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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-14630

In the Matter of	
DANIEL J. GALLAGHER,	
Respondent.	

THE DIVISION OF ENFORCEMENT'S REPLY MEMORANDUM OF LAW IN RESPONSE TO RESPONDENT'S OPPOSITION TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION

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July 30, 2014

The Division of Enforcement respectfully submits this memorandum of law in response to Respondent Daniel Gallagher's opposition, dated July 10, 2014, to the Division's Motion for Summary Disposition, filed on January 10, 2014.

In its motion, the Division seeks an Order, pursuant to Section 15(b)(6)(A)(ii) of the Securities Exchange Act of 1934 (the "Exchange Act"), barring Gallagher from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical ratings agency (a "collateral bar") and barring him from participating in any offering of a penny stock (a "penny stock bar").

The Division seeks these bars based on Gallagher's conviction, after a jury trial, on one count of securities fraud (Count One) and two counts of wire fraud (Counts Three and Six) in a parallel criminal case, United States v. Daniel Gallagher, 11-CR-806 (E.D.N.Y.) (LDW), on April 9, 2012.[1]

Gallagher attempts to collaterally attack his conviction, which he is prohibited from doing, by claiming that he did nothing wrong. He also appears to argue that he could not have been associated with a broker-dealer during the relevant period because the broker-dealer in question, Vision Securities, Inc. "was non operational due to net capital deficiencies." However, Gallagher provides no factual support for this claim. In fact, Vision was a registered broker-dealer and FINRA-member until January 2010, after Gallagher had fraudulently raised approximately $300,000 from NAG investors. Finally, in arguing that there is no need for a collateral or penny stock bar, Gallagher minimizes not only his recent criminal conviction but his

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[1] Exchange Act Section 15(b)(6)(A)(ii) authorizes the Commission to impose collateral and penny stock bars on persons convicted, within ten years of the commencement of the proceeding, of a felony involving the purchase or sale of a security, who were, at the time of the misconduct, associated with a broker or dealer.

numerous prior regulatory violations and casts blame instead on a host of judges, prosecutors and regulators.

Gallagher's failure to admit any wrongdoing, his complete lack of remorse and his efforts to cast blame on others for his string of civil, criminal and regulatory violations makes it all the more evident that Gallagher is, as the sentencing judge in his criminal case concluded, "dangerous" to the investing public. See Sentencing Transcript dated April 23, 2013 in United States v. Daniel Gallagher at p. 23, attached as Exhibit G to the Declaration of Kevin P. McGrath in Support of the Division of Enforcement's Motion for Summary Disposition, dated January 9, 2014 (McGrath Declaration). As discussed below, this Court should grant summary disposition and impose permanent collateral and penny stock bars on Gallagher.

I. No Genuine Issue of Material Fact Exists Regarding Gallagher's Conviction on Three Felony Counts of Fraud in Connection with the Purchase or Sale of Securities and His Association with a Broker-Dealer During that Period

In his Opposition, Gallagher asserts that there are "several genuine issues of material fact" that require the Court to deny or defer summary disposition or "consider other sanctions based on the circumstances of this case." Gallagher Opposition at 1. He does not contest the fact, however, that he was convicted of one count of securities fraud (Count One) and two counts of wire fraud (Counts Three and Six) in the parallel criminal case United States v. Daniel Gallagher, 11-CR-806 (E.D.N.Y.) (LDW), on April 9, 2012. Count One charged Gallagher with engaging in a fraudulent scheme by which, between October 2009 and September 2011, he raised approximately $493,000 from thirteen investors in Nano Acquisitions Group, Inc. ("NAG") and stole approximately $439,000, or about 89% of the invested funds. Count Three was based on an email Gallagher sent to investors misleading them regarding his misappropriation of their money and Count Six was based on a wire transfer from a defrauded

investor to NAG. See McGrath Declaration, Ex. E at ¶¶ 1-8 and Counts One, Three and Six. Nor does Gallagher contest the fact that the convictions involved the purchase or sale of a security.

Instead, Gallagher seeks to reargue the facts underlying his criminal conviction, claiming that he did nothing wrong because investors ultimately received from his father shares in another company, Watt Fuel Cell Corporation, that appear to have some value. Gallagher Opposition at pp. 2-3. Tellingly, however, Gallagher ignores the fact that he nevertheless misappropriated approximately 89% of the money he raised from investors before they received those shares from his father.

