

INITIAL DECISION RELEASE NO. 1005
ADMINISTRATIVE PROCEEDING
File No. 3-16755

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

In the Matter of

SUCCESS TRADE, INC.,
SUCCESS TRADE SECURITIES, INC., and
FUAD AHMED

INITIAL DECISION
April 28, 2016

APPEARANCES: Dean M. Conway and Christian D. H. Schultz, for the Division of
Enforcement, Securities and Exchange Commission

William C. Saacke, Esq., for Respondent Fuad Ahmed

BEFORE: Jason S. Patil, Administrative Law Judge

Summary

This initial decision imposes permanent officer and director, associational, penny stock, and investment company bars against Respondent Fuad Ahmed.

Procedural History

On August 14, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP), in which it accepted Respondents' offers of settlement, made findings, imposed certain sanctions, and directed further proceedings be held for Ahmed. The Commission found by consent that Respondents willfully violated Securities Act of 1933 Sections 5(a), 5(c), and 17(a), as well as Securities Exchange Act of 1934 Section 10(b) and Rule 10b-5 thereunder. OIP at 10. The Commission ordered Respondents to cease and desist from committing or causing any present or future violations of these provisions; revoked the broker-dealer registration of Success Trade Securities, Inc. (STS); and ordered Respondents to jointly and severally pay disgorgement of \$12,777,395.80 and prejudgment interest of \$1,503,424.84, as well as a civil penalty of \$12,777,395.80. *Id.* at 11. The Commission further ordered, and Ahmed agreed to, additional proceedings to determine whether Ahmed should be "suspended, prohibited and/or barred" from:

1. 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 the Exchange Act, if Ahmed's conduct demonstrates unfitness to serve as an officer or director of any such issuer;
2. being associated with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
3. 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 in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; or
4. serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

OIP at 10.

I held a hearing on January 20, 2016, and admitted into evidence five Division exhibits.¹ Ahmed did not submit any exhibits but testified on his own behalf and called two character witnesses: Riaz Ahmad Khokhar, who loaned money to Success Trade, Inc. (STI), and William Davis, Sr., an STI investor.²

Facts

For purposes of this proceeding, the OIP's allegations "shall be accepted as and deemed true," and Ahmed is "precluded from arguing that he did not violate the federal securities laws

¹ Citations to the Division's exhibits are noted as "Div. Ex. ____." The admitted exhibits are the OIP (Div. Ex. 379), three signed offers of settlement as to each Respondent (Div. Exs. 351-53), and an October 9, 2015, letter sent by Ahmed to the Commission and the Financial Industry Regulatory Authority (FINRA) (Div. Ex. 393).

² Ahmed filed a prehearing brief but declined to file a posthearing brief. Ahmed's prehearing brief and the Division's posthearing brief are noted as "Resp. Br. at ____" and "Div. Br. at ____," respectively. Citations to the Division's proposed findings of fact and conclusions of law are noted as "Div. Proposed Findings at ____."

described in [the OIP]” or “challeng[ing] the validity of [the OIP].” OIP at 10. I incorporate by reference all facts in the OIP, but for context I provide a brief summary below.

From February 2009 to at least February 2013, Ahmed was the founder, president, and CEO of STI and its registered broker-dealer subsidiary, STS. OIP at 2-3; Tr. 16-17. During that time period, Respondents offered and sold approximately \$20 million in STI promissory notes to at least sixty-five investors in unregistered, non-exempt transactions. OIP at 2. Many of the investors were customers of STS and advisory clients of Investment Adviser A, which employed registered representatives associated with STS and offered and sold STI notes to clients. *Id.* Contrary to what they told investors in private placement memoranda (PPMs) and other communications, Respondents misappropriated investor money to: pay at least \$800,000 of Ahmed’s personal expenses; make monthly payments of approximately \$1,300 on Ahmed’s Range Rover lease; provide \$98,000 in interest-free, unsecured, and undocumented loans to Ahmed’s brother; and fund, with \$1.25 million, Investment Adviser A’s payroll and operations. *Id.* at 2, 5. STI and Ahmed also used money from later STI note sales to pay \$4 million in interest to earlier noteholders, thereby perpetuating the fraud. *Id.* Finally, in late 2012 and early 2013, Respondents fraudulently induced some noteholders to roll-over, convert, or extend their STI notes before the scheme ultimately collapsed in April 2013. *Id.* at 2, 6-7.

