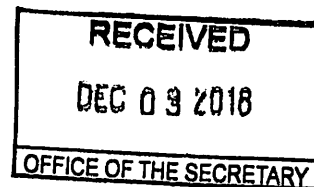


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-18229

In the Matter of

DEMITRIOS HALLAS,

Respondent.

DIVISION OF ENFORCEMENT'S  
MOTION FOR DEFAULT AND  
AN ASSOCIATIONAL BAR AGAINST  
RESPONDENT DEMITRIOS HALLAS

The Division of Enforcement (“Division”) hereby moves for default and an associational bar pursuant to Rule 155(a) of the Securities and Exchange Commission’s (“Commission”) Rules of Practice [17 C.F.R. § 201.155(a)]. The Division respectfully submits that a finding of default is appropriate and that the Court should resolve this proceeding in favor of the Division by finding that it is in the public interest to permanently bar respondent Demitrios Hallas from being associated 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, pursuant to Section 15(b)(6) of the Exchange Act.

In support of this Motion, the Division relies upon the accompanying memorandum of law, the Declaration of Kevin Fahey and exhibits attached thereto, the Declaration of Michael Ellis and exhibits attached thereto, and all prior proceedings herein. The Division respectfully requests that the Court grant this motion.

Dated: New York, New York  
November 30, 2018



---

David Stoelting  
Michael Ellis  
DIVISION OF ENFORCEMENT  
New York Regional Office  
Securities and Exchange Commission  
200 Vesey Street, Suite 400  
New York, NY 10281  
Tel.: (212) 336-0174  
StoeltingD@SEC.gov

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING  
File No. 3-18229**

**In the Matter of**

**DEMITRIOS HALLAS,**

**Respondent.**

**MEMORANDUM OF LAW IN SUPPORT OF  
THE DIVISION OF ENFORCEMENT'S  
MOTION FOR DEFAULT AND AN ASSOCIATIONAL BAR**

David Stoelting  
Michael Ellis  
DIVISION OF ENFORCEMENT  
New York Regional Office  
Securities and Exchange Commission  
200 Vesey Street, Suite 400  
New York, NY 10281  
Tel.: (212) 336-0174  
StoeltingD@SEC.gov

## TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT.....	1
FACTS.....	2
Hallas’s Background and Registration History.....	2
Hallas Stole Funds from a Customer.....	4
Hallas Recommended Daily Leveraged ETFs and ETNs that were Not Suitable for His Customers.....	7
Hallas Had No Reasonable Basis for Purchasing and Selling Daily Leveraged ETFs and ETNs in His Customers’ Accounts.....	9
The District Court Action.....	11
2014 FINRA Disciplinary Proceeding and Sanctions.....	12
2017 FINRA Disciplinary Proceeding and Bar Order.....	13
2018 Criminal Case.....	13
Hallas Has Been Served with the OIP.....	14
ARGUMENT.....	14
A. Hallas is in Default.....	14
B. Permanent Associational Bars Are Warranted.....	15
1. Statutory Requirements .....	15
2. Public Interest Factors.....	16
1. Hallas’s Conduct Was Egregious.....	17
2. The Conduct Was Recurrent.....	19
3. The Conduct Involved a High Degree of Scierter.....	19

7-2

4. Hallas Has Not Acknowledged the Wrongful Nature of His Conduct.....	20
5. Hallas Has Not Offered Any Assurances Against Future Violations.....	20
6. Hallas's Opportunities For Future Violations.....	21
CONCLUSION.....	22

## TABLE OF AUTHORITIES

	<u>Page</u>
 <b><u>Court Cases</u></b>	
<i>Brown v. E.F. Hutton Group, Inc.</i> , 991 F.2d 1020, 1031 (2d Cir. 1993) .....	18
<i>Hanly v. S.E.C.</i> , 415 F.2d 589, 596 (2d Cir. 1969).....	18
<i>Kornman v. SEC</i> , 592 F.3d 173 (D.C. Cir. 2010).....	16
<i>S.E.C. v. Hasho</i> , 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992).....	18
<i>S.E.C. v. Zandford</i> , 535 U.S. 813, 820-25 (2002) .....	17
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5th Cir. 1979), <i>aff'd on other grounds</i> , 450 U.S. 91, <i>rehearing denied</i> , 451 U.S. 933 (1981).....	16
 <b><u>Commission Opinions and Decisions</u></b>	
<i>Adam Harrington</i> , ID Rel. No. 484, 2013 WL 1655690 (Apr. 7, 2013) .....	19
<i>Alan Brian Baiocchi</i> , ID Rel. No. 382, 2009 WL 2030524 (July 14, 2009).....	19
<i>Gary L. McDuff</i> , Rel. No. 75803, 2015 WL 1873119, (Comm'n Apr. 23, 2015).....	15
<i>Gordon Brent Pierce</i> , Sec. Act Rel. No. 9555, 2014 WL 896757 (Mar. 7, 2014).....	19
<i>In the Matter of Don Warner Reinhard</i> , IA Rel. No. 3139, 2011 WL 121451.....	15, 17
<i>In the Matter of Edgar R. Page and PageOne Financial Inc.</i> , IA Rel. No. 4400, 2016 WL 3030845 (Comm. Op. May 27, 2016) .....	16
<i>In the Matter of Eric S. Butler</i> , ID Rel. No. 413, 2011 WL 174245 (Jan. 19, 2011), <i>aff'd</i> , Exch. Act Rel. No. 3262, 2011 WL 3792730 (Aug. 26, 2011), .....	16
<i>In the Matter of Gilles T. de Charsonville</i> , ID Rel. No. 996, 2016 WL 1328931 (Apr. 5, 2016) .....	16
<i>In the Matter of Glenn M. Barikmo</i> , ID Rel. No. 436, 2011 WL 4889086 (Oct. 13, 2011).....	21
<i>In The Matter of Michael Robert Balboa</i> , ID Rel. No. 747, 2015 WL 847168 (Feb. 27, 2015).....	21
<i>In the Matter of Robert Bruce Lohmann</i> , 56 S.E.C. 573.....	15

