SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52876 / December 2, 2005

Admin. Proc. File No. 3-11625

In the Matter of

VLADISLAV STEVEN ZUBKIS
1590 Continental Street
Suite 200
San Diego, California 92154

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the federal securities laws. Held, it is in the public interest to bar respondent from association with a broker or dealer and from participating in any offering of penny stock.

APPEARANCES:

Vladislav Steven Zubkis, pro se.

Mark K. Schonfeld, Helene Glotzer, Gerald Gross, Jack Kauffman, and John J. Graubard, for the Division of Enforcement.

Appeal filed: April 14, 2005
Last brief received: July 19, 2005

I.

Vladislav Steven Zubkis, a controlling shareholder of International Brands, Inc. ("IBI"), an issuer of unregistered penny stocks, and the majority owner of Z3 Capital Corp. ("Z3"), an unregistered broker-dealer, appeals from the April 5, 2005 decision of an administrative law

judge. 1/ The law judge found that, on June 29, 2001, the United States District Court for the Southern District of New York had permanently enjoined Zubkis from violating certain provisions of the federal securities laws and required him to pay disgorgement. 2/ The law judge barred Zubkis from associating with any broker-dealer and barred him from participating in any penny stock offering. To the extent we make findings, we base them on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

On June 29, 2001, the United States District Court for the Southern District of New York permanently enjoined Zubkis from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, 3/ Sections 10(b), 15(b), and 15(c)(1) of the Securities Exchange Act of 1934, 4/ and Rules 10b-5, 15c1-2, 15c1-5, and 15c1-6 thereunder. 5/ The district court also imposed an officer-and-director bar and ordered Zubkis to pay $21,578,731.39 apportioned between $12,544,313.25 in disgorgement and $9,034,418.14 in prejudgment interest. 6/ On May 20,

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1/ Vladislav Steven Zubkis, Initial Decision Rel. No. 279 (Apr. 5, 2005), 85 SEC Docket 595. When Zubkis' activities commenced, the entity now known as IBI was known as Stella Bella Coffee Co. which, for purposes of this opinion, will also be referred to as IBI. At various periods, Zubkis was the Chief Executive Officer of IBI, and at all times he owned a majority of the shares of Z3.

2/ SEC v. Zubkis, 2001 U.S. Dist. LEXIS 23603 (S.D.N.Y. June 29, 2001). Z3 and IBI were also named in the injunctive complaint; Z3 failed to answer or appear and was found to be in default. The district court enjoined Z3 and ordered it to pay disgorgement. SEC v. Zubkis, 2001 U.S. Dist. LEXIS 24011 (S.D.N.Y. June 29, 2001). IBI consented to findings that it had violated the securities laws and to an injunction against further violations. See SEC v. Zubkis, 2005 WL 1560489, at *1 n.2 (S.D.N.Y. June 30, 2005).

3/ 15 U.S.C. §§ 77e(a), (c), and 77q(a).

4/ 15 U.S.C. §§ 78j(b), 78*o*(b) and (c)(1).

5/ 17 C.F.R. §§ 240.10b-5, 240.15c1-2, 240.15c1-5, and 240.15c1-6.

6/ On June 30, 2005, the district court ordered that a yacht held in the name of IBI be sold to help satisfy Zubkis' disgorgement liability, finding that "IBI is an alter ego of Zubkis, and therefore the court should not give effect to its corporate form where doing so would frustrate the Commission's enforcement of the securities laws." Zubkis, 2005 WL 1560489, at *5. Claiming that the district court lacks jurisdiction to authorize such a sale, Zubkis has "demand[ed] a 'hearing' before the Commission on this matter of sale." Zubkis' request for a hearing regarding the sale of the yacht, which is not at issue in this proceeding, is denied.

