UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11064 / May 20, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 94956 / May 20, 2022

Admin. Proc. File No. 3-20051

In the Matter of DANIEL C. MASTERS	ORDER DENYING MOTION TO VACATE SETTLED ORDER AND OTHER RELIEF

Daniel C. Masters, an attorney, moves to vacate a settled order that the Commission entered against him with his consent.[1] The Division of Enforcement and Office of General Counsel oppose the motion. Masters has not established the requisite compelling circumstances to justify vacating his settlement.[2] Accordingly, we deny the motion. Masters also seeks to restore his privilege of appearing or practicing before the Commission as an attorney. Because he has not shown good cause for reinstatement, we deny that request.[3]

I. Background

In 2018, Masters represented Worthington Energy, Inc., before the U.S. Bankruptcy Court for the Southern District of California.[4] At that time, Worthington Energy's common stock was registered with the Commission and traded over the counter. On behalf of Worthington Energy, Masters drafted a current report on Form 8-K that was filed with the Commission in March 2018. The current report announced that Worthington Energy would petition for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. It also disclosed that Worthington Energy would solicit the approval of its creditors for a "prepackaged" plan of reorganization and made representations about the nature of the plan and formation of a successor company. Lastly, it stated that

1 *See Daniel C. Masters*, Securities Exchange Act of 1934 Release No. 89976, 2020 WL 5700696 (Sept. 23, 2020).

2 *See Gregory T. Bolan Jr.*, Exchange Act Release No. 85971, 2019 WL 2324336, at *3 (May 30, 2019).

3 17 C.F.R. § 201.102(e)(5)(i).

4 *See In re Worthington Energy, Inc.*, No. 18-bk-2702 (Bankr. S.D. Cal.).

Worthington Energy would not send the plan to its shareholders for approval and that they were deemed to have rejected the plan because shareholders would "nether receive nor retain anything of value after the proposed reorganization," as full priority would be given to paying the creditors in the bankruptcy proceeding.

Masters drafted the plan of reorganization and an accompanying disclosure statement, circulated these documents to Worthington Energy's creditors and tabulated their votes, and filed the plan and disclosure statement with the bankruptcy court in May 2018. The plan represented that Worthington Energy would acquire a private company to form a successor company and, in exchange for creditors' respective claims, offered the creditors cash and new shares, exempt from registration, in the successor company as well as in nine additional shell companies that would be spun off from Worthington Energy's dormant oil well assets.

In May 2018, Commission staff sent a comment letter to Masters, objecting to the plan of reorganization. The staff noted that the plan and disclosure statement had multiple deficiencies and contained unsupported and unreliable information, and that the plan amounted to "nothing more than an attempt to traffic in public corporate shells in contravention of Sections 1129(d) and 1141(d)(3) of the Bankruptcy Code and is unconfirmable." Worthington Energy then moved to dismiss the bankruptcy petition, which the court granted in July 2018.

In September 2020, we issued an order instituting administrative and cease-and-desist proceedings against Masters, in accordance with an offer of settlement submitted by him.[5] We found that the disclosure statement and plan of reorganization contained materially false and misleading information. The plan falsely stated that a reorganized Worthington Energy had an agreement to acquire a private company and that the private company had substantial assets.[6] Because the assets of the successor company were overstated, Masters knew that the plan's sales projections about the successor company were materially misleading.[7] Masters made these false and materially misleading statements in the plan to entice Worthington Energy's creditors to vote in favor of the plan and the bankruptcy court to confirm it.[8] Our order summarized Masters's involvement in drafting Worthington Energy's Form 8-K, plan of reorganization, and disclosure statement and how the plan constituted an unregistered offer of securities and was in connection with the purchase or sale of securities.[9]

We found that Masters willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Accordingly, we imposed a cease-and-desist order against Masters, prohibited him from serving as an officer or director of a public company, barred him from participating in any

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5 *See Masters*, 2020 WL 5700696.

6 *Id.* at *2–3.

7 *Id.* at *3.

8 *Id.*

9 *Id.* at *1–3.

offering of penny stock, denied him the privilege of appearing or practicing before the Commission as an attorney, and ordered him to pay a civil money penalty of $50,000.[10]

Masters consented to the sanctions and the entry of the settled order, but he did not admit or deny the findings. He did admit, however, that the Commission had jurisdiction over him and the subject matter of the proceeding.[11] In his offer of settlement, he also agreed to waive a hearing and further proceedings, in accordance with Rule 240 of the Commission's Rules of Practice.[12]

In January 2022, Masters, through counsel Norman B. Arnoff, moved to vacate the settled order. In opposition, the Division of Enforcement and Office of General Counsel point to the interest in finality of settled orders and argue that there is no compelling reason to vacate the settlement and that Masters has not shown good cause for reinstatement. In reply, Masters's counsel has made multiple submissions and sent emails to multiple Commission offices.[13]

II. Analysis

A. Masters has not established compelling circumstances that justify vacating his settlement, and he has waived further proceedings.

