INITIAL DECISION RELEASE NO. 567
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15556

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

In the Matter of	:	INITIAL DECISION
	:	February 20, 2014
TIMOTHY J. GEIDEL	:	

APPEARANCES: Michelle L. Ramos and David Frohlich for the Division of Enforcement, Securities and Exchange Commission

Timothy J. Geidel, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition (Motion) and permanently bars Respondent Timothy J. Geidel (Geidel) 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 (collectively, permanent bars or full industry bar).

Procedural Background

On October 9, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Geidel, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that in September 2011, Geidel pled guilty in federal district court to wire fraud, in violation of 18 U.S.C. § 1343 (wire-fraud statute), and structuring transactions to avoid reporting requirements, in violation of 31 U.S.C. § 5324(a)(3) (structuring statute); and in April 2012, the district court sentenced him to a forty-two month prison term followed by three years of supervised release and ordered him to pay $1,301,981.95 in restitution. See United States v. Geidel, 1:11-cr-12 (W.D.N.Y.). Geidel timely filed an Answer to the OIP on November 7, 2013 (Answer).

At a prehearing conference held on November 4, 2013, I deemed service of the OIP to have occurred on October 15, 2013. I also granted the parties leave to file motions for summary disposition

pursuant to Commission Rule of Practice (Rule) 250, and established a briefing schedule for motions, oppositions, and replies. See Timothy J. Geidel, Admin. Proc. Rulings Release No. 1019, 2013 SEC LEXIS 3453 (Nov. 4, 2013); Tr. 4, 11-12, 15. On November 20, 2013, the Division filed its Motion, with supporting exhibits (Div. Exs. 1-4).[1] Geidel did not file an opposition, which was due December 20, 2013. On January 6, 2014, the Division filed a letter in lieu of a formal reply, stating that it relies on the arguments in its Motion.

On January 8, 2014, I took official notice of the following material fact pursuant to Rule 323: Royal Alliance Associates, Inc. (Royal Alliance), is registered with the Commission as an investment adviser and broker-dealer. See Timothy J. Geidel, Admin. Proc. Rulings Release No. 1151, 2014 SEC LEXIS 60 (Official Notice) (citing 17 C.F.R. § 201.323). This fact was established by the Commission's records and the BrokerCheck database of the Financial Industry Regulatory Authority, Inc. Id. (citations omitted).

Summary Disposition Standard

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Gary M. Kornman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14262-63, pet. denied, 592 F.3d 173 (D.C. Cir. 2010); Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 & nn.21-24 (collecting cases), pet. denied, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), pet. denied, 66 F. App'x 687 (9th Cir. 2003).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323.[2] See 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

[1] The Declaration of Michelle L. Ramos in Support of the Motion attached the following exhibits: a printout from Web CRD showing Geidel's employment history (Div. Ex. 1), as well as the following documents from United States v. Geidel: the April 17, 2012, district court judgment (Div. Ex. 2); the September 13, 2011, superseding information (Div. Ex. 3); and the September 13, 2011, plea agreement (Div. Ex. 4).

[2] Pursuant to Rule 323, I take official notice of the proceedings and docket sheet in United States v. Geidel.

Findings of Fact

A. Geidel's Background and Criminal Activity

From 1989 until August 30, 2010, Geidel was a registered representative associated with Royal Alliance, a registered broker-dealer and investment adviser. See Div. Ex. 1; Official Notice. I adopt the following facts to which Geidel stipulated in his plea agreement (Div. Ex. 4 at 4-5):

1. Wire Fraud, 18 U.S.C. § 1343

Between on or about June 20, 1990, and on or about August 31, 2010, Geidel, while employed as a financial advisor, convinced investors to give him money purportedly to invest in higher yielding investment vehicles. Geidel, while acting with the intent to defraud, gave victims the impression that he would be investing their money in high yield stocks, bonds, mutual funds, and certificates of deposit. Instead of investing funds as he indicated to the victims, he diverted some of the funds to his own use by depositing the money into his personal bank accounts. He also used some of the funds to pay off earlier investors to perpetuate the scheme. To effectuate the fraud, he had victims authorize the wire transaction of funds held by their registered broker-dealers and financial custodial agents in states other than New York, and had those entities send funds to victims in New York. The victims then gave Geidel personal checks with which to invest their funds.

2. Structuring, 31 U.S.C. § 5324(a)(3)

Geidel, knowing of Bank of America's (BOA) legal obligation to report transactions in excess of $10,000, structured a currency transaction for the purpose of evading that reporting obligation. Prior to February 1, 2010, Geidel deposited investor funds in an amount exceeding $10,000, to his personal bank account at BOA, a domestic financial institution. On or about February 1, 2010, Geidel withdrew funds from his BOA account by writing a personal check to himself in the amount of $8,000. On or about February 2, 2010, Geidel withdrew additional funds from his BOA account by writing a second check to himself in the amount of $3,000. The two withdrawals were knowingly structured to evade BOA's reporting obligations.