2002, the United States Court of Appeals for the Second Circuit summarily affirmed the district court's final judgment. 7/

The district court based its injunction on its finding that Zubkis had violated the federal securities laws by knowingly orchestrating, between June 1993 and at least May 1996, a wide-ranging fraudulent scheme to evade the registration requirements of the federal securities laws and to raise money illegally for IBI and himself. 8/ As found by the district court, the primary part of the scheme began in 1994, when Zubkis caused IBI to issue millions of shares of its stock to him personally and to corporations he controlled, which he and others then sold to investors. The district court also found that, in a related scheme that commenced a year earlier, in 1993, Zubkis directed Z3 to offer and sell a securities product called "Triple Crown Units" ("TCUs"), a bundle of securities composed of, among other things, IBI stock and warrants. Zubkis admitted that there was no registration statement as to the IBI stock or the TCUs that Zubkis directly and indirectly offered and sold to investors through the means of interstate commerce. The district court further held that, while Zubkis had the burden of establishing that the securities were exempt from the registration requirement, he did not argue or offer any "evidence to suggest" that the securities were exempt. 9/

With respect to Zubkis' marketing of the stocks, the district court found that "[b]etween June 1993 and at least May 1996, Mr. Zubkis, directly and through Z3, operated as an unregistered securities broker. . . . In all, Z3 sold at least 3,700,000 shares of [IBI] stock and 290 TCUs to investors . . . ." 10/ The district court further found that "Mr. Zubkis, directly and through others, made numerous material misrepresentations concerning, among other things, [IBI's] projected revenues, [IBI's] imminent listing on a national stock exchange, and [IBI's] merger with a national corporation." 11/ The resulting sales of 3.7 million shares of IBI stock through Z3 generated $1,220,000 in proceeds, some of which was deposited in an account over which Zubkis exercised joint control. Through other broker-dealers, Zubkis sold IBI stock to

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7/ SEC v. Zubkis, No. 01-6151 (2d Cir. May 20, 2002) (unpublished memorandum).

8/ SEC v. Zubkis, 2000 WL 218393 (S.D.N.Y. Feb. 23, 2000) (hereinafter "Summary Judgment Decision").

9/ Summary Judgment Decision, 2000 WL 218393, at *6 n.6.

10/ Id. at *4. The district court found that Z3 was a "broker" based on its employment of salespersons to sell securities to others. Id. at *8. The district court also found that Zubkis was a "controlling person" of Z3. Id.

11/ Id. at *7. Zubkis himself falsely claimed that United Airlines had contracted with IBI to provide coffee for all of its flights in the United States, that IBI would be listed on the American Stock Exchange by the end of 1996, and that IBI was going to merge with the fast-food chain Boston Chicken. Id. at *5.

investors generating an additional $8,517,813.25 in proceeds. The illegal sales of TCUs generated an additional $2,806,500 in proceeds. The district court held:

> [T]here is a strong basis for concluding that Mr. Zubkis, unless enjoined from doing so, will again violate federal securities laws . . . . [I]t has been proven that Mr. Zubkis violated several federal securities laws and did so with scienter. Mr. Zubkis did not commit an isolated infraction, but instead committed numerous violations over the course of several years. 12/

On the basis of this holding the district court permanently enjoined Zubkis. 13/

Following entry of the injunction, we authorized the institution of administrative proceedings to determine whether remedial sanctions were warranted by the public interest. After holding a hearing at which Zubkis presented evidence, the law judge found that the injunction was entered against Zubkis within the meaning of Exchange Act Sections 15(b)(4)(C) and 15(b)(6)(A), 14/ that the stock of IBI was a penny stock, and that the public interest warranted Zubkis being barred from association with any broker or dealer and barred from participating in an offering of penny stock. 15/

III.

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12/ Id. at *10.

13/ In granting the injunction, the district court rejected Zubkis' argument, characterized by the district court as "frivolous," that "he is not bound by federal securities laws." Id. The district court found that Zubkis' position was based on "a profound misapprehension of federalism and a clear mistake as to the law and as to the facts of this case . . . ." Id. at *5.

