INITIAL DECISION RELEASE NO. 497
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15156

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

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| In the Matter of | : | INITIAL DECISION |
| | : | July 24, 2013 |
| EAGLEEYE ASSET MANAGEMENT, LLC | : | |

APPEARANCES: Deena R. Bernstein and Naomi J. Sevilla for the Division of Enforcement, Securities and Exchange Commission

Albert P. Zabin and Jennifer L. Mikels of Duane Morris LLP for EagleEye Asset Management, LLC

BEFORE: Cameron Elliot, Administrative Law Judge

**Summary**

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition against Respondent EagleEye Asset Management, LLC (EagleEye) (Motion), and revokes EagleEye's registration as an investment adviser.

**Procedural Background**

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) in this proceeding on December 27, 2012, pursuant to Section 203(e) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on December 12, 2012, the United States District Court for the District of Massachusetts entered a final judgment against EagleEye in SEC v. EagleEye Asset Management, LLC, No. 11-CV-11576 (WGY), permanently enjoining it from future violations of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections 204, 206(1), and 206(2) of the Advisers Act and various provisions of Rule 204-2 thereunder. OIP, pp. 1-2; Answer, p. 1.[1] The

[1] EagleEye was served with the OIP on January 4, 2013. EagleEye and Jeffrey A. Liskov (Liskov), EagleEye's sole officer, director, and employee, and EagleEye's co-defendant in the underlying action, filed a joint Answer on January 17, 2013, and then they each filed separate Answers on January 25, 2013. There were no substantive differences between the January 17 and January 25

court ordered EagleEye, jointly and severally, with its sole owner and employee, Liskov, to pay disgorgement of $301,502.26, plus prejudgment interest of $29,603.59, and to pay, severally, a civil penalty of $725,000. OIP, p. 2; Answer, p. 1.[2] The Commission also instituted a parallel administrative proceeding against Liskov based upon the judgment in the underlying proceeding. Jeffrey A. Liskov, Administrative Proceeding File No. 15155, Advisers Act Release No. 3527 (Dec. 27, 2012).

A prehearing conference was held on January 31, 2013, attended by counsel for both EagleEye and Liskov. At the prehearing conference, the parties were granted leave to file motions for summary disposition, pursuant to Rule 250(a) of the Commission's Rules of Practice. On February 22, 2013, the Division filed its Motion and Appendix in Support of Motion, which includes the Bernstein Decl. with Exhibits A through E attached thereto.[3]

EagleEye did not file a motion for summary disposition or an opposition to the Division's Motion. Respondent's counsel, who is also counsel for Liskov, filed a Brief and Partial Opposition to the Division's Motion for Summary Disposition (Opposition) in the parallel Liskov proceeding, which is based upon the same underlying action and injunction. Because the current proceeding and the Liskov proceeding share the same allegations, I construed the Opposition and attached Exhibits A and B (Resp. Ex.)[4] filed by counsel in Liskov as an opposition to the Division's Motion in this proceeding. The Division did not file a reply in this proceeding, but filed a Reply Brief in Support of its Motion (Reply) and Declaration of Deena R. Bernstein in Support of the Reply (Bernstein Reply Decl.) with Exhibits A through D[5] in the Liskov proceeding. For the same reasons that I

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Answers, but to avoid confusion from their differing pagination, I refer only to the latter as the Answer.

[2] The final judgment of the district court in the underlying action held EagleEye and Liskov jointly and severally liable for each violation of the securities laws. As the court stated during the jury charge conference in the underlying action, "it seems undisputed that EagleEye and Mr. Liskov are one and the same, so I propose to treat them as one and the same . . . ." Excerpted Transcript of jury charge conference in the underlying action, attached as Exhibit C to the Declaration of Deena R. Bernstein in Support of the Division's Motion (Bernstein Decl.), p. 89. Accordingly, Liskov's actions are imputed to EagleEye and are considered and referred to interchangeably with EagleEye's.

[3]Bernstein Decl., Ex. A is the September 8, 2011, Complaint filed in the underlying action; Bernstein Decl., Ex. B is the jury verdict form filed in the underlying action; Bernstein Decl., Ex. D is the transcript of the December 11, 2012, remedies hearing in the underlying action; Bernstein Decl., Ex. E is the final judgment entered by the court in the underlying action.

