UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20051

In the Matter of

Daniel C. Masters,

Respondent

OPPOSITION TO RESPONDENT MASTERS' MOTION TO VACATE THE COMMISSION'S SETTLEMENT ORDER AND RULE 102(e) SUSPENSION

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The Division of Enforcement and the Office of Litigation and Administrative Practice of the General Counsel respectfully submit this opposition to Respondent Daniel C. Masters' Motion to Vacate the *Order Instituting Public Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 15(b), 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and Desist Order* dated September 23, 2020 (the "Motion to Vacate").

PRELIMINARY STATEMENT

In September 2020, Respondent Masters, an attorney licensed in California, agreed to settle fraud charges against him on a no admit, no deny basis. The findings in the Order[1] concerned misrepresentations and omissions in a Disclosure Statement filed by Masters in a U.S. Bankruptcy Court. As part of the settlement, Masters consented to an Order under Rule of Practice 102(e) prohibiting him from appearing and practicing before the Commission. Masters' Motion to Vacate seeks to vacate the Order and remove the Rule 102(e) bar. Masters, however, has not demonstrated good cause to be reinstated to appear and practice before the Commission. Therefore, Masters' Motion to Vacate the Order should be denied.

RELEVANT PROCEDURAL HISTORY

I. Masters' Offer of Settlement and the Commission's Findings

On August 12, 2020, Masters executed a notarized Offer of Settlement (the "Offer"), (Declaration of Thomas W. Peirce dated January 28, 2022 ("Decl."), Ex. 1.) Masters agreed to

[1] "Order" means the *Order Instituting Public Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 15(b), 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and Desist Order* dated September 23, 2020. *See* Decl. Ex. 2.

enter into settlement negotiations prior to a Wells Call. (Decl. ¶ 4.) The Offer stated the following:

> Masters hereby . . . consents to the entry of the Order, in which the Commission:
>
> 1. finds that Masters willfully violated Section 17(a)(1) and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder,
> 2. orders that Masters cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder,
> 3. Masters is denied the privilege of appearing or practicing before the Commission as an attorney,
> 4. orders that Masters be, and hereby is:
>
> (1) prohibited from serving or acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of that Act; and
>
> (2) barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading of any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.
>
> 5. orders that Masters shall . . . pay a civil money penalty in the amount of $50,000….

(Decl. Ex. 1 ¶ VI.)

The Offer stated that "Masters hereby waives, subject to the acceptance of the offer, the rights specified in Rule 240(c)(4) [17 C.F.R. §201.240(c)(4)] of the Commission's Rules of Practice." Specifically, Masters waived:

(1) All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(2) The filing of proposed findings of fact and conclusions of law;

(3) Proceedings before, and an initial decision by, a hearing officer;

(4) All post-hearing procedures; and

(5) Judicial Review by any court. (Peirce Decl. Ex. 1 ¶ V.)

In the Order, the Commission found that in 2018, Masters, as bankruptcy counsel to Worthington Energy, Inc., ("Worthington Energy" or "the Company") a Nevada shell corporation, drafted, signed and filed with the United States Bankruptcy Court for the Southern District of California ("the Bankruptcy Court") a false and materially misleading *Disclosure Statement Describing Debtor's Joint Disclosure Statement* and *Debtor's Joint Disclosure Statement* (the "Disclosure Statement") as a Chapter 11 prepackaged Disclosure Statement. (Decl. Ex. 2 ¶ 1) As detailed in the Disclosure Statement, Worthington Energy would acquire a certain private company (the "Private Company") and issue to Worthington Energy's creditors new shares, exempt from registration, in the successor company (the "Successor Company") as well as in nine additional shell companies that would be spun off from Worthington Energy's dormant oil well assets. (Decl. Ex. 2 ¶ 1) In fact, Worthington Energy didn't have an agreement with the Private Company for its acquisition. (Decl. Ex. 2 ¶ 1)

The Commission found that the Disclosure Statement, drafted, signed and filed with the Bankruptcy Court by Masters, also included false and misleading representations as to the Private Company's assets and the Successor Company's sales projections. (Decl. Ex. 2 ¶ 2) Masters stood to receive a fee of $100,000, as well as additional compensation in the form of cash or stock. (Decl. Ex. 2 ¶ 3.)