During the twelve month period between July 1, 2009, and June 30, 2010, Geidel violated the structuring statute while also violating the wire-fraud statute, as part of a pattern of illegal activity involving $1,312,665.43.

B. United States v. Geidel

In September 2011, the U.S. Attorney for the Western District of New York filed a two-count superseding information against Geidel, charging him with wire fraud and structuring transactions to avoid reporting requirements. Div. Ex. 3. That same month, Geidel pled guilty to both counts. Div. Ex. 4; Minute Entry, United States v. Geidel, 1:11-cr-12 (W.D.N.Y. Sept. 13, 2011), ECF No. 37. In April 2012, the district court sentenced Geidel to a forty-two month prison term followed by three years of supervised release, ordered him to pay $1,301,981.95 in restitution, and entered judgment. Div. Ex. 2; Minute Entry, United States v. Geidel, 1:11-cr-12 (W.D.N.Y.

Apr. 6, 2011), ECF No. 45. Geidel did not appeal. See Dkt. Sheet, United States v. Geidel, 1:11-cr-12 (W.D.N.Y.).

Conclusions of Law

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize the Commission to impose permanent bars as a sanction against Geidel if: 1) within ten years of the commencement of this proceeding, he was convicted of any offense specified in Exchange Act Section 15(b)(4)(B) or Advisers Act Section 203(e)(2)-(3); 2) at the time of the misconduct, he was associated with a broker, dealer, or investment adviser; and 3) the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(6)(A)(ii), 80b-3(f). Geidel's wire-fraud conviction involves the violation of 18 U.S.C. § 1343, within the meaning of Exchange Act Section 15(b)(4)(B) and Advisers Act Section 203(e)(2).[3] 15 U.S.C. §§ 78*o*(b)(4)(B)(iv), 80b-3(e)(2)(D). During the time of his misconduct, he was associated with a broker-dealer and investment adviser.[4] See Div. Ex. 1; Div. Ex. 4 at 4-5; Official Notice. A sanction therefore will be imposed if it is in the public interest.

Geidel does not dispute that the statutory basis for a sanction has been satisfied. Although he did not file an opposition, I consider the issues he raised in his Answer and at the prehearing conference. He asserts that he needs legal advice in order to file an opposition, but he is not entitled to appointment of counsel in this proceeding. See William F. Lincoln, 53 S.E.C. 452, 457-59 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1250 n.14 (1997); Tr. 5, 8-12. Further, although he contends that he has restricted access to information and documents as a prisoner, and that the underlying district court record is in Buffalo, New York, he does not dispute that the Division advised him of his right to inspect and copy its investigative file in accordance with Rule 230. Tr. 4-5, 8; see 17 C.F.R. § 201.230. Moreover, he was provided additional time to obtain assistance in acquiring documents and legal counsel, and he did not object to the December 20, 2013, filing deadline for his Opposition. Tr. 10-12. Thus, he was given the full opportunity to respond to the OIP's allegations and the Motion.[5] See Jonathan Feins, 54 S.E.C. 366, 378 (1999).

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[3] Additionally, Geidel's conviction under the structuring statute is a "crime that is punishable by imprisonment for 1 or more years," within the meaning of Advisers Act Section 203(e)(3)(A). 15 U.S.C. § 80b-3(e)(3)(A); see 31 U.S.C. § 5324(d); Kornman, 95 SEC Docket at 14251 n.13.

[4] Although Geidel's plea agreement may be read to suggest that his misconduct as to wire fraud lasted from 1990 until "on or about August 31, 2010," which would be one day after his employment at Royal Alliance ended, the plea agreement confirms that his misconduct occurred while he was "employed as a financial advisor." Div. Ex. 4 at 4; see Div. Ex. 1. No material dispute exists as to Geidel's association with Royal Alliance during the period of misconduct.

[5] Rule 250 requires me to "promptly grant or deny" a motion for summary disposition. 17 C.F.R. § 201.250(b). This Rule also provides that "[i]f it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion." Id. Neither Geidel's generalized statements about restricted access to information and documents as a prisoner nor anything else in the record, however, provide "good cause" for denying or deferring the Motion, and thus deferring an initial decision.

Regarding Geidel's contention that the Division pursued this case in an unduly adversarial manner, the Division's alleged conduct does not render this proceeding procedurally unfair, and, in any event, my findings and conclusions are based on an independent review of the record. Cf. James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2718 n.23 (noting that the Division "is entitled to pursue vigorously its claims"), pet. denied, 285 F. App'x 761 (D.C. Cir. 2008). To the extent Geidel desires a one-page settlement offer in terms he can understand, I lack the authority to direct the Division to do what Geidel seeks. See Answer; Tr. 5-6.

