INITIAL DECISION RELEASE NO. 1075
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17218

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

In the Matter of DANIEL CHRISTIAN STANLEY POWELL	INITIAL DECISION OF DEFAULT November 1, 2016

APPEARANCE: David J. Van Havermaat for the Division of Enforcement, Securities and Exchange Commission

BEFORE: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for sanctions. Respondent Daniel Christian Stanley Powell is permanently barred 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 the issuance of a penny stock.

Procedural Background

The Commission initiated this proceeding in April 2016 by issuing an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934. OIP at 1; *see* 15 U.S.C. § 78*o*(b). This proceeding is a follow-on proceeding based on the permanent injunction entered in *SEC v. Christian Stanley, Inc*., No. 11-cv-7147 (C.D. Cal., final judgment issued Feb. 24, 2016).

The Division originally alleged in the OIP that from May to September 2009, Powell was a registered representative associated with a broker-dealer registered with the Commission. OIP at 1. It also alleged that in February 2016, the United States District Court for the Central District of California permanently enjoined Powell from committing future violations of Sections 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. *Id.* at 2. The Division concluded its allegations by describing what it alleged in its injunctive complaint. *Id.*

I held a telephonic prehearing conference on May 26, 2016, which was attended by counsel for the Division and by Powell, who was unrepresented. *See Daniel Christian Stanley Powell*, Admin. Proc. Rulings Release No. 3880, 2016 SEC LEXIS 1908, at *1 (ALJ May 27,

2016). During the conference, I granted Powell until June 21, 2016, to file an answer to the OIP and I set a schedule for filing motions for summary disposition or for sanctions. *Id.*; *see* Tr. 21, 23. Division counsel also alerted Powell that although the OIP alleges that Powell was associated with a broker-dealer from May to September 2009, based on conversations with Powell's former employer, "[i]t appears that the correct date[s] [were] March 2010 through September 2010." Tr. 19-20. In light of counsel's statement and certain statutory amendments enacted in July 2010, I asked whether the Division might need to move to amend the OIP, but left it to counsel to decide how he wished to proceed.[1] Tr. 27-28.

Powell did not answer the OIP. *Daniel Christian Stanley Powell*, Admin. Proc. Rulings Release No. 3954, 2016 SEC LEXIS 2290, at *1 (ALJ June 29, 2016). As a result, I ordered him to show cause why this proceeding should not be determined against him. *Id.* at *1-2. Powell has not responded to the order to show cause.

After I ordered Powell to show cause, the Division filed a motion for summary disposition or, in the alternative, for sanctions. The Division's motion is supported by sixteen exhibits, designated as exhibits 1 through 16. These exhibits include the Commission's injunctive complaint in *SEC v. Christian Stanley, Inc*. (Ex. 1), the first superseding indictment in *United States v. Powell*, No. 13-cr-98 (C.D. Cal.) (Ex. 2), the verdict form from *United States v. Powell* (Ex. 3), the judgment in *United States v. Powell* (Ex. 4), the district court's ruling on the Commission's injunctive complaint in *SEC v. Christian Stanley, Inc*. (Ex. 5), and the judgment on that complaint (Ex. 6).

In August 2016, the Division moved to amend the OIP to allege that Powell was associated with a registered broker-dealer from March 2010 to September 2010, rather than from May to September 2009. Powell did not respond to the Division's motion, which I granted on August 26, 2016. *Daniel Christian Stanley Powell*, Admin. Proc. Rulings Release No. 4095, 2016 SEC LEXIS 3041.

Under Rule of Practice 323, 17 C.F.R. § 201.323, I take official notice of the dockets in Powell's civil and criminal cases and the filings reflected therein.

