INITIAL DECISION RELEASE NO. 484
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15119

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

In the Matter of		
	:	
ADAM HARRINGTON a/k/a ADAM RUKDESCHEL	:	INITIAL DECISION
and ADAM HARRINGTON RUCKDESCHEL	:	April 17, 2013

APPEARANCES: Jack Kaufman and Shannon Keyes for the Division of Enforcement, Securities and Exchange Commission

Adam Harrington, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Adam Harrington a/k/a Adam Rukdeschel and Adam Harrington Ruckdeschel (Harrington) from the securities industry. It is based on his 2012 conviction for securities fraud, wire fraud, mail fraud, and conspiracy to commit those three offenses.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) initiated this proceeding with an Order Instituting Proceedings (OIP) on December 5, 2012, pursuant to Section15(b) of the Securities Exchange Act of 1934 (Exchange Act). Pursuant to leave granted at the January 8, 2013, prehearing conference and 17 C.F.R. § 201.250, the Division of Enforcement (Division) filed a Motion for Summary Disposition on March 1, 2013, Harrington filed an opposition on April 10, 2013, and the Division filed a reply on April 17, 2013.

This Initial Decision is based on the Motion for Summary Disposition and responsive pleadings, including those attachments admitted into evidence, infra, and Harrington's Answer to the OIP. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which Harrington was convicted were decided against him in the criminal case on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Harrington was convicted of securities fraud, wire fraud, mail fraud, and conspiracy to commit securities fraud, wire fraud, and mail fraud in United States v. Mandell, No. 1:09-cr-00662 (S.D.N.Y. May 7, 2012). The Division urges that he be barred from the securities industry.

Harrington denies the wrongdoing for which he was convicted in United States v. Mandell and notes that his appeal of the conviction is pending before the United States Court of Appeals for the Second Circuit.

C. Procedural Issues

1. Exhibits Admitted into Evidence

The following items, of which official notice is taken pursuant to 17 C.F.R. §§ 201.250(a), .323, which are also included in the Division's Motion for Summary Disposition at Exhibits 1, 3, 4, 5, 6, and 7, are admitted as Division Exhibits 1, 3, 4, 5, 6, and 7:

December 14, 2010, Superseding Indictment, United States v. Mandell (Div. Ex. 1);

July 26, 2011, Verdict Form, United States v. Mandell (Div. Ex. 3);

May 7, 2012, Judgment, United States v. Mandell (Div. Ex. 4);

May 4, 2012, Excerpts, Transcript of Sentence, United States v. Mandell (Div. Ex. 5);

May 4, 2012, Order of Forfeiture, United States v. Mandell (Div. Ex. 6); and

September 26, 2012, Order of Restitution, United States v. Mandell (Div. Ex. 7).

2. Collateral Estoppel

Harrington denies the wrongdoing for which he was convicted in United States v. Mandell and notes that his appeal of the conviction is pending. Citing Morrison v. National Australia Bank Ltd., 130 S. Ct. 2869 (2010), he argues that he is likely to prevail and, accordingly, urges that his conviction be disregarded. Nonetheless, as found below in the Findings of Fact, Harrington was found guilty and convicted of securities fraud, wire fraud, mail fraud, and conspiracy to commit these three offenses. Harrington is foreclosed from arguing that the facts concerning his involvement in the criminal wrongdoing are not proven. It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. See Ira William Scott, Advisers Act Release No. 1752 (Sept. 15, 1998), 53 S.E.C. 862, 866;

William F. Lincoln, Exchange Act Release No. 39629 (Feb. 9, 1998), 53 S.E.C. 452, 455-56.[1] Additionally, the pendency of Harrington's appeal in United States v. Mandell does not preclude "follow-on" action based on the conviction. Joseph P. Galluzzi, Exchange Act Release No. 46405 (Aug. 23, 2002), 55 S.E.C. 1110, 1116 n.21; John Francis D'Acquisto, Advisers Act Release No. 1696 (Jan. 21, 1998), 53 S.E.C. 440, 444 n.9. If the Court of Appeals vacates the conviction on which this proceeding is based, the Commission will entertain an application to reconsider the sanction herein. Evelyn Litwok, Advisers Act Release No. 3438 (July 25, 2012), 104 SEC Docket 56983; C. R. Richmond & Co., Exchange Act Release No. 12535 (June 10, 1976), 46 S.E.C. 412, 414 n.11.

II. FINDINGS OF FACT

Harrington was convicted after a jury trial of securities fraud, wire fraud, mail fraud, and conspiracy to commit securities fraud, wire fraud, and mail fraud in violation of 15 U.S.C. §§ 78j(b), 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. §§ 2, 371, 1343 in United States v. Mandell, No. 1:09-cr-00662 (S.D.N.Y. May 7, 2012), appeal pending, No. 12-2090 (2d Cir.). Div. Exs. 3, 4. He was sentenced to sixty months of imprisonment, followed by three years of supervised release. Div. Ex. 4. He is also subject to an order of forfeiture in the amount of $20 million and was ordered to pay $24,880,460 in restitution, jointly and severally with others. Div. Exs. 5, 6, 7.