<i>In the Matter of Shervin Neman &amp; Neman Fin., Inc.</i> , Release No. 1227, 2017 WL 5589224 (Comm. Op. Nov. 20, 2017).....	21
<i>In the Matter of Toby G. Scammell</i> , IA Rel. No. 3961, 2014 WL 5493265 (Comm. Op. Oct. 29, 2014).....	21
<i>In the Matter of Toby G. Scammell</i> , ID Rel. No. 516, 2013 WL 5960707 (Nov. 7, 2013), <i>aff'd at</i> IA Rel. No. 3961, 2014 WL 5493265 (Comm. Op. Oct. 29, 2014).....	16
<i>Jonathan D. Davey, CPA</i> , ID Rel. No. 959, 2016 WL 537549 (Feb. 11, 2016).....	20
<i>Marshall E. Melton</i> , IA Rel. No. 2151, 2003 WL 21729839 (Comm. Op. July 25, 2003).....	17
<i>Richard P. Callipari</i> , ID Rel. No. 237, 2003 WL 22250402 (Sept. 30, 2003).....	19
<i>Stephen L. Kirkland</i> , ID Rel. No. 875, 2015 WL 5139109 (Sept. 2, 2015) .....	19

**Statutes and Rules**

Securities Exchange Act of 1934

§ 10(b).....	12
Rule 10b-5.....	12, 17

Securities Act of 1933

§ 17(a).....	12
--------------	----

**Commission Rules of Practice**

Rule 155(a).....	1,14
Rule 220(b).....	15

Pursuant to Rule 155(a) of the Rules of Practice, the Division of Enforcement submits this memorandum of law in support of its motion for a default and for an order barring Respondent Demitrios Hallas ("Hallas") 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.

### **PRELIMINARY STATEMENT**

Last month, Hallas pled guilty to stealing \$170,750 from a brokerage customer named Kevin Fahey. The crime to which Hallas pled guilty was highly egregious and has had a devastating impact on Fahey, a 57-year-old gas station attendant and former truck driver. The money Hallas stole had been saved by Fahey over a lifetime of low-paying jobs, and was Fahey's sole source of retirement income.

Hallas's scheme was brazen and, far from being a momentary lapse of judgment, took place over a two year period. Hallas told Fahey to write him a total of twelve checks, which totaled \$170,750, and told Fahey that he would invest the funds in a retirement account. Instead, none of the money was invested; Hallas spent all of it on personal expenses. In addition, Hallas generated the majority of the funds (\$115,000) by – without Fahey's prior authorization – liquidating securities in Fahey's brokerage account and then arranging for the transfer of the funds to Fahey's checking account, from which checks were written transferring the funds to Hallas.

Stealing Fahey's retirement nest egg was not Hallas's only act of dishonesty. In his handling of five customer accounts, including Fahey's, Hallas engaged in excessive trading for the purpose of generating commissions. Hallas also made unsuitable customer recommendations; specifically, he purchased highly risky exchange-traded funds (ETFs) that



should only be held by sophisticated investors. Hallas, moreover, significantly increased the risk by holding these ETFs – which should be traded within a single day – for weeks or months.

Hallas chose not to offer any defense to the Commission’s complaint filed in 2017 in the U.S. District Court for the Southern District of New York. Accordingly, in September 2017, the District Court entered a default judgment enjoining Hallas from violating the antifraud provisions of the federal securities laws, and ordered Hallas to pay disgorgement, prejudgment interest and a civil penalty.

FINRA, which had disciplined Hallas four years ago for misconduct involving other unsuitable trades, barred Hallas in late 2017 from associating with any member firm. In view of the record, which includes Hallas’s guilty plea; the District Court injunction; the Declaration of Kevin Fahey and exhibits; the Declaration of Michael Ellis and exhibits; and all prior proceedings herein, the Division respectfully requests that the Court issue permanent associational bars.

## **FACTS**

### **Hallas’s Background and Registration History**

In 2000, Hallas received a B.S. in Finance from Marist College in Poughkeepsie, NY. Ex. 10<sup>1</sup> at 13, Ex. 34 at 4. After graduating college, Hallas worked at Morgan Stanley for six months “in the assurance operations,” followed by two years at First Union as “a financial specialist.” Ex. 10 at 17 – 18. In 2004, Hallas received an M.B.A. through an online institution. Ex. 10 at 13, Ex. 34 at 4.

From June 2011 through February 2012, Hallas was a registered representative associated with Chase Investment Services Corp. (“Chase”), which at that time was dually

---

<sup>1</sup> The Division has attached as Exhibit 10 excerpts from Mr. Hallas’s June 16, 2016 testimony containing the portions of testimony cited herein.

registered with the Commission as a broker-dealer and investment adviser. Exs. 4 – 5.<sup>2</sup> Chase fired Hallas on February 29, 2012 for unauthorized trades and failure to disclose fees. Ex. 4 at 39, Ex. 33 at 2.

From May 2013 through May 2014, Hallas was a registered representative associated with Santander Securities LLC (“Santander”), which is dually registered with the Commission as a broker-dealer and investment adviser. (OIP at 1, Exs. 4, 7). Santander has been registered with the Commission as a broker-dealer since December 3, 1996. Ex. 7.