[4] Resp. Ex. A is a collection of copies of publications relating to the jury verdict in the underlying action; Resp. Ex. B is an excerpt of the transcript from the trial in the underlying action.

[5] Bernstein Reply Decl., Ex. A is an excerpt of the November 26, 2012, daily transcript of jury instructions, closing arguments, and verdict in the underlying action; Bernstein Reply Decl., Ex. B is a timeline of key events; Bernstein Reply Decl., Ex. C is the stipulated facts in the

extended the Opposition to this matter, I considered the Reply and the Bernstein Reply Decl. in resolving the instant dispute.[6]

## Summary Disposition

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of EagleEye's and Liskov's pleadings are taken as true, except as modified by stipulations or admissions made by them, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. See 17 C.F.R. §§ 201.250(a), .323.

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 (collecting cases), petition for review denied, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." See John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), petition for review denied, 66 F. App'x 687 (9th Cir. 2003).

EagleEye does not dispute that the final judgment in the underlying action was entered against it, enjoining it from violations of the Exchange Act, the Advisers Act, and rules thereunder. Answer, p. 1. Accordingly, there is no genuine issue with regard to any material fact, and this proceeding may be resolved by summary disposition pursuant to Rule 250 of the Commission's Rules of Practice. 17 C.F.R. § 201.250.

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. See 17 C.F.R. § 201.323. EagleEye's Answer and the parties' motion papers and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

## Findings of Fact

EagleEye, located in Plymouth, Massachusetts, is an investment adviser that has been registered with the Commission since April 9, 2008. Answer, p. 1; Bernstein Reply Decl., Ex. C,

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underlying action; Bernstein Reply Decl., Ex. D is an excerpt of the November 14, 2012, daily transcript of evidence in the underlying action.

[6] Exhibits A, C, and D to the Bernstein Reply Decl. include documents from the underlying action against Liskov and EagleEye. I take official notice of them, pursuant to Rule 323 of the Commission's Rules of Practice. See 17 C.F.R. § 201.323.

p. 1.[7] EagleEye owed a fiduciary duty to its investment advisory clients, and Liskov, as its principal, admitted failure in fulfilling those fiduciary responsibilities. Bernstein Decl., Ex. D, p. 29; Bernstein Reply Decl., Ex. C, p. 1; Opposition, pp. 2, 7. EagleEye's breach of fiduciary duty arose, in part, from Liskov's failure to inform clients of his unsuccessful prior trading record. Opposition, p. 4.

Beginning in 2008, and continuing through 2010 (Relevant Period), EagleEye, through Liskov, advised EagleEye clients Peter and Judith Starrett (Starretts), Steven Bodi (Bodi), John Striano (Striano), Gordon Smith (Smith), and Neil McLaughlin (McLaughlin) to open foreign currency exchange (forex) trading accounts at FXCM, LLC (FXCM), an online retail currency firm, and to liquidate investments in securities and invest in forex. Bernstein Reply Decl., Ex. C, pp. 1-3.

The Starretts, Bodi, Striano, Smith, and McLaughlin executed limited power of attorney forms, authorizing EagleEye, through Liskov, to conduct trading in their FXCM accounts. Bernstein Reply Decl., Ex. C, p. 2. In accordance with the limited power of attorneys, EagleEye was entitled to performance fees on net profits in the client FXCM accounts. Id. The Starretts, Bodi, Striano, Smith, and McLaughlin invested $270,000, $26,000, $130,000, $100,000, and $285,000 in their accounts, respectively. Id., pp. 2-3. During the Relevant Period, EagleEye lost nearly all of the Starretts', Bodi's, Striano's, Smith's, and McLaughlin's forex investments. Id. Prior to losses in the accounts, EagleEye collected performance fees in all but Mclaughlin's accounts. Id., pp. 2-3.

Another EagleEye client, Patricia Stott (Stott), who had preexisting brokerage accounts, authorized the opening of two FXCM accounts, collectively investing $1 million. Id, pp. 3-4. Liskov opened three additional, unauthorized, FXCM accounts in Stott's name in February 2010, May 2010, and June 2010 by altering documentation used to open her second, authorized, FXCM account. Id., p. 4.