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[1] Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to impose collateral bars—bars to participating in the securities industry in capacities in addition to the capacity in which an individual functioned at the time of his or her misconduct at issue. 15 U.S.C. § 78*o*(b)(6)(A). Effective July 22, 2010, Section 925(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act added to this list and authorized the Commission to impose bars to associating with a municipal advisor or a nationally recognized statistical rating organization. *See* Pub. L. No. 111-203, 124 Stat. 1376. The District of Columbia Circuit later held on retroactivity grounds that the Commission cannot rely on conduct predating Dodd-Frank to bar a respondent from associating with municipal advisors or rating organizations. *See Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015).

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule of Practice 323, 17 C.F.R. § 201.323. Because Powell did not file an answer to the OIP or respond to the Division's dispositive motion, he is in default.[2] *See* 17 C.F.R. §§ 201.155(a)(2), .220(f). As a result, I have accepted as true the factual allegations in the OIP. *See* 17 C.F.R. § 201.155(a). In making the findings below, I have applied preponderance of the evidence as the standard of proof.[3]

Powell was associated with a broker-dealer from March to September 2010. OIP ¶ 1; *Daniel Christian Stanley Powell*, 2016 SEC LEXIS 3041; Ex. 10. He was the founder of Christian Stanley, Inc. Ex. 7 at 17. From 2006 through at least August 2011, Powell served as Christian Stanley's chairman, CEO, and president. Ex. 7 at 16-17, 42; Ex. 8 at 41. In those capacities, he was "responsible for managing" Christian Stanley's "day-to-day operations." Ex. 7 at 42. In approximately 2009, Powell founded Daniel Christian Stanley Powell Realty Holdings (Holdings), which he described as a company he "us[ed] for asset acquisitions." Ex. 8 at 50-51. During investigative testimony, Powell said that Holdings had acquired "a gold reserve property" in Nevada and "a coal property" in Kentucky. *Id.* at 51. The gold mine interest was "a stock transaction" in which $15,000 in investor funds were used. *Id.* at 260. The coal mine acquisition was also a stock transaction. *Id.*

Powell induced investment by offering investors "debentures" purporting to pay fixed interest of between ten to fifteen percent over a set term. Ex. 8 at 104; *see id.* at 158-59, 174; Exs. 14-15. Investors were told that the debentures were secured by reverse life insurance policies, coal mines, or coal mine leases. Ex. 8 at 259-60; Ex. 12 at 2; Ex. 13 at 1; Ex. 14 at 4; Ex. 15 at 4. Powell financed the interest payments through a "debt pool" that he "structured." Ex. 8 at 104. The debt pool was comprised of funds invested in exchange for the debentures. *Id.* at 105. Powell also used the debt pool to pay for Christian Stanley's operations. *Id.* Powell was thus running a Ponzi scheme. When asked, Powell was unable to say whether any investor knew or was told that interest payments were paid from the debt pool. *Id.* at 115.

Powell used independent contractors or consultants to solicit investments. Ex. 8 at 115-16, 121-22, 124. These contractors were paid a retainer or consulting fees. *Id.* at 116-18. When asked, Powell could not precisely say how these fees were calculated, but said they ranged

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[2] Powell may move to set aside the default in this case. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

[3] *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998) ("preponderance of the evidence . . . is the standard of proof in [Commission] administrative proceedings").

between two and five percent of the amount invested. *Id.* at 116-22. In total, Powell paid the contractors $785,000 from investor funds. Ex. 11:1 at 4.[4]