More importantly, as this Court has previously advised him, Gallagher is "foreclosed from arguing in this proceeding that the facts concerning his criminal wrongdoing are not proven. See Order dated March 28, 2014, Release No. 1347. It is well established that criminal convictions may not be collaterally attacked in Commission administrative proceedings. *See Ira William Scott,* 53 S.E.C. 862, 866 (1998); *William F. Lincoln,* 53 S.E.C. 452, 455-56 (1998). Indeed, Gallagher acknowledges that there are "no collateral attacks of the conviction in this forum." Gallagher July 10, 2014 Opposition at 1. Thus, there is no genuine issue as to the fact that Gallagher was convicted, within ten years of the commencement of this proceeding, of a felony involving the purchase or sale of a security. [2]

Gallagher also argues that: "Vision Securities was non operational due to net capital deficiencies therefore rendering me unable to be associated to (sic) a broker dealer." Gallagher July 10, 2014 Opposition at p. 2. However, Gallagher does not specify what period Vision was

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[2] Gallagher also engages in *ad hominem* attacks on Division attorneys involved in this and an earlier Commission civil action against him, and *ad hominem* attacks on the prosecutor in the criminal case and the federal judges in his prior criminal and civil trials. These attacks are irrelevant to the instant motion and not worthy of response.

ostensibly "non-operational" and he provides absolutely no factual support for this bald claim. Indeed, contrary to Gallagher's unsupported allegation, FINRA records make clear that Vision was a registered broker-dealer and FINRA-member from June 2005 to January 8, 2010 and that Gallagher was a registered broker with Vision throughout that period. See FINRA BrokerCheck Report for Gallagher dated January 2, 2014, at p. 4, attached as Exhibit A to McGrath Declaration dated January 9, 2014; see also FINRA BrokerCheck Report for Vision dated July 29, 2014, at p. 7, attached as Exhibit A to McGrath Declaration dated July 30, 2014. Moreover, Gallagher raised slightly more than $300,000 from investors between October and December 2009 (see Indictment in United States v. Daniel Gallagher, Exhibit E to McGrath Declaration dated January 9, 2014 at ¶ 6), before Vision was deregistered by FINRA on January 8, 2010. Thus, there is no factual support whatsoever for Gallagher's claim that Vision was not operational, and that he therefore could not have been associated with a broker-dealer, at the time of at least certain of the misconduct underlying his criminal conviction, namely up to January 8, 2010.

Accordingly, the Division has established the predicate facts for the imposition of the relief it requests.

II. Gallagher's Continuing Refusal to Admit Any Wrongdoing Despite his Criminal Conviction and Numerous Civil and Regulatory Violations Underscores Why it is in the Public Interest to Bar Him from the Securities Industry

Gallagher argues that he should not receive a permanent collateral or penny stock bar because the NAG investors ultimately received shares of Watt Fuel Cell from his father and those shares have value. Gallagher Opposition at pp 1-2. He also argues that his prior regulatory violations either were unfounded or are old. Id. at 3-5. Those arguments, however, only further illustrate Gallagher's continuing failure to admit any wrongdoing, his lack of

remorse, his repeated attempts to blame everyone but himself for his regulatory violations, and his hostile – indeed contemptuous – attitude toward federal judges, prosecutors and regulators responsible for ensuring compliance with the securities laws and protecting investors.

Gallagher primarily argues that he did nothing wrong because the NAG investors ultimately received shares in another company, Watt Fuel Cell, which they are currently content with. Gallagher ignores, however, the fact that he was convicted of misappropriating approximately $439,000, or about 89%, of the $493,000 that he raised from NAG investors and misleading investors about his use of their funds. Even if, after he misappropriated investors' funds, Gallagher played a role in the creation of Watt Fuel Cell, and even if that company's prospects are now good, those assumed facts would not excuse or mitigate Gallagher's misappropriation and lies. Indeed, as Judge Wexler noted when he sentenced Gallagher in the parallel criminal case, Gallagher is all the more dangerous because he fails to acknowledge that he did anything wrong.

Moreover, Gallagher has an extensive history of customer complaints and disciplinary actions. Between 1994 and 2001, seven customer arbitrations, all alleging sales practices violations, were filed against Gallagher. They resulted in settlements or awards to customers of over $1,000,000. Because of these complaints, the states of Georgia, Illinois, New York, New Jersey and Maryland fined, suspended and/or imposed conditions of heightened supervision on Gallagher. McGrath January 9, 2014 Declaration, Ex. A at 15; 22; 27-28. In addition, Gallagher has been sanctioned by the National Association of Securities Dealers three times as well as by FINRA. Id. Indeed, in barring Gallagher, FINRA noted that he had engaged in egregious misconduct, including acting as a principal of Vision despite his knowledge that several states and FINRA had specifically prohibited him from acting in a principal or supervisory capacity.