In October 2009, Stott opened a new brokerage account. Id., p. 4. Using prior transfer request forms and whiteout to change certain information, Liskov transferred a total of $2.9 million from Stott's preexisting brokerage accounts into her new brokerage account, over the course of seven months. Id., p. 5. During the same span of time, Liskov transferred $2.9 million from the new brokerage account into Stott's FXCM accounts by altering prior transfer request forms and faxing them as new requests. Id., p. 6. In July 2010, Liskov opened an account in Stott's name at Deutsche Bank's forex trading platform (dbFX), signing her name without authorization. Id. After opening the dbFX account, Liskov altered prior transfer requests to transfer $800,000 from her preexisting brokerage accounts into her new brokerage account. Id. Liskov then transferred the $800,000 into Stott's dbFX account without authorization. Id.

The jury in the underlying action returned a verdict against Liskov and EagleEye finding that they intentionally or recklessly made material misrepresentations to the Starretts, Striano,

[7] Bernstein Reply Decl., Ex. C was accepted by the court and jury as undisputed evidence in the underlying action. Bernstein Reply Decl., Ex. A, p. 8.

Smith, McLaughlin, and Stott in violation of the Advisers Act. Bernstein Decl., Ex. B. The jury further found that Liskov and EagleEye violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by intentionally or recklessly making material misrepresentations in connection with the purchase or sale of securities to the Starretts, Striano, Smith, and Stott, by intentionally or recklessly failing to disclose Liskov's forex trading track record to them, and by intentionally engaging in a scheme to defraud them. Id. The jury found that Liskov and EagleEye did not violate these securities laws with respect to Bodi. Id.

## Conclusions of Law

Section 203(e) of the Advisers Act instructs the Commission to sanction investment advisers such as EagleEye that have, in relevant part, been civilly enjoined from any action, conduct, or practice specified in Section 203(e)(4). See, e.g., Schield Mgmt. Co., Exchange Act Release No. 58201 (Jan. 31, 2006), 87 SEC Docket 848, 857-58. EagleEye was enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204, 206(1), and 206(2) of the Advisers Act and various provisions of Rule 204-2 thereunder, meeting the prerequisite conduct for sanction pursuant to Advisers Act Section 203(e). Answer at 1; Bernstein Decl., Ex. E. The injunction was a result of EagleEye having been found liable for violating the Exchange Act, Advisers Act, and rules thereunder. Bernstein Decl., Exs. B, E. Accordingly, a sanction shall be imposed on EagleEye if it is in the public interest.

## Sanctions

The Division contends that EagleEye's investment adviser registration should be revoked pursuant to Advisers Act Section 203(e). Motion, p. 9.

The Opposition did not contest the Division's entitlement to summary disposition and the imposition of some additional non-monetary sanctions, but argued, regarding Liskov, that any sanctions should be proportionally lenient, because due to the underlying action and parallel proceedings: (1) Liskov is financially ruined; (2) the Division achieved its deterrence goals by avidly publicizing the underlying action and its victory; (3) Liskov has few marketable skills other than the financial services industry and thus, if a sanction was imposed, he would be unable to pay any significant portion of the disgorgement and civil penalties; and that (4) Liskov's actions were not egregious and amounted to little more than breaches of his fiduciary duty to clients. Opposition, pp. 1-2, 8.[8] The Opposition's arguments are not directly on point, but due to the commonality of Liskov and EagleEye's interests, I construed the relevant arguments in the Opposition in favor of EagleEye's ability to maintain its registration.

[8] The majority of the Opposition focuses on Respondent's grievances with the jury's assessment of the evidence from the trial in the underlying action and engages in post-hoc criticism of the Division's arguments to the jury, rather than expounding upon the above-listed reasons for deserving a lesser sanction. Respondent's arguments are, in essence, attempts to re-litigate the underlying case, which are not appropriate in a follow-on administrative action. See, e.g., John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61728.

The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). See Joseph P. Galluzzi, 55 S.E.C. 1110, 1120 (2002). They include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations (Steadman factors). Gary M. Kornman, Advisers Act Release No. 2840 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Id.