From August 2014 through July 2015, Hallas was a registered representative associated with Forefront Capital Markets LLC (“Forefront”), which was dually registered with the Commission as a broker-dealer and investment adviser. OIP at 1, Exs. 4, 8. Forefront registered with the Commission as a broker-dealer on March 23, 2011 and filed to withdraw its registration on August 17, 2015 (withdrawal effective October 16, 2015). Ex. 8.

From August 2015 through November 2015, Hallas was a registered representative associated with PHX Financial, Inc. (“PHX”), which has been registered with the Commission as a broker-dealer since October 31, 2007. OIP at 1, Exs. 4, 9.

In 2016, Hallas was working for Time Warner Cable as a “concierge rep.” Ex. 10 at 19. According to his public LinkedIn page, Hallas presently works as a Funding Specialist for Premium Merchant Funding. Ex. 34 at 1. This LinkedIn page also asserts that Hallas possesses multiple securities licenses. Ex. 34.

---

<sup>2</sup> Exhibits 5, 7, 8 and 9 are excerpted versions of FINRA BrokerCheck reports for the respective broker-dealers with which Hallas was associated. Due to the size of the BrokerCheck reports (*e.g.*, the BrokerCheck report for Chase is 194 pages), the Division has provided only the pages demonstrating that such broker-dealers were registered with the Commission as broker-dealers and/or investment advisers.

### **Hallas Stole Funds from a Customer**

Kevin Fahey was a truck driver with no trading or finance experience who first became Hallas's customer in or around July 2011 at Chase. When Hallas switched jobs and moved to Santander, Forefront and PHX, he met with Fahey – sometimes in a McDonald's restaurant – to fill out account transfer and opening forms in order to open accounts for Fahey at the new brokerage firm. By early 2014, Fahey had managed to prudently save approximately \$200,000 from his years of hard work in various low paying jobs and entrusted this money, his life savings, to his broker, Hallas. Fahey Decl. at ¶¶ 2 – 5, Ex. 14 at 1, 11, 19, 29.

In 2014 and 2015, on four occasions, Hallas recommended and sold securities in Fahey's account and then caused the proceeds of these sales, totaling \$115,700, to be transferred to Fahey's personal bank account. Ex. 14 at 6, 15 – 16, 26 – 27, 33, Exs. 11 – 13, Ex. 10 at 200 – 201. Once each of these transfers was complete, Hallas immediately deposited into his (Hallas's) personal bank account a check drawn on Fahey's account; the four transactions totaled \$115,000. Ex. 15 at 2 – 4, 7. The following table details the securities transactions and subsequent flow of funds from Fahey's brokerage and bank accounts to Hallas's checking account:

Securities Transactions	Transfer to Fahey Bank Account	Transfer to Hallas's Bank Account
3/10/2014: \$25,000 sale of PL Pacific Funds Portfolio Optimization Moderate Fund (POCAX) is settled in Fahey Santander brokerage account. Ex. 14 at 6.	3/12/2014: \$25,700 sent from Fahey Santander brokerage account to Fahey Chase bank account. <sup>3</sup> Ex. 14 at 6.	3/13/2014: \$25,000 Fahey Chase bank check deposited into Hallas's Chase bank account. Ex. 15 at 2.
5/20/2014: \$15,000 sale of POCAX is settled in Fahey Santander brokerage account. Ex. 14 at 15.	5/20/2014: \$15,000 sent from Fahey Santander brokerage account to Fahey Chase bank account. Ex. 14 at 16.	5/21/2014: \$15,000 Fahey Chase bank check deposited into Hallas's Chase bank account. Ex. 15 at 3.
1/20/2015: \$50,491.20 sale of Global X Copper Miners ETF in Fahey Forefront account. \$42,011.28 purchase of TRMXX Money Market Fund in Fahey Forefront account. Ex. 14 at 26.	1/21/2015: \$45,000 sent from Fahey Forefront account (debited from Money Market Fund) to Fahey Chase Bank account. <sup>4</sup> Ex. 14 at 27.	1/22/2015: \$45,000 Fahey Chase bank check deposited into Hallas's Chase bank account. Ex. 15 at 4.
10/16/2015: \$30,317.43 sale of Direxion Daily Gold Miners Index Bear 3X Shares in Fahey PHX account. <sup>5</sup> Ex. 14 at 33.	10/21/2015: \$30,000 wired from Fahey PHX account to Fahey Chase bank account. Ex. 14 at 33.	10/22/2015: \$30,000 Fahey Chase bank check deposited into Hallas's Chase bank account. Ex. 15 at 7.
TOTAL		\$115,000

Hallas received an additional \$55,750 from Fahey, \$30,000 of which Hallas received while associated with registered broker-dealers, namely Forefront and PHX. Ex. 15 at 5 – 6, 8 – 13.

In total, from March 2014 to May 2016, Fahey provided twelve checks totaling \$170,750 to Hallas. Ex. 15. Fahey believed that Hallas would invest these funds in a retirement account

<sup>3</sup> An internal Santander email dated March 12, 2014 shows that Hallas provided the Automated Clearing House (“ACH”) instructions and input the details for this transfer and asked that the internal system be updated, stating “I would like to send out the funds to client today if possible.” (Ex.7).

<sup>4</sup> In a January 21, 2015 email, Hallas wrote to a Forefront operations manager regarding Fahey’s Forefront account, “Can you please ACH \$45,000 into his bank account per customer request. Please verify if ok and completed. I see \$45,233.78 in MMA [money market account] and \$67,320.92 in cash.” (Ex. 12).

<sup>5</sup> In an October 16, 2015 email, Hallas stated to a PHX executive assistant, “Kevin Fahey is my clients [sic] name. . . Sold out the position today so will wire the money Wednesday. Should be around \$30,500.” (Ex. 13).

for Fahey's benefit, and that the retirement account would include investments, including in stocks or securities. Fahey Decl. ¶11. Hallas, however, did not invest any of the \$170,750 on Fahey's behalf; instead, Hallas immediately deposited the funds into his own personal bank account and spent them on his personal expenses. Ex. 10 at 199, 201, 203, Ex. 15.

