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

INVESTMENT ADVISERS ACT OF 1940
Release No. 3394 / April 6, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14715

In the Matter of	:	
	:	ORDER MAKING FINDINGS
JOHN D. FRIEDRICH	:	AND IMPOSING SANCTIONS BY
	:	DEFAULT

Summary

This Order bars John D. Friedrich (Friedrich) from association with a broker, dealer, investment adviser, municipal securities dealer, and transfer agent. Friedrich was previously enjoined from violating the antifraud provisions of the securities laws in connection with wrongdoing while associated with an investment adviser.

I. Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Friedrich on January 25, 2012, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that a final judgment was entered against Friedrich on December 2, 2011, permanently enjoining him from violating Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rule 10b-5 in SEC v. Seaforth Meridian, Ltd., No. 5:06-cv-4107-RDR (D. Kan.).

On March 7, 2012, a prehearing conference was held, in which Friedrich failed to participate. On March 14, 2012, the Division filed a Motion for Default Judgment (Motion), including five exhibits.[1] Friedrich did not file an opposition.

The Division and the Office of the Secretary provided evidence that Friedrich was properly served with the OIP by February 8, 2012, in accordance with 17 C.F.R. § 201.141(a)(2)(i).[2]

[1] Exhibit A is the Complaint filed in Seaforth Meridian; Exhibit B is the Memorandum and Order filed in Seaforth Meridian, granting the Commission's Motion for Summary Judgment; Exhibit C is the Final Judgment entered against Friedrich in Seaforth Meridian; Exhibit D is the OIP, including the cover letter from the Office of the Secretary advising Friedrich of this proceeding pursuant to the Commission's Rules of Practice, the signed USPS certified return receipt detail, and USPS tracking report; and Exhibit E is the Declaration of Angelia L. Stewart.

Exhibits D, E. Friedrich's Answer was due within twenty days of service of the OIP on him. OIP at 3; 17 C.F.R. § 201.220(b). To date, Friedrich has not filed an Answer and the time for filing has expired.

Friedrich is in default within the meaning of Rule 155(a) of the Commission's Rules of Practice in that he did not file an Answer to the OIP or participate in the prehearing conference, and has not otherwise defended the proceeding. OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f), .221(f). Accordingly, the allegations in the OIP are deemed to be true.

II. Findings of Fact

Friedrich was a managing member of Seaforth Meridian, Ltd. (Meridian), Seaforth Meridian Management, LLC (Management), and Seaforth Meridian Advisors, LLC (Seaforth Advisors). OIP at 1. Meridian was a hedge fund and Seaforth Advisors was its investment adviser. Exhibit A at 3; Exhibit B at 5. Between May 2004 and October 2005, in reliance on a claimed exemption from registration under Regulation D, Friedrich, as a principal of Meridian, raised approximately $18 million from approximately seventy investors – many of them elderly – by use of a private placement memorandum and oral representations. Id.

Friedrich enticed investors to purchase limited partnership interests in Meridian with offering materials and oral representations that falsely represented and omitted material information regarding investment strategies and risks of loss, the financial controls over investor funds, and the background, experience, and expertise of Meridian principals. OIP at 2. Meridian principals, including Friedrich, misled investors about the conservative nature of Meridian's investment strategy, while, in fact, investing almost 75% of the funds raised in two highly suspect, offshore funds. Id. They funneled more than $600,000 to themselves without having adequately accounted for Meridian's profits or losses. Further, Meridian principals reassured investors with false monthly account statements and reports that emphasized the safety of investor funds. Id. At the time of the misconduct, Friedrich was not a registered representative. OIP at 1.

Official notice is taken that Friedrich was permanently enjoined from violating Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. 17 C.F.R. § 201.323. Friedrich was ordered to pay disgorgement of $277,339.64, including prejudgment interest of $18,937.50, and a civil penalty of $100,000.00. Exhibit C at 3-4.

III. Conclusions of Law

Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act) authorizes the Commission to sanction a person associated with an investment adviser, where the associated person has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, if it is in the public interest to do so. 15 U.S.C. § 80b-3(f).

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[2] Respondent was served by USPS certified mail on February 2, 2012, and the Office of the Secretary received a signed USPS return receipt on February 8, 2012. 17 C.F.R. § 201.141(a)(2)(i); Exhibits D, E.