The Steadman factors weigh in favor of revocation. Liskov and EagleEye's conduct was egregious and recurrent as evidenced by the jury findings in the underlying action. Bernstein Decl., Ex. B. Liskov caused approximately $3.7 million of Stott's money to be transferred without authorization into and out of the various accounts he opened through deceptive practices, including by altering documents and signing her name without authorization. He engaged in a scheme to defraud multiple investors over a period of approximately two years, inducing at least four investors to make forex investments in accounts controlled by him, resulting in a loss of substantially all of their investments. Id.; Bernstein Reply Decl., Ex. C, pp. 4-6.

The jury found that Liskov's and EagleEye's conduct was scienter based and not merely negligent. Bernstein Decl., Ex. B. The level of scienter found in the underlying action is unclear; the jury did not make a special finding, and the court simply noted that Liskov acted "fraudulently." Bernstein Decl., Ex. D, at 31:15. However, the use of altered documents and forged signatures indicates a high level of scienter. Bernstein Reply Decl., Ex. C, pp. 5-6.

EagleEye has offered no assurances against future violations and has not recognized the wrongful nature of its conduct. Though Liskov recognizes that his actions included "inexcusable breaches of the duties of care that a fiduciary owes to his clients," EagleEye and Liskov both stated that they "continue[] to deny the Commission's allegations," admitting only that the Commission "alleged" that Liskov and EagleEye made material misrepresentations. Opposition, p. 2; Liskov Answer, p. 1; EagleEye Answer, p. 1.

EagleEye's failure to understand that its actions were wrongful is troubling and makes it difficult to accept any assurances that it would avoid misleading future clients. Although Liskov and EagleEye are bound by the terms of the permanent injunction, no other restrictions on Liskov's or EagleEye's ability to advise clients have been imposed. Liskov and EagleEye's deceptive conduct and repeated violations of the federal securities laws demonstrate the need to revoke EagleEye's investment adviser registration.

Respondent's arguments against the public interest factors, boiled down, are that the only wrongdoing by Liskov and EagleEye was a failure to inform clients of Liskov's poor trading record, a non-egregious breach of fiduciary duty, and that the Division's case was predicated on a single, one-off, scheme, and thus the behavior could not be deemed recurring. Opposition, pp. 3-6. The latter argument was supported only by a fragmented excerpt from the Division's closing arguments to the jury in the underlying action. Id., pp. 5-6. These arguments ignore

Liskov's multiple acts of using unauthorized signatures and document alterations to open new accounts and make fund transfers that the jury considered in rendering its verdict. Bernstein Reply Decl., Ex. C. As is clear from the verdict slip, the jury found Liskov and EagleEye liable for fraudulent statements and acts under both the Advisers Act and the Exchange Act, in addition to its finding of scheme liability under the Exchange Act. Bernstein Decl., Ex. B. Furthermore, Liskov and EagleEye were found liable for violations of various provisions of Advisers Act Rule 204-2. Bernstein Decl., Ex. E.

The Commission also considers the deterrent effect of administrative sanctions. See Schield Management Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862. The Opposition argues that deterrence has been achieved through the adverse publicity associated with the underlying action and this proceeding, mitigating the need for sanctions. Opposition, p. 2. The Commission has considered similar arguments to Liskov's and has found them unpersuasive where the sanction was warranted by the public interest. See, e.g., Lester Kuznetz, 48 S.E.C. 551, 555 (1986). The effect of any adverse publicity against Liskov does not outweigh the public interest factors here, which demonstrate the need for revocation.[9]

## Ruling

It is ORDERED, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, that the Division of Enforcement's Motion for Summary Disposition against Respondent EagleEye Asset Management, LLC, is GRANTED; and

It is FURTHER ORDERED, pursuant to Section 203(e) of the Investment Advisers Act of 1940, that EagleEye Asset Management, LLC's investment adviser registration is REVOKED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. See 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. See 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact.

[9] Liskov's assertion of his dire financial circumstances as another mitigating factor does not apply here. Though inability to pay civil penalties or disgorgement due to financial condition may be considered in fashioning such remedies, there is no analogous consideration in the analysis of whether revocation is appropriate. See 17 C.F.R. § 201.600(a).

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 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.

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Cameron Elliot
Administrative Law Judge