which Mosshart was acting. *Cf. 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).

VI. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Advisers Act of 1940, JOSHUA MOSSHART IS SUSPENDED FOR A PERIOD OF TWELVE MONTHS 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.[9]

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

Served by email on both parties

[9] Thus, Mosshart 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).