During investigative testimony, Hallas admitted that he spent the funds that Fahey provided to him (\$170,750) on his (Hallas's) personal expenses, including credit card debt, student loan debt, rent, utilities and "lifestyles" such as restaurants and groceries. Ex. 10 at 195 – 197.

While Fahey provided checks to Hallas with the understanding that they would be drawn on Fahey's bank account, Hallas never told Fahey that he would be funding the four checks described above by selling securities in Fahey's brokerage accounts and transferring the proceeds to Fahey's bank account. Fahey believed that Hallas was investing the funds in a retirement account for Fahey's benefit. Fahey Decl. ¶¶ 11 – 12.

In May 2016, Fahey asked Hallas about the retirement account. Hallas then drafted and sent a letter to Fahey which stated: "This is a letter of authorization to start distribution [sic] a monthly payment from the retirement agreement established by Kevin Fahey in which he entrusted and moved money to Demitrios Hallas per checks given to Mr. Hallas by Mr. Fahey in order for Mr. Hallas to advise him . . . The total account balance transferred and managed by Mr. Hallas is \$170,000 with Kevin Fahey authorizing Mr. Hallas to manage the account. . ." Ex. 16, Fahey Decl. ¶ 14.

Hallas admitted in testimony that he did not tell Fahey that he spent Fahey's funds on personal expenses and that he no longer had the money. Ex. 10 at 199, 201, 203.

**Hallas Recommended Daily Leveraged  
ETFs and ETNs that were Not Suitable for His Customers**

The five customer accounts at issue were non-discretionary. As a result, Hallas was required to seek and receive customer authorization before each trade. Ex. 25<sup>6</sup> at 97 – 100, 102 – 104, Ex. 35 at 3. The evidence shows, however, that Hallas placed trades in customer accounts without authorization. Fahey Decl. ¶ 10, Ellis Decl. ¶¶ 5 – 8, Ex. 25 at 97 – 100, 102 – 104, Ex. 35 at 3. None of Hallas’s customers signed the trading authorization form required by Forefront to grant a broker discretionary authority and PHX did not permit its brokers to exercise discretionary authority over customer accounts. Ex. 35 at p. 3.

Hallas’s customers were unsophisticated investors with limited or no investing experience outside of the accounts that they held with Hallas. Fahey Decl. ¶¶ 2 – 5, 9, Ellis Decl. ¶¶ 5 – 8. Moreover, Hallas’s customers lacked knowledge of the risks associated with daily leveraged ETFs. Fahey Decl. ¶¶ 10, Ellis Decl. ¶¶ 5 – 8.

The daily leveraged ETFs and ETNs that Hallas purchased and sold in his customers’ accounts were highly complex securities that were only appropriate for sophisticated investors. These ETFs and ETNs sought to magnify the performance of the S&P 500 VIX Short-Term Futures Index, as well as certain gold mining, oil and gas and foreign stock indices, by multiples of two or three. Exs. 24, 38 – 39. As described (often in bold typeface) in the prospectuses for the daily leveraged ETFs and ETNs that Hallas purchased and sold, such products are intended for use by sophisticated investors who understand the leveraging, volatility and shorting risks associated with the products. Ex. 24 at 2, Ex. 38 at 1, Ex. 39 at 2. For example, page two of a

---

<sup>6</sup> The Division has attached as Exhibit 25 excerpts from Michael Halperin’s March 3, 2017 testimony containing the portions of testimony cited herein.

Direxion prospectus dated February 27, 2015 (excerpts attached as Exhibit 24)<sup>7</sup> for a number of Direxion's daily leveraged ETFs and ETNs, including all of the Direxion daily leveraged ETFs and ETNs traded by Hallas in his customers' accounts, contains the following warnings in bold font:

**The Funds seek *daily leveraged* investment results and are intended to be used as short-term trading vehicles. . . The Funds are not intended to be used by, and are not appropriate for, investors who do not intend to actively monitor and manage their portfolios. . . The Funds are not suitable for all investors. The Funds are designed to be utilized only by sophisticated investors, such as traders and active investors employing dynamic strategies. . . Investors who do not understand the Funds or do not intend to actively manage their funds and monitor their investments should not buy the Funds. [emphasis in original].**

In testimony, Hallas admitted that daily leveraged ETFs are "riskier" and "very volatile" investments, the value of which could move "above five, ten percent in one day." Ex. 10 at 25. Exhibits 17 and 18 are trade blotters and Exhibits 19 through 23 contain account statements, each of which detail ETF and ETN purchases and sales that Hallas recommended to his five customers. Exhibit 36 provides additional details concerning the 22 different daily leveraged ETFs and ETNs that Hallas recommended to his five customers. Exhibit 37 details daily leveraged ETF and ETN positions in Hallas customer accounts that had net losses of \$5,000 or more per position. Daily leveraged ETFs and ETNs were not suitable for Hallas's customers in that they were unsophisticated investors who did not understand the products or the investment risks that they presented.

---

<sup>7</sup> Due to the size of the prospectuses (e.g., the Direxion prospectus is 550 pages), the Division has attached as Exhibits 24, 38 and 39 excerpts of Direxion, Velocityshares and Proshares prospectuses containing the relevant language cited herein. Should the Court seek the full prospectuses, the Division will promptly provide copies.

**Hallas Had No Reasonable Basis for Purchasing and Selling Daily Leveraged ETFs and ETNs in His Customers' Accounts**

Hallas did not conduct adequate due diligence on daily leveraged ETFs and ETNs; he did not adequately understand how the products worked or the risks involved in purchasing and selling them (including the risks inherent in holding such products open for periods greater than one day); and, he had no basis to believe that the products were suitable for his customers. Ex. 10 at 70 – 73, 135 – 140.