Powell eventually took in over $5 million in investor funds. Ex. 11:1 at 3; Ex. 11:5 at 1. After subtracting principal and interest payments made to investors, he was left with over $4.4 million. Ex. 11:1 at 3; *see* Ex. 4 at 1 (ordering Powell to pay that amount in restitution). Of that amount, Powell spent approximately $90,000 on the purported purpose of the debentures—the purchase of coal leases and gold mine interests. Ex. 11:1 at 4. Between 2009 and August 2011, Powell spent most of his investors' funds on things that had nothing to do with what he told investors he would use the funds for. In addition to paying his consultants $785,000, he spent $470,000 on purported salaries, $212,000 on luxury cars, over $160,000 on hotels, limousines, nightclubs, and restaurants, $371,000 on promotional activity, $482,000 on renovations to one of his companies' facilities, $290,000 on retail purchases via a check card, $237,000 on cash withdrawals, $27,750 on his father and brother, and nearly $107,000 on rent for the residences of a woman whom Powell said was like a mother to him and another woman whose connection to Powell or his firms was not known. *Id.* at 4-5. By late July 2011, his companies' bank accounts held just over $400,000. *Id.* at 6; Ex. 11:5 at 2. Within weeks, after Powell gave investigative testimony, the amount in the accounts dropped less than $30,000. Ex. 11:1 at 6.

Based on the foregoing activity, the Commission filed an injunctive complaint against Powell in the United States District Court for the Central District of California. Ex. 1. Powell was also later indicted on five counts of mail fraud, five counts of wire fraud, and three counts obstruction of justice. Ex. 2 at 5-12; *see* 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1512(c)(2) (obstruction). A jury convicted Powell on all criminal charges in November 2014. Ex. 3. In June 2015, the district court sentenced Powell to 121 months' imprisonment and ordered him to pay his victims over $4.4 million in restitution.[5] Ex. 4 at 1-2.

In February 2016, the district court granted summary judgment on the Commission's injunctive complaint and permanently enjoined Powell from violating Securities Act Sections 5 and 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5. Ex. 6. Noting that Powell was convicted based on the same conduct that was alleged in the Commission's injunctive complaint, the court held that principles of collateral estoppel entitled the Commission to judgment on the Section 17(a), Section 10(b), and Rule 10b-5 claims. Ex. 5 at 3-4. The court also held that Powell's admissions, the Commission's evidence, and the jury's verdict in Powell's criminal case supported granting summary judgment on the Section 5 claim. *Id.* at 4-5. The court concluded by stating that: (1) "Powell's criminal trial" "established" "that he knowingly perpetrated [a] fraud, which lasted several years"; (2) "Powell's conviction for obstruction of justice suggests that he has not recognized the wrongful nature of his actions"; and

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[4] Exhibit 11 consists of five separate exhibits, which I have identified by using a colon followed by a numerical sub-designation.

[5] Neither Powell's indictment nor his conviction were alleged in the OIP. Nonetheless, matters not alleged in the OIP may be considered in relation to sanctions. *See Nature's Sunshine Prod., Inc.*, Exchange Act Release No. 59268, 2009 WL 137145, at *6 n.27 (Jan. 21, 2009).

(3) "Powell's occupation, which involved the management and operation of a Ponzi-like scheme, also suggests a risk of future violations." *Id.* at 5.

Conclusions of Law

Section 15(b)(6) of the Exchange Act gives the Commission authority to impose a collateral bar[6] and penny stock bar against Powell if, as is relevant here, (1) he was associated with or seeking to become associated with a broker or dealer at the time of the misconduct at issue; (2) he was enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security"; and (3) imposing a bar is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii).

The above-factors are met in this case. During part of the time he carried out his scheme, Powell was a registered representative associated with a registered broker-dealer. OIP at 1. And the district court enjoined Powell based on conduct that "involved the offer or sale and purchase or sale" of securities. Ex. 5 at 4. Finally, imposing a bar is also in the public interest.

In this latter regard, I must consider the factors described in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), when deciding whether the public interest supports imposing a bar. *See Thomas C. Gonnella*, Advisers Act Release No. 4476, 2016 WL 4233837, at *12 (Aug. 10, 2016). The public interest factors include:

> the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations.

