UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67974/ October 3, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14967

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
JOHN S. MORGAN,	:	IMPOSING SANCTIONS BY DEFAULT
MARIAN I. MORGAN, and	:	AS TO TWO RESPONDENTS
THOMAS D. WOODCOCK, JR.	:	

SUMMARY

This Order bars John S. Morgan (Morgan) and Thomas D. Woodcock, Jr. (Woodcock) (collectively, Respondents), from association with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization (NRSRO), and from participating in an offering of penny stock. Respondents were previously enjoined from violating the antifraud and registration provisions of the securities laws in connection with wrongdoing while acting as unregistered broker-dealers.[1]

BACKGROUND

The Securities and Exchange Commission (Commission) initiated this proceeding with an Order Instituting Administrative Proceedings (OIP) on July 30, 2012, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Respondents were served with the OIP by August 20, 2012, and a telephonic prehearing conference was held on September 17, 2012. See 17 C.F.R. § 201.141(a)(2)(i). Respondents did not participate in the prehearing conference and did not file Answers to the OIP, due within twenty days after service of the OIP. See OIP at 3; 17 C.F.R. § 201.220(b). Accordingly, I find Respondents in default and the allegations in the OIP are found to be true as to them. See 17 C.F.R. §§ 201.155(a)(2), .220(f), .221(f).

On September 14, 2012, the Division of Enforcement (Division) filed a Motion for Default Pursuant to Rule 155(a)(2) of the Commission's Rules of Practice (Motion) and on September 25, 2012, the Division filed a Supplement to Motion (Supplemental Motion),

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[1] Marian I. Morgan is in settlement negotiations with the Division of Enforcement and remains a party in this proceeding.

including several documents for my consideration.[2] Official notice is taken of these documents to the extent they are relied on in this Order. See 17 C.F.R. § 201.323. I also take official notice of the final judgments entered by in SEC v. Morgan. See 17 C.F.R. § 201.323.

FINDINGS OF FACT

Morgan was the Fund Manager for Morgan European Holdings ApS (MEH), a Danish entity also known as MoneyTalks Inc., from at least April 2006 through June 2009. OIP, p. 1. During this time, Morgan used MEH to offer and sell investments in a ficticious prime bank instrument trading program. Id. Morgan was not associated with any registered broker dealer. Id. MEH has not registered any securities or securities offerings with the Commission, and has never been registered with the Commission. Id.

Following the criminal indictment filed May 31, 2011, Morgan pled guilty to conspiracy to defraud the United States and money laundering, and the Court entered its final judgment on July 20, 2012, in United States v. Morgan. Supplemental Motion, Exhibits 4, 5, pp. 1-2. Morgan was sentenced to 121 months imprisonment and ordered to pay total restitution, jointly and severally with other individuals, of $17,360,850. Supplemental Motion, Exhibit 5, pp. 2, 5.

On July 5, 2012, the Court entered its final judgment by default against Morgan in SEC v. Morgan (Morgan Final Judgment). The Court found that Morgan, acting with scienter, participated in a fraudulent scheme to defraud investors and permanently enjoined him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 thereunder. Morgan Final Judgment, pp. 2-4. The fraudulent scheme resulted in MEH receiving ill-gotten gains of $24,180,652.63, and the Court found Morgan jointly and severally liable for disgorgement of $25,519,897.24, which includes $1,339,244.61 of prejudgment interest. Id. pp. 3, 6.

In 2006, Woodcock participated in the fraudulent scheme by offering and selling investments in a ficticious prime bank instrument trading program. OIP, p. 2. During this time, Woodcock was not associated with any registered broker-dealer. Id. On April 2, 2010, the Court entered a final judgement by default against Woodcock in SEC v. Morgan (Woodcock Final Judgment). The Court found that Woodcock, acting with scienter, participated in a fraudulent scheme to defraud investors, and permanently enjoined him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 thereunder. Woodcock Final Judgment, pp. 1-3. The court found that Woodcock received ill-gotten gains of $7,758,346 as a result of the fraud, and the court ordered disgorgement of $8,878,945.29, which includes $1,120,599.29 of prejudgment interest, and ordered Woodcock to pay a third tier civil penalty in the amount of $130,000. Woodcock Final Judgment, pp. 3, 6-7.