14/ 15 U.S.C. §§ 78*o*(b)(4)(C) and 78*o*(b)(6)(A).

15/ The law judge originally scheduled a hearing in this matter for December 7, 2004. Zubkis, however, indicated that he would not attend the hearing because, he claimed, the Commission lacked jurisdiction over him. Consequently, on November 17, 2004, the Division moved to find Zubkis in default. On December 3, 2004, the law judge granted the Division's motion and determined the case against Zubkis. On December 9, 2004, Zubkis requested reconsideration of the default order; the law judge took no action on Zubkis' request. On February 18, 2005, we remanded the proceeding to the law judge for reconsideration of the entry of default because, as a general rule, law judges, who are most familiar with the relevant facts, should first decide such matters before the Commission addresses them. Vladislav Steven Zubkis, Securities Exchange Act Rel. No. 51364 (Feb. 18, 2005), 84 SEC Docket 4074. We also deemed it appropriate for the law judge to consider whether her default order, issued several days before the scheduled hearing date, was "premature." Id. at 4077. Following the remand, the law judge vacated the default order and rescheduled the hearing.

Exchange Act Section 15(b)(6)(A) authorizes us to bar from association a person associated with a broker or dealer where, as here, that associated person has been enjoined with respect to the purchase or sale of any security. It also authorizes us to bar a person from participating in the offering of any "penny stock" if the person, at the time of the misconduct alleged in the injunctive proceeding, was participating in an offering of penny stock. The record establishes that, at the time of the misconduct, Zubkis was associated with a broker, 16/ and was participating in an offering of penny stocks. 17/

Zubkis does not deny that he has been enjoined, but argues that the district court's injunction is "void" because it was imposed on him without a hearing and, therefore, cannot be a basis for this proceeding. As we understand this contention, Zubkis has two objections. The first is that the entire civil injunctive action is "void" because the Commission did not initiate an administrative proceeding as a precursor to bringing the injunctive action. The second objection is that the district court injunction against him was "granted by default when [he] refused to participate in providing evidence of innocense [sic], stood on [his] vested rights, [and] depended on the law of the United States and the Constitution to challenge jurisdiction. All was circumvented by the use of rules, inapplicable case law, and by trick or device." We do not believe that Zubkis has established any basis for concluding that the injunction is void or invalid. Contrary to Zubkis' assertions, there is no requirement in the federal securities laws for the Commission to bring an administrative proceeding before initiating a civil injunctive action. As to Zubkis' second contention, there was no hearing because the district court granted the Division of Enforcement's motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the district court acted properly in doing so because Zubkis, although opposing the Division's motion, failed to identify a triable issue. 18/

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16/ Zubkis' control of Z3 brings him within the definition of an associated person of a broker-dealer and, therefore, within the application of Exchange Act Section 15(b).

17/ As is pertinent here, Exchange Act Section 3(a)(51)(A) defines a "penny stock" as "any equity security other than a security that is . . . excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph . . . ." In general, under Exchange Act Rule 3a51-1, certain equity securities -- including securities priced at five dollars or more, securities subject to last sale reporting and listed on a national securities exchange or quoted on Nasdaq, and securities of an issuer that meets either a minimum net tangible assets or revenues test -- are excluded from the definition of "penny stock." 17 C.F.R. § 240.3a51-1; see Nolan Wayne Wade, Exchange Act Rel. No. 48245 (July 29, 2003), 80 SEC Docket 2683, 2684. Zubkis does not allege, and the record contains no evidence, that the securities at issue here, which were unregistered, unlisted, and traded at less than one dollar, satisfied any of the exceptions.

18/ Fed. R. Civ. P. 56.