Geidel questions whether "the Commission controls every aspect of this case, including the 'impartial' judge [who] is going to decide the outcome of this action[.]" Answer at 3.[6] His support for this suggestion centers on the fact that the OIP provided the time frame within which I must issue an initial decision. Id. The provision of such time frame is required by regulation and has no bearing on my ability to render an impartial judgment. See 17 C.F.R. § 201.360(a)(2). It is settled law that the procedure of agency adjudication comports with due process and assures that the hearing officer exercises his independent judgment on the evidence before him, free from pressures by the parties or other officials within the agency; Geidel points to no facts establishing to the contrary here. See Butz v. Economou, 438 U.S. 478, 513-14 (1978); Blinder, Robinson & Co., Inc. v. SEC, 837 F.2d 1099, 1104-08 (D.C. Cir. 1988); The Stuart-James Co., Inc., 50 S.E.C. 468, 470 (1991).

Accordingly, there is no genuine issue with regard to any material fact and summary disposition is appropriate. See 17 C.F.R. § 201.250(b). A sanction will be imposed if it is in the public interest.[7] See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (Commission has authority to bar persons from association with registered or unregistered investment advisers or otherwise sanction them under Advisers Act Section 203).

Sanctions

The Division seeks a full industry bar against Geidel. Motion at 1, 6. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC, namely: 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 the respondent's assurances against future violations; 5) the respondent's recognition of the wrongful nature of his conduct; and 6) the likelihood of future violations (Steadman factors). 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see Kornman, 95 SEC Docket at 14255. The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Kornman, 95 SEC Docket at 14255. The

[6] The Answer's page numbering is manual.

[7] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted on July 21, 2010, added collateral bar sanctions to Exchange Act Section 15(b) and Advisers Act Section 203(f). The Commission has held that Dodd-Frank's collateral bars "are prospective remedies whose purpose is to protect the investing public from future harm," and therefore applying the bars in a follow-on proceeding addressing pre-Dodd-Frank conduct is "not impermissibly retroactive." John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

Commission also considers the deterrent effect of administrative sanctions. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. Industry bars have long been considered effective deterrence. See Guy P. Riordan, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478 & n.107 (collecting cases).

The Steadman factors weigh in favor of imposing permanent bars. First, Geidel's criminal conduct was egregious; it involved a Ponzi scheme, diverting investor funds for his own personal use contrary to what he had indicated to the victims, and over $1 million in a twelve-month period. Div. Ex. 4 at 4-5. The egregious nature of his misconduct is underscored by the fact that he was ordered to pay over $1 million in restitution. Div. Ex. 2 at 5. Second, his conduct was recurrent, as it was committed over the course of two decades. Div. Ex. 4 at 4. Third, in committing wire fraud, he acted with a high degree of scienter—intent to defraud his victims. Id.; see United States v. Guadagna, 183 F.3d 122, 129 (2d Cir. 1999).

Geidel stated that he takes responsibility for his mistakes and accepted the punishment given to him. Answer at 1, 4. It is unclear, however, whether there is a likelihood of future violations. In his Answer, he stated that he has no interest in getting back in the brokerage business after his prison term is completed. Id. at 4. At the prehearing conference, however, he indicated at one point that he may "try and get back into the securities industry," but that he was "not looking to get back into the industry any time soon, if at all." Tr. 5. Even assuming that the factors pertaining to Geidel's recognition of the wrongful nature of his conduct and the likelihood of future violations weigh in his favor, the balance of the Steadman factors weighs in favor of a full industry bar, given his egregious, recurrent misconduct and high degree of scienter. Moreover, a sanction will further the Commission's interest in deterring others from engaging in similar misconduct.

In conclusion, it is in the public interest that the full range of permanent bars be imposed against Geidel.[8]

[8] Under Section 15(b)(6)'s plain language, the Commission is authorized to impose the full range of permanent bars, including the penny-stock bar, against Geidel if, in relevant part, at the time of the alleged misconduct, he was associated with a broker or dealer, or was participating in an offering of penny stock. 15 U.S.C. § 78*o*(b)(6)(A); see Peter Siris, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *19-20 (Dec. 12, 2013) (Commission imposed full range of permanent bars against the respondent based on his participation in an offering of penny stock at the time of the alleged misconduct, without requiring a separate broker-dealer nexus); Vladimir Boris Bugarski, Exchange Act Release No. 66842 (Apr. 20, 2012), 103 SEC Docket 53374, 53378 (same). Here, the broker-dealer nexus is satisfied. In two opinions, the Commission held that a penny-stock bar was inappropriate under the circumstances of those cases. See James Harvey Thornton, 53 S.E.C. 1210, 1217 (1999) (finding imposition of penny-stock bar inappropriate because, among other considerations, the respondent's failure to supervise did not involve penny-stock fraud and it appeared unlikely that he would commit such fraud or enter the penny-stock industry in the future), aff'd, 199 F.3d 440 (5th Cir. 1999) (unpublished); Alan E. Rosenthal, 53 S.E.C. 767, 770-71 (1998) (under Steadman analysis, Commission declined to impose penny-stock bar because such bar would not serve a remedial purpose). However, under the circumstances of this proceeding, imposing the full range of permanent bars best comports with the statute's remedial purpose and is in the public interest for the reasons discussed.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition against Respondent Timothy J. Geidel is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Timothy J. Geidel is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Timothy J. Geidel 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.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. See 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. See 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

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

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Cameron Elliot
Administrative Law Judge