[2] The Supplemental Motion included the following Exhibits: (1) Complaint in SEC v. Morgan, No. 8:09-cv-1093 (M.D. Fla.) filed on June 11, 2009; (2) Order to Show Cause in SEC v. Morgan filed July 7, 2009; (3) Contempt Order in SEC v. Morgan filed July 17, 2009; (4) Superseding Indictment in United States v. Morgan, No. 8:09-cr-585 (M.D. Fla.) filed on May 31, 2011; and (5) Judgment in United States v. Morgan filed August 2, 2012.

CONCLUSIONS OF LAW

Section 15(b)(6)(A) of the Exchange Act permits the Commission to sanction any person who, at the time of the misconduct, was associated with, or acted as a person associated with, a broker or dealer, if the Commission finds that the sanction is in the public interest and the person has been enjoined from any offense specified in Section 15(b)(4)(C). See 15 U.S.C. § 78o(b)(4)(C); see Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (barring an unregistered, associated person of an unregistered broker-dealer from association with a broker or dealer). Morgan and Woodcock were enjoined from violating the antifraud and registration provisions of the securities laws and from acting as unregistered broker-dealers. Accordingly, a sanction shall be imposed on Respondents if it is in the public interest.

SANCTIONS

When determining the public interest, the Commission is guided by the well-established public interest factors set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). See Joseph P. Galluzzi, Exchange Act Release No. 46405 (Aug. 23, 2002), 55 S.E.C. 1110, 1120. They include: (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, 603 F.2d at 1140.

Respondents' conduct was egregious, recurrent, and involved scienter. Respondents violated federal securities laws by perpetuating a fraudulent scheme to obtain funds from investors by offering and selling investments in a ficticious prime bank instrument trading program. Morgan engaged in this fraudulent conduct over a three-year period and Woodcock participated for at least one year.

The egregiousness of Morgan's and Woodcock's conduct is demonstrated by the fact that they were enjoined from violating the antifraud and registration provisions of the federal securities laws and that Morgan was found jointly and severally liable for receiving ill-gotten gains of over $24 million and Woodcock was found to have received ill-gotten gains of over $7 million. See Don Warner Reinhard, Exchange Act Release No. 63720 (Jan. 14, 2011), 100 SEC Docket 36940, 36947 & n.21 (citing Robert Bruce Lohmann, Exchange Act Release No. 48092 (June 26, 2003), 56 S.E.C. 573, 583 n.20 (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions")). The Commission has noted that "the fact that a person has been enjoined from violating antifraud provisions 'has especially serious implications for the public interest.'" Michael T. Studer, Exchange Act Release No. 50411 (Sept. 20, 2004), 57 S.E.C. 890, 898 (quoting Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 713), reconsideration denied, Exchange Act Release No. 50600 (Oct. 28, 2004), aff'd, 148 F. App'x 58 (2d Cir. 2005) (unpublished).

Respondents were found to have acted with scienter in the underlying civil action. Morgan Final Judgment, p. 1; Woodcock Final Judgment, p. 1. Respondents have failed to participate in this proceeding, offer assurances against future violations, and recognize the wrongful nature of their conduct. Accordingly, the Steadman factors overwhelmingly weigh in favor of finding that it is in the public interest to impose sanctions on Respondents.

The Division requests that Respondents be collaterally barred in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Motion, pp. 3-4. Specifically, the Division requests that Respondents be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO, and from participating in an offering of penny stock. Id.

Dodd-Frank, enacted on July 21, 2010, added collateral bar sanctions to Section 15(b) of the Exchange Act. The new sanctions authorize the Commission to simultaneously suspend or bar an individual who has engaged in certain unlawful conduct from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Prior to Dodd-Frank, collateral sanctions were generally authorized only on a piecemeal basis, i.e., only when an individual sought association with the particular branch of the securities industry at issue. Teicher v. SEC, 177 F.3d 1016, 1020-21 (D.C. Cir. 1999) (the Commission could not impose sanctions as to any specific branch until it could "show the nexus matching that branch").