When asked about his knowledge of daily leveraged ETFs, Hallas stated “I wouldn’t say I was 100 percent knowledgeable. I did have an understanding” and “. . .now looking back there’s probably some aspects that I needed to learn a little more about it.” He thereafter testified that he fully understood the product at the time of the trades, but that he didn’t at the time of his June 2016 testimony. Hallas further testified that though he didn’t document any of his research, he reviewed the websites of companies such as Direxion and looked at fact sheets and prospectuses for the ETFs that he recommended. Ex. 10 at 70 – 73. However, the section of the aforementioned Direxion prospectus describing the Daily Russia Bear 3X Shares (RUSS) fund (Exhibit 24 at 4 – 13) states, for example:

The Fund seeks daily investment results, before fees and expenses, of 300% of the inverse (or opposite) of the performance of the Market Vectors Russia Index. ***The Fund seeks daily leveraged investment results and does not seek to achieve its stated investment objective over a period of time greater than one day.*** The Fund is different and much riskier than most exchange-traded funds. ***The Fund is designed to be utilized only by knowledgeable investors who understand the potential consequences of seeking daily inverse leveraged investment results, understand the risks associated with shorting and the use of leverage, and are willing to monitor their portfolios frequently.*** [emphasis in original].

Despite such warnings, Hallas purchased and sold approximately 179 daily leveraged ETF and ETN positions in the accounts of his unsophisticated customers, and repeatedly held



such positions open for periods greater than one day (including for weeks or months at a time in some instances), demonstrating that he did not conduct adequate due diligence and did not understand how the products worked. In his Forefront customer accounts, Hallas held positions in the Daily Russia Bear 3X Shares (RUSS) fund open for periods greater than one day on ten different occasions. Ex. 17. Exhibit 37 lists instances in which Hallas's customers lost \$5,000 or more as a result of a single daily leveraged ETF or ETN position that Hallas purchased and sold in their accounts. In each such instance, Hallas held the position open for a period greater than one day, including upwards of five months in two instances. Three of the positions are investments in the Daily Russia Bear 3X Shares (RUSS) fund that resulted in losses of \$17,629, \$21,891 and \$22,714 for Hallas's customers Kevin Fahey, Roberto Pico and Roberto Isaza respectively. (*Id.*).

Exhibit 17 is a trade blotter produced by Forefront's clearing firm, RBC Capital Markets, LLC ("RBC"), and Exhibit 18 is a trade blotter produced by PHX. The Division staff has filtered and excerpted these trade blotters to show only the ETF and ETN purchases and sales that Hallas recommended to his Forefront and PHX customers. In addition, Exhibits 19 through 23 contain examples of brokerage statements for such customers. Each statement contains Hallas's name on the first page, showing that he was each customer's registered representative.

These statements also provide examples of Hallas's unsuitable daily leveraged ETF and ETN recommendations and purchases and sales for which he had no reasonable basis. For example, Exhibits 19 and 21 contain February 2015 and July 2015 Forefront account statements for each of Kevin Fahey and Roberto Pico. Hallas purchased the VelocityShares Daily 2x VIX Short Term ETN (TVIX) for both Fahey and Pico in February 2015 and didn't sell the positions until July 2015. Ex. 19 at 5, 17, Ex. 21 at 5, 13. The net loss on each of these daily leveraged

ETN positions that Hallas held open for more than five months was approximately \$61,492 for Pico and \$47,541 for Fahey. Ex. 37, Ex. 19 at 17, Ex. 21 at 13.

On 116 occasions, Hallas held daily leveraged ETF and ETN positions open for a period greater than one day in his customer accounts. Exs. 17 and 18. When asked about certain of these holdings – including instances in which he did not exit a daily leveraged ETF or ETN position until several days or weeks after purchase – Hallas could not provide an explanation for the trading other than to say “[m]aybe I was on vacation or something” during the nearly month-long period that he held one daily leveraged ETN position open. Ex. 10 at 135 – 140.

During his testimony, Hallas also admitted to engaging in excessive trading in order to generate commissions:

Q Do you believe you excessively traded in the accounts that your customers were in at Forefront or Phoenix?

A Yes.

Q Why do you say this?

A Because of the amount of transactions that were on the account. And even though I thought there was discretionary on it I think sometimes there was – like some of the accounts are more traded than others then there should have been.

Q What do you think motivated the level of trade?

A Money.

Q Commissions?

A Commissions.

Ex. 10 at 220 – 221.

### **The District Court Action**

On April 25, 2017, the Commission filed a civil action in the Southern District of New York (the “District Court Action”) alleging that Hallas, while associated with Commission-registered broker-dealers: (1) misappropriated a total of \$170,750 from one of his customers under the guise of soliciting funds for investment purposes, (2) purchased and sold daily leveraged ETFs and ETNs in the accounts of five customers, knowingly or recklessly

disregarding that these products were unsuitable for such customers, and (3) had no reasonable basis for recommending daily leveraged ETFs and ETNs. The Commission alleged that Hallas's conduct violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. On September 27, 2017, United States District Judge Alison J. Nathan entered a default judgment against Hallas in the District Court Action, ordering that Hallas be permanently enjoined from violating Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder and that he pay to the Commission \$260,193.39 in disgorgement, \$29,600.86 in prejudgment interest and a civil penalty of \$260,193.39.

