

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

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In the Matter of :  
: INITIAL DECISION  
GUY W. GANE, JR. : June 19, 2013  
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APPEARANCES: David Stoelting for the Division of Enforcement, Securities and Exchange Commission

Guy W. Gane, Jr., pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

**Background**

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on February 15, 2013, alleging that Guy W. Gane, Jr., (Gane): (1) on December 9, 2010, pled guilty to single counts of mail fraud and money laundering in United States v. Gane, Case No. 1:10-cr-90 (W.D.N.Y.), and was sentenced to a prison term of 156 months and three years of supervised release and ordered to make restitution of \$6,394,359.37; and (2) on February 16, 2012, was permanently enjoined from future violations of various provisions of the securities statutes in SEC v. Watermark Fin. Ser. Group, Inc., Civil Action No. 1:08-cv-361 (W.D.N.Y.).

Gane did not file an Answer to the OIP, but he did participate in the prehearing conference held on March 18, 2013, where I granted the Division of Enforcement (Division) leave to file a Motion for Summary Disposition (Motion), which it did on April 16, 2013. Tr. 6. At the prehearing, Gane stated he did not contest the allegations and he did not plan to object to the Motion. Tr. 6-8. Gane agreed to the procedural schedule which required his opposition to the Motion on May 17, 2013, but he did not make a filing. The Motion has the following attachments: Exhibit A, Final Judgment as to Gane in Watermark (Feb. 16, 2012); Exhibit B, Decision and Order in Watermark (Feb. 14, 2012); Exhibit C, Judgment in Gane (Sept. 23, 2011); and Exhibit D, Plea Agreement in Gane (Dec. 9, 2010).

I take official notice of, and accept into evidence, the exhibits attached to the Motion. 17 C.F.R. § 201.323. There are no issues of material fact that require a hearing and the presentation of witnesses. My findings are based on the record and I applied preponderance of the evidence as the applicable standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981).

### **Findings of Fact**

A plea agreement filed December 9, 2010, in Gane, described Gane as president of M-One Financial Services, Inc. (M-One Financial), an investment adviser affiliated with various registered broker-dealers. Motion, Ex. D at 3-4. Before January 2006, Gane and his sales staff sold various investment products. Id. at 4. Gane also formed and was president of Watermark Financial Services Group and Watermark M-One Holdings, and in or about January 2006, Gane and his sales staff began offering clients unregistered debentures and later promissory notes in the name of these firms, making fraudulent representations as to investment opportunities, and promising a ten percent annual return that the investment was guaranteed. Id. at 4-5. Gane pled guilty to charges of mail fraud and money laundering, was sentenced to 156 months of incarceration followed by three years of supervised release, and was ordered to pay \$6,394,359.37 jointly and severally with others in Gane. Motion, Ex. C.

The Decision and Order granting in part the Commission's motion for summary judgment in the civil case, Watermark, stated that Gane held Series 7 and 24 licenses and operated a broker-dealer at M-One Financial from July 2007 through 2008, but that he was not associated as a registered representative with the broker-dealer. Motion, Ex. B at 2. Prior to 2007, Gane had been associated with other broker-dealers as a registered representative. Id. Gane and others engaged in a Ponzi scheme employing the conduct that was the basis of the criminal case. Motion, Ex. B at 3-6, 15. In Watermark, Gane was: (1) enjoined from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act), and Exchange Act Rule 10b-5; and (2) found jointly and severally liable for disgorging \$5,299,478.21, together with prejudgment interest from May 18, 2008, of \$788,979.69, for total disgorgement of \$6,088,457.89. Motion, Ex. A.

### **Conclusions of Law**

Section 15(b) of the Exchange Act provides that the Commission shall censure, place limitations on the activities of any person, suspend for a period of up to twelve months, or bar a person from association with specified entities authorized to operate in the securities industry where the person engaged in misconduct while associated or seeking to become associated with a broker-dealer, where the sanction is in the public interest, and where the person has willfully violated a provision of the Exchange Act, an Exchange Act regulation, or has been enjoined from future violations. 15 U.S.C. § 78o(b).

The criteria for making a public interest determination is set out in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). See Steven Altman, Esq., Exchange Act Release No. 63306 (Nov. 10, 2010), 99 SEC Docket 34405, 34434-35. Consideration of those criteria show that it is in the public interest to bar Gane from participation in

the securities industry. His conduct was egregious and recurrent, involving numerous fraudulent misrepresentations over several years that resulted in illegal profits of five or six million dollars. Gane had a high degree of scienter as shown by the court's finding that "the undisputed facts demonstrate that [Gane and others] knowingly participated in the scheme to defraud the debenture and promissory note investors." Motion, Ex. B at 16. Nothing in the record shows Gane appreciates the wrongful nature of his conduct, and he has not represented that his future conduct will conform to legal standards.

### **Order**

I GRANT the Division's Motion for Summary Disposition, and ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934, that Guy W. Gane, Jr. is barred from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

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 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 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.

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Brenda P. Murray  
Chief Administrative Law Judge