Moreover, it is well established that Zubkis is collaterally estopped from challenging in this administrative proceeding the decision of the district court in the injunctive proceeding. 19/ Zubkis' only means of challenging the validity of the injunction was through an appeal to the Second Circuit, which Zubkis has already pursued without success. 20/

More generally, Zubkis contends that the Commission cannot proceed against him because "[he does] not do business in any area [in] which the legislature has exclusive or concurrent jurisdiction. See Art. 1 §8 ¶17 [sic]." We understand Zubkis to be arguing that the federal government cannot enforce federal statutes against him because he neither resides nor does business in the District of Columbia or any other federal enclave. 21/ Zubkis cites as support Clause 17 of Article I, Section 8 of the Constitution, which provides that Congress shall have the power

> To exercise exclusive legislative power in all cases whatsoever, over such District . . . as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. 22/

We, like the district court, reject this argument. 23/ Clause 3 of Article I, Section 8 provides for federal regulation of interstate commerce and, in turn, Clause 7 of Article I, Section 8 provides for federal regulation of the mails. Regulation under the federal securities laws is predicated on

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19/ Joseph P. Galluzzi, Exchange Act Rel. No. 46405 (Aug. 23, 2002), 78 SEC Docket 1125, 1129; see also Ted Harold Westerfield, 54 S.E.C. 25, 32 n.22 (1999); Demitrius Julius Shiva, 52 S.E.C. 1247, 1249 (1997). Among the numerous arguments Zubkis raises against the validity of the injunction are that the district court erred in evidentiary rulings, improperly granted summary judgment to the Division, and lacked authority to issue an injunction against Zubkis. Such challenges are similarly collaterally estopped.

20/ See supra note 7.

21/ Zubkis supports this argument by asserting that he "sold private stock of a private corporation to private individuals not located in any area of jurisdiction of the United States as defined." As indicated, we disagree with Zubkis' limited view of federal jurisdiction regarding securities regulation.

22/ U.S. Const. art. I, § 8, cl. 17. "The purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential to federal activities . . . ." S.R.A., Inc. v. Minnesota, 327 U.S. 558, 564 (1946).

23/ See supra note 13.

the use of the mails and the facilities of interstate commerce and, as such, the constitutionality of the federal securities laws has been repeatedly upheld. 24/

Zubkis also seems to argue that the proceedings are invalid because, he claims, the relevant "rules and regulations are NOT published in the Office of the Federal Register," and consequently, "they DO NOT have general applicability" (emphasis in original). As a result, according to Zubkis, because "the regulations are NOT published in the Office of the Federal Register as required by law they are ONLY locally applicable" (emphasis in original). In fact, and contrary to Zubkis' assertions, the Commission's regulations, including those pertaining to the Commission's organization, have been published in the Federal Register. 25/

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24/ See, e.g., Sloan v. SEC, 535 F.2d 676, 678 (2d Cir. 1976) (characterizing argument that Exchange Act was unconstitutional as "frivolous"); United States v. Wolfson, 405 F.2d 779, 783-84 (2d Cir. 1968) (upholding constitutionality of Securities Act); Oklahoma-Texas Trust v. SEC, 100 F.2d 888, 890-91 (10th Cir. 1939) (Securities Act). The Exchange Act, the only statute applied to Zubkis in this proceeding, has been held to be a valid exercise of Congressional legislative authority over interstate commerce and the mails, and Zubkis has not disputed that he used the mails and facilities of interstate commerce in executing his fraudulent scheme. Sloan, 535 F.2d at 678. Zubkis argues that the securities laws "do not allow the government to interpose its view of fairness between willing private buyers and sellers of private stock of a private corporation." In fact, the Exchange Act expressly authorizes the type of federal regulation at issue in this case.

25/ See 17 C.F.R. §§ 200.1 et seq. After publication in the Federal Register, the regulations were codified and republished in Title 17 of the Code of Federal Regulations, the permanent edition of the Federal Register. Every regulation codified in the Code of Federal Regulations memorializes the volume, page number, and date of Federal Register publication at the end of every regulation. For example, the Commission's regulation entitled "General statement and statutory authority" was published in volume 27 of the Federal Register beginning at page 12,712 on December 22, 1962. See 17 C.F.R. § 200.1. Publication in the Code of Federal Regulations is "prima facie evidence" of publication in the Federal Register, and Zubkis has adduced no evidence to rebut that prima facie showing. See 44 U.S.C. §§ 1510(b), (e).