#### **2014 FINRA Disciplinary Proceeding and Sanctions**

On May 9, 2014, FINRA's Department of Enforcement filed a Complaint alleging that Hallas, while a registered representative at Chase, violated NASD Rule 2310 and FINRA Rule 2010 by making unsuitable recommendations to customers. Ex. 33 at 1. Specifically, FINRA's Complaint alleged that Hallas, despite having "no reasonable basis," recommended that two customers "liquidate their investments" and invest the proceeds in certain bond funds. Ex. 33 at 1, 6 – 7.

On June 23, 2014, FINRA issued an Order Accepting Offer of Settlement (the "2014 FINRA Order"). Ex. 6. The 2014 FINRA Order suspended Hallas for 30 days and ordered him to pay a \$5,000 fine and \$6,110 in restitution. Ex. 6.

The 2014 FINRA Order, which Hallas consented to without admitting or denying the allegations in the Complaint, made numerous "findings," including that Hallas had made recommendations to two customers without any reasonable basis; that "Hallas had no reason to

believe” that the investment he recommended was suitable; and that his recommendation “was not suitable” for the customers in view of their financial situation and needs.

### **2017 FINRA Disciplinary Proceeding and Bar Order**

On June 16, 2017, FINRA’s Department of Enforcement filed a Complaint alleging that Hallas had “failed to appear and provide testimony” in violation of FINRA Rules 8210 and 2010. Ex. 31.

On November 2, 2017, FINRA issued a Default Decision stating that: “Respondent Demitrios Hallas is barred from associating with any FINRA member firm in any capacity[.]” Ex. 32 at 5. The bar was “effective immediately.” *Id.*

### **2018 Criminal Case**

A Superior Court Information issued by the Westchester County (N.Y.) District Attorney accused Hallas of “steal[ing] approximately one hundred seventy thousand, seven hundred and fifty dollars (\$170,750.00) from Kevin Fahey, without permission or authority to do so.” Ex. 30.

On October 28, 2018, Hallas pled guilty in the Supreme Court of the State of New York (County of Westchester) to a charge of grand larceny in the third degree, a Class D felony. In pleading guilty, Hallas, in open court, waived his right to appeal his conviction and sentence. Ex. 3 at 11 – 14. Hallas affirmed to the court that he was pleading guilty because he is in fact guilty, that he had sufficient time to discuss the matter with his attorney, and that he understood his rights, including the right not to incriminate himself and the right to a trial in which he could cross-examine witnesses. Ex. 3 at 7 – 13.

At his plea hearing, Hallas responded to questions from the District Attorney as follows:

MS. GALEF: Mr. Hallas, do you understand that your statements here today may be used against you in future or other judicial proceedings as they are admissions of guilt?

THE DEFENDANT: Yes.

MS. GALEF: Do you now plead guilty to the crime of grand larceny in the third degree as charged in count 1 of [the Superior Court Information]?

THE DEFENDANT: Yes.

MS. GALEF: And do you admit that in the Village of Tarrytown, County of Westchester, State of New York, from on or about March 2014 to on or about March 2016, you did steal property and the value of that property exceeded \$3,000?

THE DEFENDANT: Yes.

MS. GALEF: And more specifically, do you agree or do you admit that you did steal approximately \$170,750 from Kevin Fahey without permission or authority to do so?

THE DEFENDANT: Yes.

THE COURT: Do you understand everything that's been said here today?

THE DEFENDANT: Yes.

Ex. 3 at 13 – 14.

### **Hallas Has Been Served With the OIP**

On September 28, 2017, the Commission instituted this follow-on proceeding pursuant to Section 15(b) of the Exchange Act.<sup>8</sup> Ex. 1. Hallas was served with the OIP on October 12, 2017. Ex. 26. To date, Hallas has not responded to the OIP.

## **ARGUMENT**

### **I. Hallas Is In Default**

Rule 155(a) of the Rules of Practice states that if a party fails to answer or otherwise defend the proceeding, or fails to appear at a hearing or conference of which that party has been notified, such party “may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed true.” Hallas was served with the OIP on October 12, 2017, and his Answer was due within twenty days of service

---

<sup>8</sup> On August 22, 2018, following the U.S. Supreme Court’s decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the Commission vacated the Initial Decision as to Hallas that had been entered on February 27, 2018, by Judge Foelak, and remanded this proceeding to be heard before a different ALJ. *Pending Administrative Proceedings*, Rel. No. 4993, 2018 WL 4003609 (Comm’n Aug. 22, 2018).

pursuant to Rule 220(b). Although Hallas was served with the OIP more than one year ago, he has failed to answer or otherwise defend the proceeding. Moreover, Hallas, despite being given notice, failed to appear at the October 23, 2018, telephonic prehearing conference. Exs. 27, 40. Accordingly, Hallas should be deemed to be in default.

## **II. Permanent Associational Bars Are Warranted.**

### **A. Statutory Requirements**

“Exchange Act Section 15(b)(6) authorizes the Commission to determine whether a sanction is in the public interest if two statutory requirements are met: (i) the respondent is associated, is seeking to become associated, or, at the time of the alleged misconduct, was associated or was seeking to become associated with a broker or dealer, and (ii) the respondent meets at least one of several potential bases for a proceeding, including that respondent has been enjoined from engaging in or continuing any conduct or practice in connection with acting as a broker-dealer.” *Gary L. McDuff*, Rel. No. 75803, \*1, 2015 WL 1873119, \*1 (Comm’n Apr. 23, 2015).

The statutory conditions are satisfied because Hallas was associated with a broker-dealer at the time of the misconduct. Exs. 4 – 5, 7 – 9. In addition, Hallas has been enjoined from violating the antifraud provisions of the federal securities laws. Ex. 29.