Retroactive application of a new law authorizing or affecting the propriety of prospective relief requires inquiry into whether the new law would impair vested rights – that is, "rights a party possessed when he acted." Landgraf v. USI Film Prods., 511 U.S. 244, 280 (1994); Fernandez-Vargas v. Gonzales, 548 U.S. 30, 44 n.10 (2006) (noting that vested rights are "something more substantial than inchoate expectations and unrealized opportunities," and include "an immediate fixed right of present or future enjoyment"). In those cases where the question of retroactivity cannot be resolved by statutory construction and the new law authorizes injunctive relief, the question of retroactive application essentially reduces to the question of whether such application would impair vested rights. See Ferguson v. U.S. Attorney General, 563 F.3d 1254, 1261 (11th Cir. 2009) (describing two-step analysis under Landgraf); see also Wayde M. McKelvy, Exchange Act Release No. 65423 (Sept. 28, 2011), 102 SEC Docket 46319; Glenn M. Barikmo, Initial Decision Release No. 436 (Oct. 13, 2011), 102 SEC Docket 47146, Finality Order, Exchange Act Release No. 65782 (Nov. 17, 2011); John D. Friedrich, Investment Advisers Act of 1940 Release No. 3394 (Apr. 6, 2012), 103 SEC Docket 53102.

Dodd-Frank lacks an express retroactivity provision, and "'normal rules of [statutory] construction'" do not reveal Congress' intent regarding retroactivity. Pezza v. Investors Capital Corp., 767 F. Supp. 2d 225, 228 (D. Mass. Mar. 1, 2011) (quoting Lindh v. Murphy, 521 U.S. 320, 326 (1997)); see also SEC v. Daifotis, 2011 WL 2183314, at *14 (N.D. Cal. June 6, 2011); Holmes v. Air Liquide USA LLC, 2012 WL 267194, at *5 (S.D. Tex. Jan. 30, 2012). The requested relief is injunctive, and the question, then, is whether retroactive application of Dodd-Frank's collateral bar would impair Respondents' vested rights.

Respondents plainly had no such vested right to associate with a broker dealer. Before Dodd-Frank's enactment, any person who was permanently enjoined "from engaging in or continuing any conduct or practice in connection with [activities as a broker or dealer]" or "in connection with the purchase or sale of any security" was subject to a broker and dealer associational bar under Section 15(b)(6)(A)(iii) of the Exchange Act. 15 U.S.C. § 78o(b)(6)(A) (2006).

Respondents also had no vested right to associate with an investment adviser, municipal securities dealer, or transfer agent. Before Dodd-Frank, a conviction like Respondents' could bar them from such associations, even though the bar could not be imposed until the person actually sought association. 15 U.S.C. §§ 78o(b)(6)(A), 78o-4(c)(4), 78q-1(c)(4)(C) (2002); Teicher, 177 F.3d at 1020-21. A similar bar existed as to penny stock offerings, but it was direct, not collateral. 15 U.S.C. §§ 78o(b)(4)(D), 78o(b)(6)(A)(iii) (2006); see also 15 U.S.C. § 78o(b)(6)(C) (defining the term "participating in an offer of penny stock").

The analysis is more complicated with respect to a municipal advisor and NRSRO. There was no associational bar or similar provision predating Dodd-Frank with respect to a municipal advisor, nor was there a formal associational bar with respect to an NRSRO. See, e.g., Commissioner Kathleen L. Casey, Address to Practising Law Institute's SEC Speaks in 2011 Program (Feb. 4, 2011) (noting the absence of these two bars before Dodd-Frank). However, before Dodd-Frank's enactment, there existed a statutory provision for revoking the registration of an NRSRO if any person associated with it was found to have been enjoined as Respondents have, and if it was necessary for the protection of investors and in the public interest. 15 U.S.C. § 78o-7(d) (2006). Although this provision is not formally an associational bar, for practical purposes it amounts to one because it is unlikely that any NRSRO would hire or otherwise associate with the person enjoined. This provision became effective September 29, 2006, the year in which Woodcock's misconduct took place and at the time when Morgan began commiting his violations.

Thus, Respondents had no vested rights in association with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or NRSRO, or in participating in a penny stock offering, but did have such rights with respect to municipal advisors. A permanent bar is therefore warranted, but only with respect to brokers, dealers, investment advisors, municipal securities dealers, transfer agents, NRSROs, and penny stock offerings.

ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, John S. Morgan and Thomas D. Woodcock, Jr., are BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, NRSRO, and transfer agent, and from participating in a penny stock offering.

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Cameron Elliot
Administrative Law Judge