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The Commission found that Masters conceived of, and structured, Worthington Energy's Disclosure Statement; drafted a Form 8-K, issued by the Company and filed with the Commission on March 19, 2018, announcing that Worthington Energy would file for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code; solicited approval of the issuer's creditors of a "prepackaged Disclosure Statement"; drafted and signed, as counsel for Worthington Energy, the Disclosure Statement; circulated the Disclosure Statement to Worthington Energy's creditors; tabulated their votes; and filed the Disclosure Statement with the Bankruptcy Court. (Decl. Ex. 2 ¶ 6 – 8.) The Disclosure Statement stated that a reorganized Worthington Energy was to acquire the Private Company. (Peirce Decl. Ex. 2 ¶ 9.) Obligations to creditors were to be satisfied by a combination of cash and the issuance of stock in the Successor Company and in nine subsidiaries spun off from Worthington Energy's dormant oil well assets in exchange for the creditors' respective claims (Decl. Ex. 2 ¶ 9.)

The Disclosure Statement was materially false and misleading. (Decl. Ex. 2 ¶ 10.) Worthington Energy did not have an agreement with the Private Company to acquire it and Masters falsified the assets of the Private Company and Successor Company in the Disclosure Statement, falsely representing that the Private Company held almost $500,000 in assets that would be assets of the Successor Company when, in reality, the Private Company had no more than $10,000 in assets. (Decl. Ex. 2 ¶¶ 10 – 11.) Masters knew that the sales projections in the Disclosure Statement were materially misleading because they were dependent on the Successor Company having at least $500,000 in assets, which Masters knew the Successor Company would not actually have. (Decl. Ex. 2 ¶ 12.)

Finally, the Disclosure Statement was an unregistered offer of securities pursuant to the

exemption from registration for securities issued to creditors in exchange for their claims contained in Section 1145 of the Bankruptcy Code. (Decl. Ex. 2 ¶ 14.) It was also in connection with the purchase or sale of securities because at the time the Disclosure Statement was sent to Worthington Energy's creditors for approval and subsequently filed with the Bankruptcy Court for confirmation, Worthington Energy was publicly traded. (Decl. Ex. 2 ¶ 14.)

ARGUMENT

I. The Motion to Vacate Should Be Denied

The Commission has repeatedly expressed its "strong interest in the finality of [its] settlement orders." *Michael H. Johnson*, SEC Rel. No. 31818, 2015 WL 5305993, at *4 (Sept. 10, 2015) (internal quotation marks and citations omitted). "It would be unworkable to allow respondents to settle, forgo proceedings, and then argue that the result obtained by other respondents who did litigate their own cases should be applied to the settling respondents." *Richard D. Feldmann*, SEC Rel. No. 10078, 2016 WL 2643450, at *2 (May 10, 2016).

"If sanctioned parties easily are able to reopen consent decrees years later, the SEC would have little incentive to enter into such agreements." *Miller v. SEC,* 998 F.2d 62, 65 (2d Cir. 1993) (denying petition for review of Commission order that had denied motion to vacate prior Commission consent order); *cf. SEC v. Conradt*, 309 F.R.D. 186, 188 (S.D.N.Y. 2015) ("[R]elief under [Federal Rule of Civil Procedure] 60(b) is not intended to allow one side of a settlement agreement to obtain the benefits of finality while placing the other side at risk that future judicial decisions will deprive them of the benefit of their bargain. When it comes to civil settlements, a deal is a deal…."), *aff'd*, 696 F. App'x 46 (2d Cir. 2017).

The Commission's consent orders imposing sanctions therefore "remain in place in the usual case and [will] be removed only in compelling circumstances." *Johnson*, 2015 WL

5305993, at *3 (citing *Ciro Cozzolino*, SEC Rel. No. 49001, 2003 WL 23094746, at *3 (Dec. 29, 2003)); *see also Feldmann*, 2016 WL 2643450, at *2 n.24 (requiring circumstances "at least as compelling, if not more so," to alter the terms of a consent order other than a bar); *cf.* 17 C.F.R. § 201.193 ("[T]he Commission will not consider any application [by a barred individual for consent to associate] that attempts to…collaterally attack the findings that resulted in the Commission's bar order.").