"We have a 'strong interest' in the finality of our settlement orders."[14] "Agreements settling litigation are 'solemn undertakings,' and public policy 'strongly favors' settlements; as

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[10] *Id.* at *3–4.

[11] *Id.* at *1.

[12] *See* 17 C.F.R. § 201.240(c)(4).

[13] Papers filed in connection with any administrative proceeding must be filed electronically through our Electronic Filings in Administrative Proceedings (eFAP) system, unless the party submits a certification of inability to file electronically. 17 C.F.R. § 201.151(a), .152(a); eFAP, https://www.sec.gov/efap. Sending emails to Commission offices is not the appropriate means to request relief under the Rules of Practice. Moreover, sending multiple submissions in reply is inconsistent with our rules, which contemplate a motion followed by opposition and reply briefs, 17 C.F.R. § 201.154(b), and which discourage repetitive, overlapping, or duplicative filings that contribute to "unnecessary delay or needless increase" in the resources needed to resolve a proceeding, 17 C.F.R. § 201.153(b)(1)(iii); *see also Am. CryptoFed DAO LLC*, Exchange Act Release No. 93806, 2021 WL 5966848, at *1 n.3 (Dec. 16, 2021). Although we have not done so in this proceeding, we may reject filings that do not comply with our rules. *See* 17 C.F.R. § 201.180(b); *Edward M. Daspin*, Exchange Act Release No. 10813, 2020 WL 4463315, at *7 n.60 (Aug. 3, 2020).

[14] *Michael H. Johnson*, Exchange Act Release No. 75894, 2015 WL 5305993, at *4 (Sept. 10, 2015) (quoting *Kenneth W. Haver, CPA*, Exchange Act Release No. 54824, 2006 WL 3421789, at *3 (Nov. 28, 2006)).

such, settlement agreements should 'be upheld whenever equitable and policy considerations so permit.'"[15] "As a result, . . . a respondent must establish 'compelling circumstances' to justify vacating a settled order."[16]

Masters has not shown the requisite compelling circumstances. Masters—who is a lawyer—"does not suggest that his offer to settle was not voluntary, knowing, or informed."[17] Rather, he attacks the legal and factual bases of the settled order. He argues that: (1) the Commission lacked "subject-matter jurisdiction" over his misconduct because it was not in connection with an offer, purchase, or sale of securities; (2) the bankruptcy case was withdrawn following the Commission's comment letter objecting to the plan of reorganization and disclosure statement, and therefore his conduct in the bankruptcy proceeding cannot support sanctions imposed by the Commission; (3) the allegedly false statements in the plan of reorganization and disclosure statement were true or, at the least, he reasonably believed them to be true; and (4) his conduct complied with bankruptcy law.

These arguments are not premised on any newly discovered evidence, an intervening change in law, or any other unforeseeable circumstance.[18] All of these arguments could have been raised before. Masters made the conscious choice to forgo litigation and resolve the

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[15] *Bolan*, 2019 WL 2324336, at *3 (quoting *Ford Motor Co. v. Mustangs Unlimited*, 487 F.3d 465, 469–70 (6th Cir. 2007)).

[16] *Id.* (quoting *Richard D. Feldmann*, Exchange Act Release No. 77803, 2016 WL 2643450, at *2 (May 10, 2016)); *cf. Miller v. SEC*, 998 F.2d 62, 65 (2d Cir. 1993) ("If sanctioned parties easily are able to reopen consent decrees years later, the SEC would have little incentive to enter into such agreements.").

[17] *Haver*, 2006 WL 3421789, at *3.

[18] *See Feldmann*, 2016 WL 2643450, at *2 ("Feldmann bases his request to modify the settled order entirely on circumstances that were foreseeable when he entered into the settlement."); *id.* at *3 (denying a request to reduce a settled disgorgement amount because "there has been no post-settlement, judicial determination in light of which the sanctions imposed were no longer authorized by the governing substantive law"); *see also SEC v. Conradt*, 309 F.R.D. 186, 188 (S.D.N.Y. 2015) (ruling that even new developments in the law, which did not overrule any binding precedent, were insufficient to justify vacating consent judgments), *aff'd*, 696 F. App'x 46 (2d Cir. 2017); *Clayton v. Ameriquest Mortg. Co.*, 388 F. Supp. 2d 601, 609 (M.D.N.C. 2005) (rejecting argument to vacate settlement on grounds of newly discovered evidence where the "information was available to the Plaintiffs, and certainly could have been uncovered with the exercise of reasonable diligence on their part"); *Bolan*, 2019 WL 2324336, at *5 ("[N]o statutory prerequisites for imposing the settled order on Bolan have been vacated and no court has held that we lacked authority to impose the settled order's sanctions against Bolan."); *Edward I. Frankel*, Exchange Act Release No. 38378, 1997 WL 103785, at *2 n.5 (Mar. 10, 1997) (noting that where the respondent "elected to settle the matter and did not develop the record further," he "cannot now complain that the record is inaccurate or incomplete").