Id. The Commission also considers the deterrent effect of administrative sanctions. *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016). The public interest inquiry is "flexible" and "no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

Before imposing a collateral bar, an administrative law judge must determine, based on the evidence presented, "whether such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016). I must therefore "'review [Powell's] case on its own facts' to make

[6] A collateral bar, also referred to as an industry bar, is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014); *see also* 15 U.S.C. § 78*o*(b)(6)(A) (listing the capacities in which a respondent can be barred).

findings regarding [his] fitness to participate in the industry in the barred capacities." *Id.* (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). A decision to impose a collateral bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'"[7]

The evidence shows that the public interest supports imposing a full collateral bar. Powell perpetrated a fraud "which lasted several years." Ex. 5 at 5. He lied to investors at every turn. He told investors that the debentures he sold them involved very little risk and were secured by reverse life insurance policies, coal mines, or coal mine leases. Ex. 8 at 259-60; Ex. 12 at 2; Ex. 13 at 1; Ex. 14 at 4; Ex. 15 at 4. None of these assertions were true. Powell issued investors what purported to be "secured corporate debenture indentures," documents which appeared to be genuine and thus gave an air of legitimacy to the fraud Powell perpetrated. *See* Exs. 14, 15. In reality, these documents merely evidenced the breadth of Powell's lies.

Not counting the money he returned to them, Powell caused his victims significant harm—over $4.4 million in losses. Ex. 11:1 at 3. Of the millions he received from his victims, Powell used only $90,000 on the purported purpose of the debentures. *Id.* at 4. The balance was spent seemingly on whatever Powell felt like spending it on: salaries; luxury cars; hotels, limousines, nightclubs, and restaurants; retail purchases; cash withdrawals; payments to or for the benefit of his family and friends; and promotional activity and payments to soliciting consultants, *i.e.*, efforts to attract more victims. *Id.* at 4-5.

The Commission's interest in protecting the investing public and deterring similar misconduct would be served by barring Powell from the securities industry. It is axiomatic that a respondent who chooses to operate a Ponzi scheme is not someone who should be permitted to remain in the securities industry.

Lying to potential investors in order to obtain their money to support one's Ponzi scheme and lifestyle easily qualifies as egregious. By its nature, a Ponzi scheme involves recurrent fraud; attracting ever more investors is necessary in order to keep the scheme operating. Similarly, Powell did not lure in his victims through inadvertence. Rather, he acted with a high degree of scienter, lying to them about the risk of investing and what he intended to do with their funds. He also lied every time he gave an investor a seemingly legitimate debenture certificate because he knew the debentures were bogus. The egregiousness of Powell's conduct is underscored by the fact that the district court sentenced him to over ten years in prison.

Powell has made no assurances that his misconduct will not recur nor shown that he recognizes the wrongful nature of his conduct. To the contrary, the district court explained that "Powell's conviction for obstruction of justice suggests that he has not recognized the wrongful nature of his actions." Ex. 5 at 5. Finally, the fact and nature of Powell's misconduct "raises an

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[7] *Ross Mandell*, 2014 WL 907416, at *2 (quoting *McCarthy*, 406 F.3d at 189-90); *see also John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012) ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors."), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016).

inference that" he will repeat it.[8] Indeed, the district court concluded that "Powell's occupation, which involved the management and operation of a Ponzi-like scheme, also suggests a risk of future violations." Ex. 5 at 5.

In light of the factors discussed above, I find that it is in the public interest to impose a full collateral bar against Powell.

Order

The Division of Enforcement's motion for sanctions is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934, Daniel Christian Stanley Powell is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Under Section 15(b) of the Securities Exchange Act of 1934, Daniel Christian Stanley Powell is BARRED from participating in an offering of 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 of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule 111. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occurs, the initial decision shall not become final as to that party.

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James E. Grimes
Administrative Law Judge

[8] *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)); *see John A. Carley*, Securities Act Release No. 8888, 2008 WL 268598, at *22 (Jan. 31, 2008) (determining whether to impose a cease-and-desist order and holding that "[o]ur finding that a violation is egregious raises an inference that [the misconduct] will" recur), *remanded on other grounds*, *Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).