Masters merely seeks to reargue the underlying facts, and shows no compelling circumstances that justify vacating the Order. Masters first claims that the Commission lacks subject-matter jurisdiction. (Motion to Vacate at 1.) The fraud, however, was in connection with the purchase or sale of securities because, at all relevant times, Worthington Energy's common stock was publicly traded. (Decl. Ex. 2 ¶ 5, 14.) When Worthington Energy filed its Form 8-K in March 2018, announcing that it would file with the Court a Disclosure Statement and, when it made its public filing of the Plan with the Bankruptcy Court in May 2018, Worthington Energy securities were quoted at all relevant times on OTC Link. (Decl. Ex. 2 ¶ 5, 7, 14.) Masters also argues that there was no justification for a cease-and-desist order. (Motion to Vacate at 1.) A cease-and-desist order was and is appropriate because Masters' conduct was egregious and the conduct occurred over multiple months. (Decl. Ex. 2 ¶ 1 – 3, 6 – 14.)

Masters first primed the market for Worthington Energy's Chapter 11 bankruptcy in March 2018 when he drafted and issued the Form 8-K, filed with the Commission, announcing the Plan. (Decl. Ex. 2 ¶ 7.) He subsequently drafted the Disclosure Statement that falsely said that the Private Company held liquid assets valued at almost a half million dollars. (Decl. Ex. 2 ¶¶ 8 – 11.) Masters added the assets to the Disclosure Statement's narrative and Balance Sheet to entice creditors to approve, and the Bankruptcy Court to confirm, the Disclosure Statement.

(Decl. Ex. 2 ¶ 3, 13.) These false assets were the basis for otherwise unsupported sales projections that promised the creditors valuable shares in exchange for their worthless claims against Worthington Energy. (Decl. Ex. 2 ¶¶ 11-13.)

Next, Masters claims he was not reckless. (Motion to Vacate at 1.) In fact, Masters was reckless and acted with scienter by engaging in a course of conduct designed to deceive the Creditors, shareholders of Worthington Energy and the Bankruptcy Court. (Decl. Ex. 2 ¶¶ 1-3, 6-13.) Finally, Masters claims that "[t] he Bankruptcy Plan complied with Bankruptcy Law and should be viewed and evaluated in light of that law." (Motion to Vacate at 1.) As the Commission findings show, Masters violated the securities laws by knowingly submitting a fraudulent Disclosure Statement to the Bankruptcy Court, distributing a fraudulent Disclosure Statement to investors, and lying to a federal judge. (Decl. Ex. 2 ¶¶ 8-14.) Masters withdrew the Disclosure Statement before the Court was scheduled to consider it, so that the Bankruptcy Court never made any determination that the Disclosure Statement complied with applicable Bankruptcy Law.

The Disclosure Statement was based on false financials and, had the Court considered it, the Court would have likely denied confirmation because the SEC staff was prepared to inform the Bankruptcy Court that the Disclosure Statement was proposed in bad faith and by means forbidden by law. 11 U.S.C. § 1129(a)(3) (to be confirmed, Plan must be "proposed in good faith and not by any means forbidden by law.")

Seeking to confirm a Disclosure Statement by soliciting votes on it by use of a materially false disclosure statement in violation of the federal securities laws would clearly run afoul of Section 1129(a)(3) of the Bankruptcy Code. *See also In re Ligon*, 50 B.R. 127 (Bankr. W.D. Tenn. 1985) (bankruptcy court denied approval of Chapter 11 disclosure statement, appointed

trustee, and sanctioned debtor's attorney for filing a disclosure statement that contained false financial information).

II. The Commission Should Not Reinstate Masters

A. The Applicable Standard: A Professional Permanently Suspended from Appearing or Practicing before the Commission May Only Be Reinstated if the Commission Finds "Good Cause Shown."

When a person has been permanently suspended from appearing and practicing before the Commission, he or she may apply for reinstatement at any time, and the Commission may reinstate the privilege of appearing and practicing before it "for good cause shown."[2] As the Commission has stated, "the determination of 'good cause' is necessarily highly fact specific."[3] In the main case in which the Commission has had occasion to address the issue of what constitutes "good cause" for reinstatement,[4] Steven Wolfe, an accountant, had been permanently denied the privilege of appearing and practicing before the Commission in December 1991. Wolfe had been involved in overstating revenues as Corporate Controller at Miniscribe Corporation over a 15-month period, and had been enjoined from further violations of

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[2] Specifically, 17 C.F.R. 201.102(e)(5) provides, in pertinent part:

> *Reinstatement*. (i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

[3] *In the Matter of Steven C. Wolfe, Sr., CPA*, SEC Release No. 1007, 1998 WL 28039 at *2 (Jan. 28, 1998) ("*Wolfe II*").