On June 25, 2014, prior to the OIP issuing, a FINRA hearing panel found that Ahmed and STS had violated Securities Act Section 5 and Exchange Act Section 10(b) and Rule 10b-5 thereunder, based on the same set of facts as in this proceeding, and imposed sanctions. Div. Proposed Findings, Ex. 1.³ Ahmed appealed the panel’s decision to FINRA’s National Adjudicatory Council (NAC), and on September 25, 2015, NAC affirmed the hearing panel’s decision. *See* Div. Ex. 393 at PDF pages 7-68. On October 14, 2015, Ahmed appealed the NAC decision to the Commission. *Id.* at 1-6. The appeal is currently pending. *See Fuad Ahmed*, Admin. Proc. File No. 3-16900.

I have considered all the evidence, and where I have found a fact supported by the preponderance of evidence, and relevant to any remaining remedies issues, I have noted it below in my analysis. *See Steadman v. SEC*, 450 U.S. 91, 100-04 (1981).

Remedial Actions

The Division requests permanent officer and director, associational, penny stock, and investment company bars. Div. Br. at 9-18. These bars are authorized by Securities Act Section 8A(f), Exchange Act Sections 15(b)(6) and 21C(f), and Investment Company Act of 1940 Section 9(b). 15 U.S.C. §§ 77h-1(f), 78o(b)(6), 78u-3(f), 80a-9(b).

Securities Act Section 8A(f) and Exchange Act Section 21C(f) authorize barring Ahmed from acting as an officer or director of any issuer with securities registered pursuant to Exchange Act Section 12 or required to file reports under Exchange Act Section 15(d) if he has, respectively, violated Securities Act Section 17(a)(1) or Exchange Act Section 10(b), and his

³ I take official notice of FINRA’s public documents, pursuant to 17 C.F.R. § 201.323.

conduct demonstrates unfitness to serve as an officer or director of any such issuer. 15 U.S.C. § 77h-1(f), 78u-3(f).

Exchange Act Section 15(b)(6) authorizes the Commission to bar Ahmed from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization, or from participating in an offering of penny stock if Ahmed: (1) was associated with a broker or dealer at the time of the misconduct; (2) willfully violated, or aided and abetted any violation of, the Securities Act, Exchange Act, Investment Company Act, or Investment Advisers Act of 1940; and (3) the sanction is in the public interest. 15 U.S.C. §§ 78o(b)(4)(D), (E), (6)(A)(i).

Investment Company Act Section 9(b) authorizes barring Ahmed from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if Ahmed: (1) willfully violated or willfully aided and abetted violations of any provision of the Securities Act, Exchange Act, Advisers Act, or Investment Company Act; and (2) such a bar is in the public interest. 15 U.S.C. § 80a-9(b).

Ahmed, as president and chief executive officer of STS, was associated with a broker-dealer at the time of the misconduct and he willfully violated, among other provisions, Securities Act Section 17(a) and Exchange Act Section 10(b). OIP at 2-3, 10. Therefore, the associational, penny stock, and investment company bars will be ordered if in the public interest, and the officer and director bar will be ordered if I deem Ahmed unfit to serve as an officer or director of a registered issuer or filer.

A. Sanction Considerations

In determining whether a bar is in the public interest, I am guided by the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). These factors are: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman*, 603 F.2d at 1140. The inquiry is "flexible, and no single factor is dispositive." *ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 SEC LEXIS 4474, at *102 (Oct. 30, 2015) (internal quotation marks omitted).

For the officer and director bar, I consider the six non-exclusive *Patel* factors in assessing whether a respondent is unfit to act as an officer or director of a registered issuer or filer: (1) the egregiousness of the underlying securities law violation; (2) the defendant's recidivism; (3) the defendant's role or position in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur. *See SEC v. Bankosky*, 716 F.3d 45, 47-49 (2d Cir. 2013); *SEC v. Patel*, 61 F.3d 137, 141 (2d Cir. 1995). Given the significant overlap of factors one, four, and six with the *Steadman* factors, I conduct a separate analysis only of factors two, three, and five below.