In a related argument, Zubkis contends that there was no obligation to register Z3 as a broker-dealer because the "registration forms" (presumably Form BD) were not promulgated in compliance with the Paperwork Reduction Act of 1980, 44 U.S.C. § 3500 et seq. Form BD, to the contrary, has been promulgated as required by the Administrative Procedure Act, 5 U.S.C. §§ 500 et seq., published in the Federal Register as required, and assigned an OMB Control Number as required by the Paperwork Reduction Act. See 17 C.F.R. § 200.800.

Zubkis also contends that the Order Instituting Proceedings "made use of a statute without regulations." The exact import of this argument is not clear. If, however, Zubkis contends that Exchange Act Section 15(b) is not effective due to a failure to adopt implementing regulations, he is mistaken. The Commission has adopted regulations implementing the requirements of Exchange Act Section 15(b) regulating the registration of brokers and dealers. 26/

Additionally, Zubkis argues that this proceeding, which was instituted on September 1, 2004, is barred by a statute of limitations because the misconduct at issue occurred in the early to mid-1990s. 27/ The general federal statute of limitations contained in 28 U.S.C. § 2462 provides in pertinent part that, "except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . ." The United States Court of Appeals for the District of Columbia Circuit held, in Johnson v. SEC, 28/ that the five-year statute of limitations established by Section 2462 applied to a Commission administrative proceeding imposing a censure and a six-month supervisory suspension. The court concluded there that the sanctions imposed constituted a "penalty" within the meaning of Section 2462 because it was "evident" that they were not based on "any general finding of [the respondent's] unfitness . . . nor any showing of the risk she posed to the public, but rather were based on [her] failure reasonably to supervise . . . ." 29/ Here, by contrast, in determining that the public interest requires that Zubkis be barred, we are focusing on the respondent's "current competence or the degree of risk [he] poses to the public." 30/ Hence, the sanctioning assessment at issue in this proceeding is not punitive, as the court found it was in Johnson, but remedial, and therefore not subject to Section 2462. Moreover, we note that, even if the sanction at issue were deemed to be punitive, thereby implicating Section 2462, the basis for this administrative proceeding is the injunction, which was entered less than five years before proceedings were instituted, and therefore within the limitations period. 31/

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26/ See 17 C.F.R. §§ 240.15b1-1 through 240.15b11-1.

27/ Zubkis does not cite to any statute or other authority to support his claim that the proceeding is barred by a statute of limitations.

28/ 87 F.3d 484 (D.C. Cir. 1996).

29/ Id. at 489.

30/ Id.

31/ See William E. Lincoln, 53 S.E.C. 452, 457 (1998) (noting that, because the Exchange Act "authorizes us to proceed . . . on the basis of [respondent's] conviction . . . it is the date of [the] conviction, not the conduct underlying the conviction, which is relevant"); see also Michael J. Markowski, Exchange Act Rel. No. 44086 (Mar. 20, 2001), 74 SEC

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In a related argument, Zubkis contends that the district court has retained jurisdiction over the injunctive action, thereby precluding the Commission from conducting this administrative proceeding. 32/ The district court proceeding and this proceeding are independent, although this proceeding necessarily follows from the injunctive proceeding. Because Exchange Act Section 15(b)(6) expressly authorizes the Commission to institute administrative proceedings to determine the need for remedial sanctions in the public interest where the respondent has been, among other things, enjoined from "engaging in any conduct or practice . . . in connection with the purchase or sale of any security," it follows that the district court has not ousted the Commission from jurisdiction in this matter; rather the existence of the injunction is a condition precedent for this proceeding. 33/