[4] *Id.*

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anti-fraud and periodic reporting provisions of the federal securities laws.[5]

In 1993, two years after his suspension, Wolfe applied for reinstatement. The Commission denied that application, stating "the time elapsed since the imposition of the sanction … is not sufficient to permit a reasonable determination whether Wolfe possessed the qualifications and fitness necessary to justify reinstatement."[6] In 1998, after seven years of suspension, Wolfe again applied for reinstatement. He pointed to his employment in positions of increasing responsibility, his completion of a series of professional education courses, and his teaching of accounting for several years at a community college. He also cited his cooperation with authorities in the criminal case against two principals in the Miniscribe fraud. The Commission staff also noted that Wolfe had exhibited candor in his submissions.[7] Moreover, Wolfe acknowledged the severity of his misconduct and accepted responsibility for his actions.[8] Finally, Wolfe submitted to an undertaking, agreeing that, if he were reinstated, he would have his work reviewed by an independent audit committee and would be subject to periodic peer review, among other things.[9]

In considering Wolfe's application, the Commission noted that "the determination of 'good cause' is necessarily highly fact specific. In making that determination, we are guided by the purpose of the Rule [102(e)(5)], which is 'to determine whether a person's professional

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[5] *Id*. at *1.

[6] *In the Matter of Steven C. Wolfe*, SEC Release No. 34-39209, 1994 WL 17094101 at *1 (Jun. 14, 1994) ("*Wolfe* I").

[7] *Wolfe II,* 1998 WL 28039 at *1- *2.

[8] *Id*. at *1.

[9] *Id*. at *2.

qualifications, including his character and integrity, are such that he is fit to appear and practice before the Commission.'"[10] The Commission concluded:

> Under all the facts and circumstances presented, we find that Wolfe has shown good cause for reinstatement. Although Wolfe's misconduct was serious, he has demonstrated that a reoccurrence of his past misconduct is unlikely, and that he presently possesses the qualifications and fitness necessary to justify reinstatement. In addition, Wolfe's conformance with the undertaking will provide continuing assurances about Wolfe's professional conduct in his practice before this Commission.[11]

B. Masters Has Not Demonstrated Good Cause for Reinstatement.

Masters has not shown good cause that the Commission should vacate his Rule 102(e) suspension and reinstate him. He largely premises this request on his arguments why his settlement agreement with the Commission should be voided entirely. As shown above, those arguments must be rejected. Beyond this, his arguments as to why his Rule 102(e) suspension should be vacated after little more than a year are manifestly insufficient to demonstrate "good cause."

1. The Commission Found that Masters Engaged in Egregious Fraudulent Conduct, and He Agreed to a Suspension Without a Right to Reapply After a Fixed Number of Years.

Weighing heavily against finding good cause to reinstate Masters are the Commission's findings that Masters committed egregious fraudulent conduct in violation of the federal securities laws. Such violations by an attorney warrant the lengthiest of suspensions:

> "The Commission considers violations of the antifraud provisions to be particularly reprehensible. *See Chris G. Gunderson, Esq*., SEC Release No. 61234, 2009 WL 4981617 at *5, *7 (Dec. 23, 2009) (permanently disqualifying, from appearing or practicing before the Commission, attorney who was permanently enjoined from

[10] *Id*. at *2, citing *Touche Ross v. SEC*, 609 F.2d 570, 579 (2d Cir. 1979).

[11] *Id*. at *2.

violating the antifraud and registration provisions); *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5."