allegations by consenting to the settled order; his change of heart does not constitute compelling circumstances to justify vacating the settled order.[19]

Moreover, Masters's motion to vacate the settled order fails because he waived his right to further proceedings when he settled.[20] Our rules provide that a settling respondent waives all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted; the filing of proposed findings of fact and conclusions of law; proceedings before, and an initial decision by, a hearing officer; all post-hearing procedures; and judicial review by any court.[21] Our rules also provide that settlement offers "shall recite or incorporate" these waiver provisions, and Masters's settlement offer did so.[22] His waiver thus "precludes him from challenging his settlement" now.[23]

In any event, Masters's arguments are without merit. Masters mainly argues that we lacked "subject-matter jurisdiction" over his misconduct because it was not in connection with an offer, purchase, or sale of securities.[24] But both the federal courts and we have consistently construed these nexus requirements broadly and flexibly.[25] As we found in the settled order, the plan of

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19 *See Conradt*, 309 F.R.D. at 188 (emphasizing that defendants chose to settle, "thereby receiving the certainty of the settlement terms in place of the risks of litigation"); *cf. Ackermann v. United States*, 340 U.S. 193, 198 (1950) ("Petitioner made a considered choice not to appeal …. Petitioner cannot be relieved of such a choice because hindsight seems to indicate to him that his decision not to appeal was probably wrong …. There must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from.").

20 *See Bolan*, 2019 WL 2324336, at *4; *Feldmann*, 2016 WL 2643450, at *3.

21 17 C.F.R. § 201.240(c)(4).

22 17 C.F.R. § 201.240(b); Opp'n, Peirce Decl. Ex. 1, at 2 (notarized offer of settlement).

23 *Bolan*, 2019 WL 2324336, at *4; *Feldmann*, 2016 WL 2643450, at *3.

24 Sections 17(a)(1) and 17(a)(3) of the Securities Act prohibit fraudulent conduct "in the offer or sale of any securities," 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraudulent conduct "in connection with the purchase or sale of any security," 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. The meaning of the terms "in" and "in connection with" are not substantially different, and the Supreme Court has "used the terms interchangeably." *United States v. Naftalin*, 441 U.S. 768, 773 n.4 (1979).

25 *See, e.g.*, *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 84–85 & n.10 (2006); *SEC v. Zandford*, 535 U.S. 813, 819–20, 825 (2002); *Naftalin*, 441 U.S. at 772–73, 773 n.4, 778; *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 WL 6850921, at *8 (Dec. 5, 2014); *William H. Murphy & Co.*, Exchange Act. Release No. 90759, 2020 WL 7496228, at *9 (Dec. 21, 2020) ("[E]ven a communication that [does] not on its face refer to a particular offering could nonetheless constitute an offer as long as it was 'designed to awaken an interest'

reorganization that Masters disseminated to creditors "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."[26] The plan of reorganization was also in connection with the purchase or sale of securities including because when it was sent to Worthington Energy's creditors for approval Worthington Energy was publicly traded[27] and because Masters drafted a current report on Form 8-K filed with the Commission in March 2018 announcing the plan.[28]

Masters's remaining arguments also fail. Contrary to Masters's contentions, past misconduct may in fact give rise to sanctions under the relevant provisions of the federal securities laws,[29] and the availability of Rule 102(e) sanctions does not turn on whether his misconduct occurred while he was "appearing or practicing" before the Commission.[30] And Masters's assertions that the statements in the plan of reorganization were true or he at least believed them to be true, aside from his own declaration and inferences from documents that

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in the security." (quoting *Gearhart & Otis, Inc.*, Exchange Act Release No. 7329, 1964 WL 66874, at *18 (June 2, 1964), *aff'd on other grounds*, 348 F.2d 798 (D.C. Cir. 1965))).

[26] *Masters*, 2020 WL 5700696, at *3.

[27] *Id.*

[28] Both the federal courts and we have held that a Commission filing is a type of document on which investors would presumably rely in making investment decisions, and thus material misrepresentations or omissions in such documents would meet the nexus requirements. *See Pirate Investor*, 580 F.3d at 250; *SEC v. Wolfson*, 539 F.3d 1249, 1262–63 (10th Cir. 2008); *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993); *Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *10 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).