Zubkis contends further that he is a "natural person" and neither a broker nor a dealer "as defined in the statutes." From this assertion, Zubkis draws the erroneous conclusion that "[a]ll of the statutes in this section [15 of the Exchange Act] are inoperative as to me." It is well established, however, that Exchange Act Section 15(b), the section at issue here, applies to natural persons who are, like Zubkis, acting as a broker or dealer or associated with a broker or dealer, such as Z3. 34/

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31/ (...continued)
Docket 1537, 1539 (stating that limitations period under 28 U.S.C. § 2462 begins to run "when the party instituting the proceeding has a 'complete and present cause of action,'" i.e., on the date of the injunction, conviction, or underlying misconduct that provides the basis for the proceeding under Exchange Act Section 15(b)(6)(A).), petition denied, No. 01-1181 (D.C. Cir. 2002); Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994) ("Under the statutory language, existence of the injunction provides a ground for the bar adequate in itself . . . .").

32/ The district court stated in its final judgment imposing the injunction that "the Court shall retain jurisdiction of this matter for all purposes." Zubkis, 2001 U.S. Dist. LEXIS 23603, at *10. Recently, the district court has ruled on matters arising from the enforcement of the court's June 2001 judgment. See supra note 6.

33/ In a similar argument, Zubkis contends that he cannot be sanctioned on the basis of Exchange Act Sections 15(b)(4)(C) and 15(b)(6)(A) because those sections "did not exist in the 8086 case [the injunctive action]." As discussed, the sections Zubkis cites provide an independent basis for the Commission to act after entry of a district court's injunction. The injunctive action did not reference these sections because they had no application in that case.

34/ Zubkis also argues that the law judge's decision is defective because "the ALJ makes the [sic] use of Title 17 for all the procedural matters, however she fails to use the statutory authority to have me before this administrative court or before the Commission." The exact meaning of this objection is not clear. In any event, the law judge cited to regulations codified in Title 17 of the Code of Federal Regulations because the

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IV.

Zubkis raises various unspecific claims of bias by the law judge and other Commission officials and argues that he has been denied due process of law because of their misconduct. We find that Zubkis' claims of bias and denial of due process are unsupported by the record.

Our review of this proceeding establishes that Zubkis has been fully able to exercise his procedural rights. Zubkis received notice of the charges against him through proper service of the Order Instituting Proceedings, and he participated in pre-hearing conferences. 35/ At a

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34/ (...continued)
Commission's Rules of Practice are found there. Moreover, the law judge's decision is amply supported by citations to Exchange Act Sections 15(b)(4)(C) and 15(b)(6)(A), the statutory authority for this proceeding.

Zubkis attached to his Brief an "Attachment A" which appears to be a copy of a document filed in connection with his appeal of the injunction, and attached to his Reply a lengthy "Attachment C" described as "the Answer to the Complaint I would have filed had I not decided to challenge[] jurisdiction for the last 10 years." To the extent either document pertains to the injunctive action (as they appear to do) we reject them as impermissible collateral attacks on the injunction. To the extent they are submitted for some other purpose, we reject them as beyond the scope of the submissions allowed by the briefing order. Construing their inclusion with Zubkis' Brief and Reply as motions to adduce additional evidence pursuant to Rule of Practice 452, 17 C.F.R. § 201.452, we nonetheless reject them. Neither Attachment A nor Attachment C is material to the issues before the Commission and, even if they were material, Zubkis offers no reason why they could not have been submitted before the record was closed. 17 C.F.R. § 201.452 ("Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."). On September 16, 2005, Zubkis filed an "Administrative Notice and Request for Decision" asserting that Commission action deciding his appeal is "past due," pursuant to Commission Rule of Practice 900, 17 C.F.R. § 201.900, because "it has been five months since the initial decision was given . . . ." Zubkis appears to misconstrue our rules. Rule 900(a)(iii) states that, "[o]rdinarily, a decision by the Commission . . . should be issued within seven months from the date the petition for review . . . is filed . . . ." The rule further expressly provides that "[t]he deadlines in 201.900 confer no substantive rights on the parties."