In the Matter of Randall Goulding, Esq., SEC Release No. 1404, 2020 WL 6487997 (Oct. 29, 2020).[12] Here, as the Commission found, Masters drafted, signed and filed a false and misleading disclosure statement on behalf of his client with the Bankruptcy Court. In short, Masters masterminded a fraudulent shell trafficking scheme, being conducted before a court, and had the Commission not intervened in the bankruptcy proceeding, Masters would have controlled 10 new public shells. The Commission thus found that he committed willful violations of Section 17(a), Section 10(b), and Rule 10b-5. This conduct – as detailed in the Commission findings – likewise shows a high degree of scienter. In view of the severity of his illegal conduct, Masters agreed to a permanent suspension (that is, without a provision providing a right for reinstatement after a term of years).

2. Masters Still Does Not Appreciate the Wrongfulness of His Conduct.

In addition, that Masters' application demonstrates that he still does not recognize the wrongful nature of his conduct counsels strongly against finding good cause here. In Wolfe's case – where again the Commission did not find good cause to reinstate until after *seven years* – three critical factors were that he demonstrated candor in his submission, acknowledged the severity of his misconduct, and accepted responsibility for his actions.[13] Such recognition of wrongdoing is tellingly absent here. Much to the contrary, Masters disputes the findings in the Order, despite his prior agreement not to dispute them. His arguments challenging the

[12] This became the final decision of the Commission when Goulding did not appeal it. *See In the Matter of Randall Goulding, Esq*., SEC Release No. 92075, 2021 WL 2190896 at *1 (May 28, 2021).

[13] *Id.* at *1-*2.

Commission's findings and order amply demonstrate that he in no way acknowledges the severity of his misconduct or accepts responsibility for his actions.

Moreover, Masters provides no assurances against future violations and attacks the Commission's findings in his case. And while he cites to the eventual withdrawal of the fraudulent bankruptcy plan, such action (especially in light of his denial of any wrongdoing) represents not a recognition that he did anything wrong but a realization that he was caught.

3. Unlike Wolfe, Masters Resisted Cooperating or Assisting in the Underlying Enforcement Investigation.

Furthermore, a critical factor in the Commission finding good cause for Wolfe's reinstatement was his having assisted the criminal authorities in the prosecution of two principals in the Miniscribe fraud.[14] Here, again in stark contrast, Masters invoked the Fifth Amendment and refused to testify in the Division's investigation, delayed producing documents to the staff and provided no assistance in the Division's building of the case against another Respondent.[15] (Decl. Exs. 3, 4.) While Masters has provided letters of reference, these are far outweighed by the negative factors noted above.[16] Here, unlike in Wolfe's case, in the brief period in which he has been suspended, Masters has not demonstrated that a reoccurrence of his past misconduct is unlikely or that he presently possesses the qualifications and fitness necessary to justify reinstatement. Therefore, we do not believe that he has demonstrated good cause to be

[14] *Wolfe II* at *2.

[15] *In the Matter of Alan J. Kau*, Exchange Act Release No. 89977, 2020 WL 5700697 (Sep. 23, 2020) found Alan Kau, the former CEO of Worthington Energy, to have willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Kau was subject to a C&D, an O&D bar, a two year penny stock bar and $15,000 penalty.

[16] *See Wolfe* I, 1994 WL17094101 at *1 (not finding good cause despite accountant having provided "supporting letters written by the President of his current employer and other professional acquaintances.").

reinstated.

4. Insufficient Time Has Passed Since Masters Was First Suspended.

The brevity of time since Masters was suspended further counsels that he has not demonstrated fitness to resume practicing before the Commission. In *Wolfe*, with all of his assistance in the investigation and recognition of wrongful conduct, the Commission nonetheless justifiably denied his initial denial application for reinstatement because the time elapsed since the ban (two years) was insufficient for him to demonstrate fitness to practice before it. The Commission only reinstated him after seven years. Here, more pointedly than in the initial denial of reinstatement in *Wolfe*, "the time elapsed since the imposition of the sanction … is not sufficient to permit a reasonable determination whether Wolfe possessed the qualifications and fitness necessary to justify reinstatement." Nor does Masters have seven years of employment in positions of increasing responsibility or other indicia of long-term good conduct that was present in *Wolfe*; the highly-generalized letters of recommendation he presents are manifestly insufficient in this regard.

And finally, while under Rule 102(e)(5)(1), Masters may seek reinstatement at any time, it is worth noting that the Commission did not suspend him with a right to reapply after a term of years. As such, it would be anomalous and inappropriate – absent strong evidence of sustained achievement that clearly demonstrates a return to fitness to appear and practice before the Commission as an attorney -- to reinstate Masters despite his having served a period of suspension shorter than the vast majority of term-of-years suspensions.[17] There is far from such strong evidence here.