[29] In relevant part, we have authority: to enter a cease-and-desist order under Section 8A of the Securities Act, 15 U.S.C. § 77h-1(a), and Section 21C of the Exchange Act, 15 U.S.C. § 78u-3(a); to impose officer-and-director bars under Section 8A of the Securities Act, 15 U.S.C. § 77h-1(f), and Section 21C of the Exchange Act, 15 U.S.C. § 78u-3(f); to impose a penny stock bar under Section 15(b)(6) of the Exchange Act, 15 U.S.C. § 78*o*(b)(6); to deny the privilege of appearing or practicing before the Commission under Section 4C of the Exchange Act, 15 U.S.C. § 78d-3(a)(3), and Rule 102(e) of the Commission's Rules of Practice, 17 C.F.R. § 201.102(e)(1)(iii); and to impose a civil money penalty under Section 8A of the Securities Act, 15 U.S.C. § 77h-1(g)(1), and Section 21B of the Exchange Act, 15 U.S.C. § 78u-2(a)(2). In the context of determining whether to impose cease-and-desist orders, we have long held that even a single instance of past misconduct may "raise[] a sufficient risk of future violation." *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at *24 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

[30] *Steven Altman, Esq.*, Exchange Act Release No. 63306, 2010 WL 5092725, at *15–16 (Nov. 10, 2010), *pet. denied*, 666 F.3d 1322 (D.C. Cir. 2011).

were previously known to him, are unsupported. Lastly, whether his conduct complied with bankruptcy law says nothing about the Commission's authority to institute proceedings or impose sanctions under the federal securities laws.

In summary, Masters has provided no valid basis to revisit the settled order.

B. Masters has not established good cause to be reinstated.

Masters also asks us to restore his privilege to appear or practice before the Commission. "An application for reinstatement of a person permanently suspended … may be made at any time," but we may reinstate a person to the privilege of appearing and practicing before us only "for good cause shown" in accordance with Rule 102(e)(5).[31] "[T]he determination of 'good cause' is necessarily highly fact specific."[32] "In making that determination, we are guided by the purpose of the Rule, which is 'to determine whether a person's professional qualifications, including his character and integrity, are such that he is fit to appear and practice before the Commission.'"[33]

Masters has not shown good cause. His misconduct was serious.[34] His letters of reference from other attorneys and certificate of good standing from the State Bar of California are outweighed by the severity of his misconduct, his current failure to fully recognize his wrongdoing, and his refusal to cooperate during the Commission's investigation.[35] Thus, given the severity of his misconduct and in the absence of other favorable circumstances, the time since Masters was suspended in September 2020 until now "is not sufficient to permit a reasonable determination whether [he] presently possesses the qualifications and fitness necessary to justify reinstatement."[36]

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[31] 17 C.F.R. § 201.102(e)(5).

[32] *Steven C. Wolfe, Sr., CPA*, Exchange Act Release No. 39589, 1998 WL 28039, at *2 (Jan. 28, 1998).

[33] *Id.* (quoting *Touche Ross & Co. v. SEC*, 609 F.2d 570, 579 (2d Cir. 1979)).

[34] *See Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) ("We have repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." (internal quotation marks omitted)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

[35] Masters invoked his Fifth Amendment privilege against self-incrimination during the investigation as a basis to refuse to provide documents and answer questions at a deposition. *Cf. David Howard Welch*, Exchange Act Release No. 92267, 2021 WL 2941483, at *3 (June 25, 2021) ("Because our proceedings are civil in nature, we may draw adverse inferences from a respondent's invocation of his Fifth Amendment privilege and take this into account in weighing all of the evidence.").

[36] *Steven C. Wolfe*, Exchange Act Release No. 34209, 1994 WL 274012, at *3 (June 14, 1994) (finding that "the time elapsed since the imposition of the sanction (approximately two

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Masters has not established compelling circumstances to justify vacating his settled order. Nor has he shown good cause for reinstatement.

Accordingly, IT IS ORDERED that the motion of Daniel C. Masters to vacate the settled order dated September 23, 2020, is DENIED.[37]

IT IS FURTHER ORDERED that the application of Daniel C. Masters for readmission to appear or practice before the Commission is DENIED, without prejudice to the right to reapply at a later date.

By the Commission.

Vanessa A. Countryman
Secretary

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years)" was insufficient to make the requisite determination, given the seriousness of the misconduct); *cf. Wolfe*, 1998 WL 28039, at *1–2 (reinstating the same applicant after more than six years elapsed since the imposition of the sanction, where, among other considerations, he acknowledged the severity of his misconduct, accepted responsibility for his actions, provided evidence regarding his rehabilitation, was cooperating with authorities in a related criminal prosecution, and, in connection with his application, submitted an undertaking to comply with several conditions if reinstated).

[37] Because our decisional process would not be significantly aided by oral argument, the motion for oral argument is DENIED. 17 C.F.R. § 201.451(a).