

[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—11th Cir.: SEC did not abuse its discretion in ordering industry bar, \(Jul. 5, 2017\)](#)

Securities Regulation Daily Wrap Up

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By [Amy Leisinger, J.D.](#)

An Eleventh Circuit panel has denied an unregistered broker's petition for review of an SEC order permanently barring him from various securities-industry roles and penny stock offerings. After finding it had jurisdiction to consider the petition (despite an issue with the timing of concurrent request to the Commission), the panel found that the SEC did not abuse its discretion by imposing a lifetime industry bar. The court did, however, grant the SEC's request to vacate the portion of the order barring the broker from associating with municipal advisors and nationally recognized statistical rating organizations to avoid retroactive effects of the Dodd-Frank Act ([Imperato v. SEC](#), June 30, 2017, *per curiam*).

Fraudulent scheme. In 2005, the broker launched an unregistered offering of stock in his company, Imperiali, Inc., and promoted the stock, cold-called prospective investors, and issued a private placement memorandum to investors. Imperiali raised about \$2.5 million, but the funds were paid to another company owned by the broker and used to pay his personal expenses. Thereafter, Imperiali elected to be regulated by the SEC as a business development company and filed statements with the Commission that dramatically overstated its assets and listed investments in companies incapable of issuing stock.

In 2012, the Commission filed a complaint alleging 17 counts of violations of the federal securities laws. While a settlement was pending, a magistrate judge issued a report and recommendation finding a number of violations, and the district court adopted the findings, granted summary judgment in favor of the SEC, and entered a judgment permanently enjoining further violations and ordering disgorgement. On appeal, the Eleventh Circuit [rejected](#) the broker's arguments against the SEC's determinations and resulting order, noting that he was at least a "substantial factor" in the sale of securities and that the securities were not registered. The court also cited his approval of statements that included false and misleading valuations and fictitious investments and found no genuine issues of material fact to support reversal of the district court's decision.

During the course of the appeal, the SEC brought an administrative proceeding to determine whether it should impose additional remedial sanctions. An administrative law judge issued a decision permanently barring the broker "from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock."

Industry bar upheld. Refusing to allow the broker to attack the earlier injunction or finding of liability, the panel found that the SEC did not grossly abuse its discretion in imposing the permanent industry bar. The SEC's determination that the broker "acted with a high degree of scienter" is consistent with the finding that he knowingly made deceptive material statements and the agency's finding that he continues to deny wrongdoing demonstrates the potential for future violations, the court found. The court also rejected the broker's contention that the follow-on administrative proceeding violated due process and fell outside the statute of limitations. The statute of limitations for a follow-on proceeding runs from the underlying injunction, not the underlying conduct, the panel stated.

Despite finding no merit to the petition for review, the panel did grant the SEC's request to vacate the industry bars prohibiting the broker's association with municipal advisors and NRSROs. The SEC stated that the authority

for the two restrictions came from the Dodd-Frank Act, but that, in this case, they were based on pre-2010 conduct. To avoid an impermissible retroactive effect, the panel agreed to modify the Commission's order.

The case is [No. 15-11574](#).

Attorneys: Daniel Imperato, pro se. Theodore Weiman for the SEC.

Companies: Imperiali, Inc.

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