35/ Zubkis was initially found in default, based on his expressed intention not to attend the hearing, a finding subsequently vacated by the law judge after the Commission remanded the default decision for reconsideration. See supra note 15. We note that Zubkis was given ample opportunity to express his views and respond to the allegations orally at a
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March 1, 2005, pre-hearing conference, Zubkis stated his determination not to attend the hearing scheduled for March 8, 2005. The law judge instructed Zubkis that the hearing would take place as scheduled whether he attended or not. Zubkis attended the hearing and participated fully, submitting three exhibits; although he had the opportunity to do so, Zubkis called no witnesses, but did argue on his own behalf. Zubkis also submitted a post-hearing brief. Having received Zubkis' evidence and arguments, the law judge considered and responded to them in her Initial Decision.

With respect to Zubkis' claim of bias, Zubkis identifies no specific examples of improper conduct by the law judge, and we have found no evidence of bias or improper conduct. 36/ The

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35/ (...continued)
hearing and in writing, notwithstanding his repeated statements that he refused to recognize the Commission's jurisdiction and would not appear at the administrative hearing.

36/ Although the incident was not identified by Zubkis in his brief, we note that Zubkis opened the pre-hearing conference with a statement that appeared to address several legal and factual issues. When Zubkis concluded, the law judge responded as follows: "Thank you, Mr. Zubkis. I must admit that I understood very little of what Mr. Zubkis said not because of a language barrier but because of the reasoning process that's going on there . . . ." Zubkis took this comment to be demeaning and took formal exception to it in a submission to the law judge. At the March 8, 2005 hearing, after Zubkis made the law judge aware of his understanding of her comment, the law judge apologized on the record for her comment and made clear that she did not have any animosity towards Zubkis with respect to his ethnicity, national origin, or difficulty with English. She offered Zubkis the opportunity to have an interpreter and committed herself to ensuring that Zubkis was able to participate fully and effectively in the hearing. Zubkis offers no basis for not crediting the law judge's claim that she was unbiased toward Zubkis, and we have found no evidence that she acted in a non-neutral manner.

Zubkis cites as evidence of improper conduct by Commission officials the determination by the Office of the General Counsel, acting under delegated authority, to treat his "Motion to Correct Manifest Error of Fact," filed by him following issuance by the law judge of her initial decision, as a petition for review. Vladislav Steven Zubkis, Admin. Proc. File No. 3-11625 (Apr. 14, 2005). According to the briefing order issued in response to that filing, Zubkis' motion did not comply with the applicable requirements to be considered by the law judge as a motion to correct errors of fact in the initial decision. Instead, the staff properly determined that, "[b]ecause of the matters raised," the motion should be treated as a petition for review to the Commission. Zubkis does not allege, and we are unaware of, how he was prejudiced by that determination.

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record indicates that the law judge sought to ensure that Zubkis was able to participate effectively in the hearing by presenting evidence and argument, and had the opportunity to make himself heard with respect to the issues in this proceeding. 37/

V.

The determination of what sanctions are in the public interest depends on a consideration of the following factors:

> [T]he 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 further violations, the [respondent's] recognition of the wrongful nature of his

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36/ (...continued)
Zubkis also asserts that he has been unfairly disadvantaged in that he was allowed only fifteen days in which to prepare his brief while the Division was allowed thirty days in which to prepare its brief. This objection is without foundation. The April 19, 2005, briefing order in this case required Zubkis to file a supporting brief within thirty days, by May 19, 2005. Although Zubkis asserts that Commission staff sent the April 19, 2005 Order to a recently vacated address, the Commission's Office of the Secretary received no notice of the change of address until April 25, 2005. When Zubkis failed to file a brief within the time specified in the briefing order, Commission staff called Zubkis to determine his intentions. Zubkis stated that he intended to file a brief and received an additional fifteen days in which to file. We note that, by contrast with the more than forty-five days granted Zubkis for preparing his brief, the Division was required to file its brief within thirty days.