Hallas’s criminal conviction for grand larceny establishes another basis for relief, and can be considered even though the criminal conviction is not alleged in the OIP. *See, e.g., Don Warner Reinhard*, IA Rel. No. 3139, 2011 WL 121451, at \*5 (Comm. Op. January 14, 2011) (citing *In the Matter of Robert Bruce Lohmann*, 56 S.E.C. 573, 583 n.20 (2003)) (information not contained in the OIP may be considered in assessing the public interest and sanctions). And although Hallas’s theft of money from Fahey was in connection with the sale of securities, the Commission “has long barred individuals based on convictions involving dishonesty that are not

even securities-related.” *Toby G. Scammell*, ID Rel. No. 516, 2013 WL 5960707, at \*4 (Nov. 7, 2013), *aff’d at* IA Rel. No. 3961, 2014 WL 5493265 (Comm. Op. Oct. 29, 2014), *citing Kornman v. SEC*, 592 F.3d 173, 180 (D.C. Cir. 2010).

**B. Public Interest Factors**

In determining whether a particular sanction is in the public interest, the Commission considers six factors: (1) the egregiousness of Hallas’s actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) Hallas’s recognition of the wrongful nature of his conduct; (5) the sincerity of Hallas’s assurances against future violations and (6) the likelihood that Hallas’s occupation will present opportunities for future violations. *See Edgar R. Page and PageOne Financial Inc.*, IA Rel. No. 4400, 2016 WL 3030845, at \*5 (Comm. Op. May 27, 2016) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979)). The inquiry is “flexible, and no one factor is dispositive.” *Id.*

Hallas—who has been convicted of grand larceny stemming from his theft of a customer’s retirement funds—faces a high bar to remaining in the industry. It is well established that “[a]bsent extraordinary mitigating circumstances” a conviction for offenses involving fraud necessitates a bar. *Eric S. Butler*, ID Rel. No. 413, 2011 WL 174245, at \*3 (Jan. 19, 2011), *aff’d*, Exch. Act Rel. No. 3262, 2011 WL 3792730 (Aug. 26, 2011); *see also Gilles T. de Charsonville*, ID Rel. No. 996, 2016 WL 1328931, at \*4 (Apr. 5, 2016) (“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.”).

Hallas’s theft from Fahey is a crime of dishonesty, and such “misconduct is highly relevant in our inquiry where we are required to consider the public interest and determine whether an individual is fit to work in an industry where honesty and rectitude concerning

financial matters is critical.” *Reinhard*, 2011 WL 121451, \*6 (barring former registered representative based on facts admitted in plea agreement).

All six factors require a full associational bar against Hallas. The District Court injunction would itself be sufficient to establish a presumption in favor of barring the Hallas. “[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry a respondent who is enjoined from violating the antifraud provisions.” *Marshall E. Melton*, IA Rel. No. 2151, 2003 WL 21729839, at \*9 (July 25, 2003).

### **1. Hallas’s Conduct Was Egregious**

Hallas’s conduct in stealing \$170,750 from his customer, Kevin Fahey, was obviously egregious. In addition, Hallas’s handling of all five of his Forefront and PHX customers was egregious.

Fraudulent conduct occurs in connection with the purchase or sale of a security if it “coincides” with the transaction. *S.E.C. v. Zandford*, 535 U.S. 813, 820-25 (2002) (finding that SEC complaint sufficiently alleged the “in connection with the purchase or sale of any security” element of Rule 10b-5 in that registered representative’s misappropriation of customer funds was connected to the registered representative’s sale of securities in the customer’s account and that “[i]t is enough that the scheme to defraud and the sale of securities coincide.”).

Hallas’s customers were unsophisticated investors at or nearing retirement age, yet without having a reasonable basis for doing so and without having discretionary authority over his customers’ accounts or discussing the trades with them, Hallas invested their hard-earned money and substantial portions of their retirement savings in daily leveraged ETFs and ETNs,



products that are characterized by a significant degree of volatility and risk. Exs. 17 – 25, 38 – 39, Fahey Decl. ¶¶ 2 – 5, 9 – 10, Ellis Decl. ¶¶ 5 – 8.

The 179 daily leveraged ETF and ETN positions that Hallas purchased and sold in his Forefront and PHX customers' accounts, without having a reasonable basis for doing so, resulted in a net loss of approximately \$150,000 to his customers and commissions of approximately \$89,000 to Hallas. Exs. 17 – 18.

Kevin Fahey – a truck driver with no trading or finance experience – further suffered as a result of Hallas's conduct in that Hallas misappropriated \$170,750 that Fahey provided to Hallas with the understanding that he would invest the funds on Fahey's behalf. Ex. 10 at 195 – 203, Exs. 15 – 16, Fahey Decl. ¶¶ 11 – 15.

Hallas also made unsuitable recommendations to his customers and, as he admitted, engaged in excessive trading to generate commissions. Ex. 10 at 220 – 221. A registered representative violates the antifraud provisions of the federal securities laws by recommending unsuitable securities that a customer subsequently purchases in reliance on the recommendation. *See, e.g., Brown v. E.F. Hutton Group, Inc.*, 991 F.2d 1020, 1031 (2d Cir. 1993). A registered representative violates the antifraud provisions if he or she makes a recommendation to a customer without an adequate and reasonable basis. "A securities dealer occupies a special relationship to a buyer of securities in that by his position he implicitly represents he has an adequate basis for the opinion he renders." *Hanly v. S.E.C.*, 415 F.2d 589, 596 (2d Cir. 1969); *see also S.E.C. v. Hasho*, 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992) ("By making a recommendation, a securities dealer implicitly represents to a buyer of securities that he has an adequate basis for the recommendation").