Harrington, 42, of Miami, Florida, was associated with Commission-registered broker-dealers from 2000 to 2005 – Thornwater Company, LP, from 2000 to 2002 and Sky Capital LLC (n/k/a Granta Capital LLC) from August 2002 to August 2005. Answer at 1. His conviction arose from activities conducted in furtherance of these broker-dealers' business over a five-and-a-half-year period and included a leadership role in the wrongdoing. Div. Ex. 5 at 48-49. The court considered that "[t]he conduct in which he engaged is very serious." Div. Ex. 5 at 48. Harrington denies having engaged in the wrongdoing underlying his conviction. Answer at 1-2.

III. CONCLUSIONS OF LAW

Harrington has been convicted, within ten years of the commencement of this proceeding, of a felony that "arises out of the conduct of the business of a broker[-]dealer" and "involves the violation of section . . . 1343 . . . of title 18, United States Code" within the meaning of Sections 15(b)(4)(B)(ii), (iv) and 15(b)(6)(A)(ii) of the Exchange Act.

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[1] Similarly, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See Michael J. Markowski, Exchange Act Release No. 44086 (Mar. 20, 2001), 55 S.E.C. 21, 26-27, pet. denied, No. 01-1181 (D.C. Cir. 2002) (unpublished); John Francis D'Acquisto, Advisers Act Release No. 1696 (Jan. 21, 1998), 53 S.E.C. 440, 444; Demitrios Julius Shiva, Exchange Act Release No. 38389 (Mar. 12, 1997), 52 S.E.C. 1247, 1249 & nn.6-7. See also Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 697-700, 709-13.

IV. SANCTION

The Division requests that Harrington be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. This sanction will serve the public interest and the protection of investors, pursuant to Section 15(b) of the Exchange Act and accords with Commission precedent and sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). When the Commission determines administrative sanctions, it considers:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Id. (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), aff'd on other grounds, 450 U.S. 91 (1981). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 698. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46.

The unlawful conduct for which Harrington was convicted was egregious and recurrent during a period of more than five years. A high degree of scienter is indicated by his conviction for fraud. Harrington has not given assurances against future violations or acknowledged the wrongful nature of his conduct. Harrington's previous occupation, if he were allowed to continue it, would present opportunities for future misconduct involving dishonesty. His violations are neither recent nor distant in time. The degree of harm to investors and the marketplace is quantified in the restitution of $24,880,460 that the court ordered. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1145, aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., Exchange Act Release No. 11773 (Oct. 24, 1975), 46 S.E.C. 78, 100. A bar is also necessary for the purpose of deterrence.

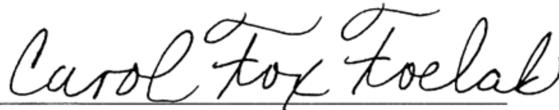
A bar is consistent with Commission precedent in litigated administrative proceedings based on a respondent's conviction involving fraud. See Galluzzi, 55 S.E.C. 1110; John S. Brownson, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1027, pet. denied, 66 Fed. Appx. 687 (9th Cir. 2003) (unpublished); Ted Harold Westerfield, Exchange Act Release No. 41126 (Mar. 1, 1999), 54 S.E.C. 25; Scott, 53 S.E.C. 862; Victor Teicher, Exchange Act Release No. 40010 (May 20, 1998), 53 S.E.C. 581, aff'd in part and rev'd in part, 177 F.3d 1016 (D.C. Cir. 1999), cert. denied, 529 U.S. 1003 (2000); Lincoln, 53 S.E.C. 452; Meyer Blinder, Exchange Act Release No. 39180 (Oct. 1, 1997), 53 S.E.C. 250; Benjamin G. Sprecher, Exchange Act Release No. 38485 (Apr.

18, 1997), 52 S.E.C. 1296; Ahmed Mohamed Soliman, Exchange Act Release No. 35609 (Apr. 17, 1995), 52 S.E.C. 227. "Absent extraordinary mitigating circumstances, such an individual cannot be permitted to remain in the securities industry." Brownson, 55 S.E.C. at 1027. There are no extraordinary mitigating circumstances in this case to warrant a lesser sanction.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), ADAM HARRINGTON a/k/a ADAM RUKDESCHEL and ADAM HARRINGTON RUCKDESCHEL IS BARRED from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 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 of the Commission's Rules of Practice, 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 a 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 occur, the Initial Decision shall not become final as to that party.



Carol Fox Foelak
Administrative Law Judge