1. Egregiousness (*Steadman and Patel* factor)

The OIP found that “Ahmed’s violations were egregious in that they involved repeated knowing misstatements and omissions, occurred over a period of approximately four years, and resulted in a fraud of a significant magnitude.” OIP at 9. The PPMs “Ahmed drafted” and “used . . . in soliciting investors” “contained material misrepresentations and made material omissions.” *Id.* at 4-5. “The PPMs misrepresented that the bulk of the proceeds of the STI Note offering would be used to grow and promote STI’s business.” *Id.* at 5. Contrary to Ahmed’s representations to investors, he “misappropriated proceeds to pay [his] personal expenses, remit checks to [his] brother, and fund Investment Adviser A’s payroll and operations.” *Id.* at 2. “Ahmed also used the proceeds from later STI note sales to make interest payments to earlier noteholders, thereby perpetuating the fraud,” and he “fraudulently induced some noteholders to convert or extend their STI notes before the scheme ultimately collapsed.” *Id.* The sums he misappropriated were substantial, totaling over \$6 million. *Id.* at 5. Further, most “who invested in the STI notes were young professional athletes, who, in some cases, were financially unsophisticated and did not qualify as accredited investors.” *Id.* at 4. Accordingly, Ahmed’s conduct was egregious.

2. Recurrence (*Steadman* factor)

The OIP establishes that “Ahmed’s violations . . . involved repeated knowing misstatements and omissions, [and] occurred over a period of approximately four years.” OIP at 9. During this lengthy period, Ahmed “offered and sold 152 STI [n]otes . . . to at least 65 individual investors.” *Id.* at 4. These notes were sold pursuant to four false and misleading PPMs that Ahmed drafted. *Id.* at 4-5. Moreover, Ahmed misappropriated investor money on a repeated and periodic basis. *Id.* at 5. Accordingly, Ahmed’s misconduct was recurrent.

3. Scierter (*Steadman and Patel* factor)

The OIP establishes that Ahmed acted with scierter. Ahmed “acted intentionally in performing his fraudulent acts” and knew or was reckless in not knowing that: “the PPMs contained material misrepresentations and omitted material information”; “it would be impossible for STI to list its stock on an exchange by June 2013, and that there was no reason to believe that STI’s stock would open at \$6.40 per share”; “STI could not complete [an] acquisition by April 2013”; “many of the purchasers of STI [n]otes were neither accredited nor sophisticated”; and that a valuation he touted to investors from an unreliable report was misleading. OIP at 6-9.

Although Ahmed conceded that “[i]n some cases” he intentionally used new investor money to pay earlier investors, he generally disputed having intentionally committed wrongdoing, testifying that “[n]ot even for a second did I want to mislead my investors. Not even for a millisecond.” Tr. 160-61 (also disputing that he “intentionally misuse[d] investor money to pay [his] personal expenses” and that he “intentionally misuse[d] investor money to give \$98,000 to [his] brother.”). As discussed above, I am precluded from reaching a finding contrary to that in the OIP, and therefore take as true that Ahmed acted with scierter.

4. Sincerity of assurances against future violations (Steadman factor)

Ahmed testified that he “will never, ever [commit similar misconduct] again.” Tr. 235. He explained that in the future, he will hire lawyers and accountants to assist him, and “will follow all of the processes,” because “[i]t’s better to spend more money upfront than to regret it later on.” Tr. 235. Ahmed testified that in retrospect he would have hired “a professional CFO” to help him run the company. Tr. 201-02.

I find Ahmed’s desire to avoid future violations to be sincere, but am given pause by the fact that these stated safeguards all require substantial financial resources, which Ahmed has testified he lacks. *See* Tr. 160-61, 235. Therefore, I give limited weight to Ahmed’s assurances.

5. Recognition of wrongdoing (Steadman factor)

Throughout the hearing Ahmed took inconsistent positions, both acknowledging that he had “signed off on” the contents of the OIP and “stand[s] by everything” in it, but then ardently denying the findings of wrongdoing. Tr. 160-62; *see* Tr. 136-37, 158, 180-81. Despite agreeing not to “take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the [OIP] or creating the impression that the [OIP] is without factual basis,” Ahmed repeatedly argued that because he lacks financial resources, he “had no choice but to sign off on [the OIP] or spend the rest of [his] life fighting the SEC and different agencies.” Div. Ex. 351 at 6; Tr. 39-40, 43, 160-61, 235. While I sympathize with Ahmed’s desire to put this action behind him and settle based on financial constraints, Ahmed’s repeated challenges to the OIP’s findings and the seriousness of his actions demonstrate a failure to recognize his wrongdoing.