Friedrich, while associated with an investment adviser (Seaforth Advisers), willfully violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities. Friedrich is permanently enjoined from violating federal securities laws. Thus, the only remaining issue is to determine which sanctions, if any, are in the public interest.

IV. Sanctions

A permanent associational bar is appropriate. Friedrich's conduct meets all the factors used in determining that it is in the public interest to sanction him. See Christopher A. Lowry, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1141 (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)); see generally Exhibit B at 16-17. Friedrich's conduct was egregious in that he engaged in a fraudulent scheme for over one year with the purpose of defrauding investors, many of them elderly. His conduct was recurrent because it involved repeated misrepresentations and omissions of material information for a period of over one year. Additionally, Friedrich has failed to participate in this proceeding, offer assurances against future violations, or recognize the wrongful nature of his conduct. A permanent associational bar will serve the public interest and the protection of investors, pursuant to Section 203(f) of the Advisers Act. 15 U.S.C. § 80b-3(f). It accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d at 1140.

The Division requests bars on associating with brokers, dealers, investment advisers, municipal securities dealers, municipal advisors, transfer agents, and nationally recognized statistical rating organizations (NRSRO's). Motion at 9-10. The requested sanction will be granted except as to the municipal advisor and NRSRO bars.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted July 21, 2010, added collateral bar sanctions to Section 15(b)(6)(A) of the Exchange Act and Section 203(f) of the Advisers Act. The new sanctions authorize the Commission to simultaneously suspend or bar an individual who has engaged in certain unlawful conduct from association with a broker, dealer, investment adviser, 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 that 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"). The issue is whether Dodd-Frank's broader collateral bar can be applied to Friedrich, whose misconduct ended before the enactment of Dodd-Frank.

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 Products, 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 Ojeda-Terrazas v. Ashcroft, 290 F.3d 292, 297 (5th Cir. 2002)

(describing two-step analysis under Landgraf); see also Wayde M. McKelvy, Exchange Act Release No. 65423 (Sept. 28, 2011); Richard L. Goble, Initial Decision Release No. 435 (Oct. 5, 2011); Glenn M. Barikmo, Initial Decision Release No. 436 (Oct. 13, 2011).

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 (quoting Lindh v. Murphy, 521 U.S. 320, 326 (1997)); see also SEC v. Daifotis, Fed. Sec. L. Rep. P 96,325, 2011 WL 2183314 at *14 (N.D.Cal. June 6, 2011). The requested relief is injunctive, and the question, then, is whether retroactive application of Dodd-Frank's collateral bar would impair Friedrich's vested rights.

Friedrich plainly had no such vested right to associate with brokers, dealers, and investment advisers. 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, dealer, or investment adviser]" 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, and an investment adviser associational bar under Section 203(f) of the Advisers Act. 15 U.S.C. § 78o(b)(6)(A) (2002); 15 U.S.C. § 80b-3(e)(4), (f) (2002).

Friedrich also had no vested right to associate with municipal securities dealers or transfer agents. Before Dodd-Frank, a permanent injunction like the one against Friedrich could bar him from such associations, even though the bar could not be imposed until the person actually sought association. 15 U.S.C. § 78o-4(c)(4) (2002); 15 U.S.C. § 78q-1(c)(4)(C) (2002); Teicher, 177 F.3d at 1020-21.

The situation is more complicated with respect to municipal advisors and NRSRO's. There is no associational bar or similar provision predating Dodd-Frank with respect to municipal advisors, nor was there a formal associational bar with respect to NRSRO's. 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). In 2006, 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 Friedrich has. 15 U.S.C. § 78o-7(d)(1)(A) (2006). However, Friedrich's misconduct predated the enactment of this provision. As to association with municipal advisors and NRSRO's, therefore, Friedrich possessed a right approximating an "immediate fixed right of present or future enjoyment." Fernandez-Vargas, 548 U.S. at 44 n.10.

Thus, Friedrich had no vested rights in association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent, but did have such rights with respect to municipal advisors and NRSRO's. A permanent bar is therefore warranted, but only with respect to brokers, dealers, investment advisers, municipal securities dealers, and transfer agents.

V. Order

It is ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, John D. Friedrich is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, and transfer agent.

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Cameron Elliot
Administrative Law Judge