## **2. The Conduct Was Recurrent**

Hallas's conduct was also recurrent. Through his fraudulent scheme, Hallas obtained twelve separate checks from Fahey over more than two years, during which time Hallas was employed with three different brokerage firms. (Exs. 4, 11 – 15). Hallas's unsuitable daily leveraged ETF and ETN recommendations spanned two brokerage firms, five customers and just over one year. (Exs. 17 – 23). In June 2014, Hallas also consented to a settlement with FINRA in connection with alleged violations of FINRA suitability rules resulting from investment switch recommendations that he made to two other customers in August and September 2011 while he was associated with Chase. (Ex. 6). Commission precedent establishes such conduct as recurrent, rather than isolated in nature. *See Stephen L. Kirkland*, ID Rel. No. 875, 2015 WL 5139109, at \*6 (Sept. 2, 2015); (misconduct over two years and involving ten investors recurrent); *Gordon Brent Pierce*, Sec. Act Rel. No. 9555, 2014 WL 896757, at \*23 (Mar. 7, 2014) (misconduct over eight months "recurrent and long-lasting"); *Richard J. Daniello*, Exch. Act Rel. No. 27049, 1989 WL 991994, at \*4 (July 21, 1989) (four months of misappropriating employer's funds was not isolated); *Richard P. Callipari*, ID Rel. No. 237, 2003 WL 22250402, at \*5 (a scheme lasting several weeks constituted "recurring and egregious" behavior).

## **3. The Conduct Involved a High Degree of Scienter**

Courts have recognized that misconduct involving fraud, like that at issue here, indicates a "high degree of scienter." *Adam Harrington*, ID Rel. No. 484, 2013 WL 1655690, at \*4 (Apr. 7, 2013); *Alan Brian Baiocchi*, ID Rel. No. 382, 2009 WL 2030524, at \*3 (July 14, 2009); *Callipari*, ID Rel. No. 237, 2003 WL 22250402, at \*5 (Sept. 30, 2003).

Hallas not only stole Kevin Fahey's investment funds, but he also misled Fahey about the existence of the funds and concealed from Fahey that he had spent the money. Hallas

acknowledged in his May 2016 letter to Fahey that Fahey “entrusted and moved money to” him, but Hallas concealed the fact that he never invested any of the money on Fahey’s behalf and spent it all on personal expenses. Ex. 16, Ex. 10 at 199, 201, 203. The record establishes that Hallas not only defrauded Fahey, but that he also attempted to mislead Fahey and conceal his misconduct, evidencing a high degree of scienter.

**4. Hallas Has Not Acknowledged the Wrongful Nature of His Conduct**

Though he pled guilty to a criminal charge of grand larceny, Hallas was not required to, and did not, acknowledge the wrongful nature of his conduct or offer assurances against future violations when entering his guilty plea. Neither has Hallas acknowledged the wrongful nature of his conduct or offered assurances against future violations in the civil district court action filed by the Commission or in this proceeding. Rather, in both the District Court Action and this proceeding, Hallas failed to file an answer or otherwise participate in the actions, including by failing to respond to judicial orders to show cause in both the district court action and this proceeding, and by failing to appear for a prehearing teleconference in this proceeding. Moreover, in the District Court Action, Hallas repeatedly sent inappropriate e-mails to the Division staff in which he demonstrated his lack of remorse. Ex. 28. The “absence of recognition by [a respondent] of the wrongful nature of his conduct” favors a permanent bar. *Jonathan D. Davey, CPA*, ID Rel. No. 959, 2016 WL 537549, at \*3 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction).

**5. Hallas Has Not Offered Any Assurances Against Future Violations**

For the reasons stated directly above, Hallas has also failed to offer assurances that he would not engage in similar misconduct again, if the opportunity were to present itself. That

combined with the high degree of scienter that he exhibited in concealing from Kevin Fahey that he had stolen his retirement funds, cast into doubt any assurances he may provide that he will refrain from further violations. *See, e.g., In the Matter of Toby G. Scammell*, Release No. 3961, 2014 WL 5493265, at \*6 (Comm. Op. Oct. 29, 2014) (rejecting assurances where conduct involved high degree of scienter and acts of concealment, together with only partial acknowledgement of his wrongdoing).

#### **6. Hallas's Opportunities For Future Violations**

While Hallas is not currently working in the securities industry, his recurrent misconduct across several different broker dealers in the past (including broker dealers that were dually registered as investment advisers), combined with the fact that he presently markets himself, via his LinkedIn page, as a “[f]inancial services representative with over 15 years of experience in the Financial Services Industry” who “currently hold[s] the following FINRA licenses . . . Series 6, Series 7, Series 24, Series 63, Series 65,” suggests that he would choose to work in the securities industry again, if the opportunity presented itself, and once again be in a position to harm investors. Ex. 34 at 1.

The mere fact that Hallas is not currently employed in the securities industry is not determinative. Notably, it appears that Hallas is holding himself out as holding securities licenses. Ex. 34 at 1. And “[i]f he were to reenter the securities industry, his occupation would present the opportunity for future violations.” *In The Matter of Michael Robert Balboa*, ID Rel. No. 747, 2015 WL 847168, at \*5 (Feb. 27, 2015); *see also In the Matter of Shervin Neman & Neman Fin., Inc*, 2017 WL 5589224, at \*8; *In the Matter of Glenn M. Barikmo*, ID Rel. No. 436, 2011 WL 4889086, at \*5 (Oct. 13, 2011).

Thus, the full range of bars should be imposed against Hallas.

CONCLUSION

Based upon his criminal conviction, the injunction entered against him and the record in this proceeding, and pursuant to the public interest, bars should be entered against Demitrios Hallas permanently barring him 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.

Dated: New York, NY  
November 30, 2018



David Stoelting  
Michael Ellis  
DIVISION OF ENFORCEMENT  
New York Regional Office  
Securities and Exchange Commission  
200 Vesey Street, Suite 400  
New York, NY 10281  
Tel.: (212) 336-0174  
StoeltingD@SEC.gov