Under oath, Ahmed repudiated the OIP’s findings that he:

- acted intentionally in performing his fraudulent acts (*compare* OIP at 9, *with* Tr. 136, 160-61);
- misused investor money to pay at least \$800,000 of his own personal expenses (*compare* OIP at 5, *with* Tr. 146-47, 161);
- misused investor money to give an approximately \$98,000 interest-free, unsecured, and undocumented loan to his brother (*compare* OIP at 5, *with* Tr. 139, 161-62);
- procured and disseminated a misleading valuation from an unreliable report (*compare* OIP at 7, 9, *with* Tr. 126, 152-56);
- misled investors by falsely telling them that STI would be listed on a European stock exchange when, at that time, STI had not applied to any exchanges, registered or taken any steps towards registering its stock, or identified a market maker for the stock (*compare* OIP at 7-8, *with* Tr. 157-58); and

- misled investors into believing that STI would acquire an Australian online broker-dealer by April 2013 when in reality STI lacked the funds or financing commitments to fund the purchase (*compare* OIP at 8, *with* Tr. 164-65).

In addition, in his pending appeal of FINRA’s NAC decision, which he filed after the OIP issued, Ahmed similarly disputes many of the same facts. *See* Div. Ex. 393.⁴

In Ahmed’s view, he is a victim who was singled out by FINRA and the Commission due to his religion and nationality.⁵ *See* Tr. 150 (“I have been singled out, discriminated against”); Tr. 215-16 (“Here I’m being made an example of . . . I am being barred, my name is destroyed . . . [c]ome on, that’s fair? You call that American justice?”); Tr. 225 (“[M]y case is about overzealousness . . . [m]y case is about let’s go and get this guy.”); Tr. 266 (“Do you know for a second that what my life has been? It has been living hell, literally living hell . . . I’m one man taking on the U.S. government. That’s a huge task.”); Resp. Prehearing Br. at 1. Ahmed faults the Commission and FINRA for the problems befalling him and his investors. *See* Tr. 213 (“[FINRA] destroyed my investors’ value.”); Tr. 263 (“My life has been destroyed by SEC and FINRA.”).

However, Ahmed at times acknowledged that he had “messed up,” “made mistakes,” and “abused [his] position as an officer and director.” Tr. 129, 136. Ahmed testified that:

I should have done a better job of disclosure. I should have done a better job of financials. I should have done a better job of structuring the notes . . . [m]y mistake. I should have sold my company or taken capital from private equity fund. And I should have hired additional people for supervising and making sure that the capital that’s being raised is being accounted for, and I should have [sought] a lot of legal advice that I did not. Those are my mistakes. I am sorry for that, but what really bothers me is that my investors are out their 10 million plus dollars. They need to be made whole and that is my responsibility. And I will never run away from that. I refuse to and I will never do that.

⁴ Tellingly, although Ahmed acknowledged at the hearing that he at times used proceeds from later investors to pay interest to earlier investors, Tr. 161, he argued in his NAC appeal that this finding was “not true” and a “blatantly false statement[] unsupported by evidence.” Div. Ex. 393 at 2.

⁵ Ahmed failed to present any evidence, other than his own testimony, supporting these allegations and I have found no indication that there is any merit to them. When I questioned Ahmed’s counsel about this assertion during a prehearing conference on January 6, 2016, Mr. Saacke responded that

there’s really nothing with respect to this tribunal hearing that my client has an issue with, I think it’s just the background of everything, you know, the issues with my, you know, my client’s race, and the issues going on in, frankly, in the world, and the issue of terrorism and what not. And so, it’s a very sensitive issue for my client, there was nothing meant to point, with respect to this proceeding, that anything had been done wrong.

Prehearing Tr. at 17-20.

Tr. 238.