[17] The vast majority of suspensions for fraud are without a fixed right to reply. Where suspensions are for a term of years, they are typically 3-5 years. Out of nearly 370 attorney suspensions pursuant to Rule 102(e), only nine have been for a year or less. And even under

III. An Officer and Director Bar was Appropriate

Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act authorize the Commission, in an administrative cease-and-desist proceeding, to prohibit "conditionally or unconditionally, and permanently or for such period of time as it shall determine" any person who engages in primary violations of Section 17(a)(1) of the Securities Act or Section 10(b) of the Exchange Act from acting as an officer or director of an issuer if the person's conduct demonstrates "unfitness to serve as an officer or director" of an issuer.

Masters meets this standard. As described and cited to above, he engaged in a scheme to falsify and misrepresent the financials, sales projections and the Private Company's agreement to the Disclosure Statement, for his financial gain. (Decl. Ex. 2 ¶¶ 1 – 3, 10-13.) If his scheme had been successful, thousands of unregistered shares would have been issued to Worthington Energy's creditors and potentially purchased and sold by main-street investors in the open marketplace based on his fraudulent representations. (Decl. Ex. 2 ¶ 3, 9.) Thus, a permanent officer and director bar for Masters is fair and appropriate.

IV. Masters Should not be Refunded his $50,000 penalty

Section 8A(g)(2)(1) of the Securities Act authorizes the Commission, in cease-and-desist proceedings, to impose civil penalties for willful violations of the securities laws if doing so is in the public interest. In light of the violations discussed above, a civil penalty for Masters was appropriate. Masters paid his penalty in accordance with the terms of the Order. (Decl. Ex. 2 ¶ IV. D.) A penalty of $50,000 against Masters reflects his role in structuring and implementing the fraud. This penalty takes into account that but for the swift action of the Commission,

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those suspensions, reinstatement is not automatic, as an attorney has to demonstrate compliance with conditions for reinstatement. See, e.g., *In the Matter of Robert B. Crowe, Esq*., SEC Release No. 34-80643, Admin. Proceed. No. 3-17979 (May 10, 2017).

Masters would have profited from his fraud. The penalty is supported by comparables: *See*, *e.g. In the Matter of John Briner, Esq*., SEC Release No. 75946, 2015 WL 5472557 (Sep. 18, 2015) (disgorgement and $50,000 penalty in connection with structuring of offering fraud).

V. A Penny Stock Bar is Appropriate

Pursuant to Section 15(b)(6)(A) of the Exchange Act, the Commission is authorized to impose a penny stock bar in an administrative proceeding against persons participating in an offering of penny stock. The Commission imposed a permanent penny stock bar against Masters. (Peirce Decl. Ex. 2 ¶ IV. B(2).) During the relevant time-period, Worthington Energy's securities qualified as a "penny stock" because they did not meet any of the exceptions from the definition of a "penny stock," as defined by Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. (Decl. Ex. 2 ¶ 5.) Among other things, the securities were equity securities: (1) that were not "NMS stock," as defined in 17 CFR 242.600(b)(47); (2) that traded below five dollars per share during the relevant period; (3) whose issuer had net tangible assets and average revenue below the thresholds of Rule 3a51-1(g)(1) and (2); and (4) that did not meet any of the other exceptions from the definition of "penny stock" contained in Rule 3a51-1 under the Exchange Act. Masters was a "person participating in an offering of penny stock" because he engaged in activities for the purpose of trading and/or inducing or attempting to induce the purchase or sale of Worthington Energy, which was a penny stock. (Decl. Ex. 2 ¶ 3, 9.) A permanent penny stock bar for Masters, therefore, is and was appropriate for the same reasons as the cease-and-desist order: Masters' conduct was egregious and recurrent and he will have ample opportunity to commit additional violations in the future in the absence of a bar.

CONCLUSION

For these reasons, the Commission should deny Masters' Motion because he has not shown good cause to vacate the Commission's Order and his Rule 102(e) permanent suspension and be reinstated.

Dated: January 28, 2022

Respectfully submitted,

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