See Division of Enforcement v. Daniel James Gallagher, FINRA Disciplinary Proceeding No. 2008011701203, Hearing Panel Decision June 13, 2011 at 20-21, attached as Exhibit B to McGrath Declaration dated July 30, 2014.

Moreover, 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, e.g. Adam Harrington, Initial Decision Release No. 484, 2013 WL 1655690 at 4. (April 17, 2013). Indeed, the Commission has made clear that "absent 'extraordinary mitigating circumstances,' an individual who has been convicted cannot be permitted to remain in the securities industry." Frederick W. Wall, Exchange Act Release No. 52467, 2005 SEC LEXIS 2380 (September 19, 2005) at *14 & n. 16 (quoting John S. Brownson, Exchange Act Release No. 46161, 2002 WL 143186, at *2 (July 3, 2002), pet. denied, Brownson v. SEC, 66 F. App'x 687 (9th Cir. 2009); see also Butler, 2011 SEC LEXIS 3002, at *18 & n. 27).

Gallagher has failed to establish such "extraordinary mitigating circumstances." To the contrary, Gallagher's violations in United States v. Daniel Gallagher alone were repeated, continuing over almost two years; were egregious, involving the defrauding of thirteen investors and the misappropriation of approximately $493,000; and Gallagher has expressed no remorse. In addition, Gallagher abused the second chance he was given by Judge Rakoff, who declined to enjoin Gallagher from violating the securities laws after he was found liable in SEC v. Christopher Castaldo et al., 08-CIV-8397 (S.D.N.Y.)(JSR). See SEC v. Christopher Castaldo et al, Memorandum Decision and Final Judgment dated August 19, 2009, Dkt. No. 51, McGrath January 9, 2014 Declaration, Ex. B.

As Judge Wexler recognized, Gallagher poses a continuing danger to the investing public:

> [Gallagher]'s a violator. He violated this crime under the SEC, he lied to his people that love him that he wouldn't spend any of the money until he collected a million dollars. 493,000 disappeared, not having anything to do with their advantage. It turned out to [sic] stock probably is good, there's no question about it, but he's not. We then give him a break and he's back on drugs. I know he has a drug and alcohol problem but he's also a menace to society because he's bright and capable.
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> . . . I will direct as part of the supervised release he is not to engage in securities [as a] salesman, assistant or in any other way. He's dangerous. He doesn't even realize to this day what he did was wrong. The fact that he turns out to be right doesn't make it right. He defrauded people. He will do it again.

See Sentencing Transcript dated April 23, 2013 in United States v. Daniel Gallagher at pp. 22-23, attached as Exhibit G to McGrath January 9, 2014 Declaration.

Thus, there is no genuine issue of fact regarding the public interest in the collateral and penny stock bars the Division seeks.

III. Gallagher's Previous Objections to the Motion for Summary Disposition Are Unavailing for the Reasons Set Forth in the Division's February 25, 2014 Memorandum of Law

Gallagher previously filed a motion to dismiss the Division's summary disposition motion in which he argued that: (1) the Division's motion was premature because he had not received copies of the Division's investigative files; (2) the remedies the Division seeks, a permanent collateral bar and penny stock bar, were not specified in the Amended Order Instituting Proceedings ("OIP"); and (3) the Division improperly relies upon facts not alleged in the OIP in support of that relief. The Division opposed Gallagher's motion in its Memorandum of Law dated February 25, 2014.

Because Gallagher does not expand upon or even reference those arguments in his latest filing, the Division will rest upon its detailed response to those arguments set forth in its

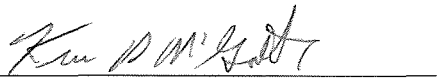
February 25, 2014 Memorandum of Law. In summary, however, the Division reiterates that the relief the Division seeks is sufficiently set forth in the OIP, and that Commission Rule of Practice Rule 200(b)(4) requires only that the OIP "state the nature of any relief or action sought or taken." It does not require that the OIP set forth all the facts or legal arguments the Division will advance, if a respondent has been adjudged liable, to support the remedies sought.

CONCLUSION

Accordingly, for the foregoing reasons, the Court should grant the Division's motion for summary disposition and order that Gallagher 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 any offering of a penny stock.[3]

Dated: New York, New York
July 30, 2014

DIVISION OF ENFORCEMENT

By: 

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[3] The Division reserves its right to request a hearing and/or briefing schedule at the appropriate time with respect to the remaining relief requested in the OIP, a cease-and-desist order, disgorgement and prejudgment interest, and is currently re-evaluating whether to continue to pursue this relief in view of the Court's guidance in the December 5, 2013 prehearing conference.