Despite acknowledging some shortcomings, however, Ahmed generally minimized the seriousness of his mistakes, furthering his narrative that he had been unfairly singled out. *See* Tr. 217 (“I made mistakes, but did these mistakes rise to this level? No.”). Taken altogether, I am unconvinced that Ahmed fully understands the wrongful nature of his conduct. Ahmed’s view of himself as a victim overpowers his contrition, as is evident by Ahmed’s blaming of others, his vehement objections throughout the hearing to the findings of wrongdoing he had previously agreed not to contest, and his recent NAC appeal contesting the same facts.

6. Opportunities for future violations (Steadman and Patel factor)

“Ahmed has represented that he desires to seek employment as an officer or director of a public company in the future,” and he appears to particularly contest the imposition of an officer and director bar. OIP at 10; *see* Tr. 14-15, 40, 193-94. Ahmed recognizes that future service as an officer or director of a public company would present opportunities for future securities violations, but requests that he not be barred so he can make money to pay his investors back. Tr. at 223-24, 240, 261. While that sentiment is admirable, the reality remains that a return to the industry or an officer and director position would afford wide-ranging opportunities to commit violations. For example, Riaz Ahmad Khokhar testified that he would be willing to invest in a company run by Ahmed in the future. Tr. 67-68.

7. Recidivism (Patel factor)

Apart from the misconduct at issue that continued for approximately four years, no evidence of prior violations was presented. Both Khokhar and William Davis, Sr., testified favorably regarding Ahmed’s character. Khokhar testified that Ahmed is “honest,” “hardworking,” and that “integrity-wise[, h]e’s a very solid person.” Tr. 67, 96. Similarly, Davis testified that he met Ahmed seventeen years ago, described him as “honest” and noted that he has never known Ahmed to be unethical. Tr. 101, 105-06. This factor weighs in Ahmed’s favor.

8. Role or Position in the Fraud (Patel factor)

As the CEO and president (and sole officer or director) of STI and STS, Ahmed played a central role in the fraud and “was able to direct the[] participation [of STI and STS] in the fraud.” OIP at 3, 9. Ahmed personally drafted and used the materially misleading PPMs to solicit investors and misappropriated investor money to pay for his own personal expenses and provide a loan to his brother. By virtue of his position, Ahmed also authorized the use of money from later STI note sales to make payments to earlier investors, and fraudulently induced noteholders to roll-over, convert, or extend the notes. This *Patel* factor weighs against Ahmed.

9. Economic Stake in the Violation (Patel factor)

As the CEO and president of STI and STS, Ahmed had a significant economic stake in the violation. Ahmed had a direct incentive to induce investors to invest in his company, and

also directly and personally benefited by misappropriating at least \$800,000 to pay for his personal expenses. This *Patel* factor weighs against Ahmed.

B. Sanction Determinations

In addition to the other factors, Ahmed's scienter, central role in the fraud, failure to fully recognize his wrongdoing, and likelihood of future recurrence are troubling, particularly given his continued desire to serve as an officer and director in the future and the likely future opportunities available to him. Therefore, based on the foregoing factors, I find that a permanent officer and director bar is warranted because Ahmed is unfit to serve in each respect, and that associational, investment company, and penny stock bars would best protect the public interest. See *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *23 (Feb. 13, 2009) ("The securities industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants. Indeed, the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business." (internal quotation marks and footnote omitted)); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)).

RECORD CERTIFICATION

Pursuant to 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the record index issued by the Commission's Office of the Secretary on April 11, 2016.

ORDER

I ORDER that, pursuant to Section 8A(f) of the Securities Act of 1933 and Section 21C(f) of the Securities Exchange Act of 1934, Fuad Ahmed is PERMANENTLY BARRED from acting as an officer or director of any issuer with securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or that is required to file reports under Section 15(d) of the Securities Exchange Act of 1934.

I FURTHER ORDER that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Fuad Ahmed is PERMANENTLY BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

I FURTHER ORDER that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Fuad Ahmed is PERMANENTLY BARRED from participating in an offering of penny stock, including acting as any promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

I FURTHER ORDER that, pursuant to Section 9(b) of the Investment Company Act of 1940, Fuad Ahmed is PERMANENTLY BARRED from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule 111 of the Commission's Rules of Practice, 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 occur, the initial decision shall not become final as to that party.

Jason S. Patil
Administrative Law Judge