37/ We similarly reject Zubkis' claims of "harassment" by the Division as unsupported. Zubkis alleges more specifically that he was harassed by agents of the Federal Bureau of Investigation and the Internal Revenue Service who conducted one or more seizures of his property pursuant to warrants at a time or times that Zubkis does not identify. These claims are also unsupported. In any event, we discern no role played by the Commission with respect to these allegations, nor has Zubkis made clear how they relate to this proceeding.

Zubkis also objects to the law judge's application of the "preponderance of the evidence" standard in considering his case, but it is well established that such standard is applicable here. See Steadman v. SEC, 450 U.S. 91, 102 (1981) ("The language and legislative history of § 7(c) [of the Administrative Procedure Act] lead us to conclude, therefore, that § 7(c) was intended to establish a standard of proof and that the standard adopted is the traditional preponderance-of-the-evidence standard.").

> conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations. 38/

In proceedings brought based upon the entry of an injunction, we examine the facts and circumstances underlying the entry of the injunction in determining the public interest. 39/ As we have held, "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions." 40/

As found by the district court, the scheme orchestrated and executed by Zubkis generated more than $12 million in illegal proceeds. The scheme lasted for several years, and its complexity and fraudulent nature demonstrate a high degree of scienter. We also note that Zubkis has a record of securities rule violations and that this case is not the first instance in which Zubkis has refused to recognize the authority of securities regulators. 41/

Zubkis has not offered any assurances that the conduct would not be repeated. In fact, Zubkis has argued at every stage of these proceedings that, in effect, the securities laws do not apply to him. Moreover, Zubkis continues to raise money from investors with respect to a real estate development project and thus amply demonstrates a potential to commit further securities violations. 42/ Based on our consideration of the relevant factors, we find it is in the public

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38/ Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (citation omitted), aff'd on other grounds, 450 U.S. 91 (1981).

39/ Marshall E. Melton, Investment Advisers Act Rel. No. 2151 (July 25, 2003), 80 SEC Docket 2812, 2814. As we noted in Melton, "[i]n considering the [public interest] factors, we recognize that conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions under the securities laws." Id. at 2825.

40/ Id. at 2825-26.

41/ Vladislav Steven Zubkis, 53 S.E.C. 794 (1998) (sustaining NASD's censure and bar of Zubkis for failure to provide information). In that prior proceeding, NASD barred Zubkis for refusing to testify or otherwise provide requested information in connection with an NASD investigation of trading irregularities. We sustained the NASD action, rejecting Zubkis' contention that NASD lacked jurisdiction over him to compel his cooperation in the investigation.

42/ Zubkis stated in his closing argument at the hearing before the law judge: "See what you can do to make sure that this guy [counsel for the Division of Enforcement] keeps his dirty hands away from my investors' money. I'm involved and I'm making this on the record. We finance a project in Mexico. It's a real estate development project we will be

(continued...)

interest to bar Zubkis from association with any broker or dealer and to bar him from participating in any offering of penny stock.

An appropriate order will issue. 43/

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS, CAMPOS, and NAZARETH).

Jonathan G. Katz
Secretary

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42/ (...continued)
building . . . . But we are in the process of financing a project."

43/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52876 / December 2, 2005

Admin. Proc. File No. 3-11625

In the Matter of

VLADISLAV STEVEN ZUBKIS
1590 Continental Street
Suite 200
San Diego, California 92154

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's Opinion issued this day, it is

ORDERED that Vladislav Steven Zubkis be barred from association with any broker or dealer; and it is further

ORDERED that Vladislav Steven Zubkis be barred from participating in any offering of penny stock, including acting as a promoter, finder, consultant, 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.

By the Commission.

Jonathan G. Katz
Secretary