INITIAL DECISION RELEASE NO. 1020
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16972

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

In the Matter of BRETT A. COOPER	INITIAL DECISION June 6, 2016

APPEARANCES: Stephen T. Kaiser and Timothy N. England for the Division of Enforcement, Securities and Exchange Commission

Brett A. Cooper, pro se

BEFORE: James E. Grimes, Administrative Law Judge

Summary

In this initial decision, I grant the Division of Enforcement's motion for summary disposition. Respondent Brett A. Cooper is barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

Procedural Background

The Commission initiated this proceeding in November 2015, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934. OIP at 1; *see* 15 U.S.C. § 78*o*(b). This proceeding follows the injunctive action the Commission brought in *SEC v. Cooper*, No. 13-cv-5781 (D.N.J. filed Sept. 27, 2013). The Division alleges the following in the OIP. Cooper has never been registered with the Commission as a broker or dealer and has never been associated with a registered broker or dealer. OIP at 1-2. The Commission filed a complaint in district court alleging that from 2008 through 2011, Cooper convinced investors to invest in "Prime Bank" or "High-Yield" investment contracts with the promise of extraordinary returns. *Id.* at 2. The complaint alleged Cooper induced at least ten investors[1] to invest roughly $2.1 million. *Id.*

[1] While the OIP states that the complaint in the underlying civil proceeding alleges "at least 11 investors," *see* OIP at 2, the complaint itself alleges Cooper defrauded "at least 10" investors, Ex. 1 ¶ 17. The district court's opinion found that Cooper defrauded "at least 10"

In November 2015, the United States District Court for the District of New Jersey permanently enjoined Cooper from committing future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5, and from "participating directly or indirectly in the issuance, offer, or sale of certain securities." OIP at 2. According to the OIP:

> The district court found that Respondent Cooper acted with a high degree of scienter and engaged in multiple, recurrent and egregious violations of the securities laws. The court also found that Cooper has never admitted his role in his fraudulent schemes nor taken responsibility for his actions. The court also found that Cooper committed a "Finder's Fee" scheme after being sued for fraud, after being named as a defendant in another prime bank case, and after becoming aware of the Commission's investigation which led to the civil action in this matter.

Id.

I held a telephonic prehearing conference on December 15, 2015, which was attended by counsel for the Division and Cooper, who was unrepresented. *Brett A. Cooper*, Admin. Proc. Rulings Release No. 3402, 2015 SEC LEXIS 5098, at *1 (ALJ Dec. 15, 2015). During the conference, I instructed the Division to establish when Cooper was served with the OIP. *Id*. I also set a schedule for filing motions for summary disposition. *Id*. at *1-2.

In early January 2016, the Division submitted a letter establishing that Cooper was not served until December 26, 2015. *See Brett A. Cooper*, Admin. Proc. Rulings Release No. 3466, 2016 SEC LEXIS 22, at *1 (ALJ Jan. 5, 2016). As a result, I informed Cooper that his answer to the OIP was due January 15, 2016. *Id*. I also modified the motions schedule. *Id*. at *1-2.

The Division timely filed its motion in January 2016. It asks that I issue an order barring Cooper from "associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization." Mot. at 1. The Division's motion is supported by nine exhibits, including: the Commission's injunctive complaint, Ex. 1; the district court's opinion, Ex. 2; the district court's final judgment, Ex. 3; the Commission's statement of undisputed material facts filed in district court in conjunction with the Commission's motion for summary judgment, Ex. 8; and the report of the Commission's expert, James E. Byrne, Ex. 9.

Cooper did not file an answer to the OIP or an opposition to the Division's motion for summary disposition. *See Brett A. Cooper*, Admin. Proc. Rulings Release No. 3698, 2016 SEC LEXIS 963, at *1 (ALJ Mar. 11, 2016). On March 11, 2016, I ordered him to show cause by

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investors, *see* Ex. 2 at 29-30, while the statement of facts notes at least eleven investors gave Cooper money to invest, Ex. 8 at 15.

March 21, 2016, why this proceeding should not be determined against him. *Id*. Cooper did not respond to the order to show cause.

Summary Disposition Standard

An administrative law judge "may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250(b). Summary disposition is generally appropriate in "follow-on" proceedings—administrative proceedings instituted following a conviction or entry of an injunction—in circumstances where the only real issue involves the determination of the appropriate sanction.[2] Summary disposition is appropriate here because the only issue is whether Cooper's conduct warrants imposition of the bars the Division seeks.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule of Practice 323, 17 C.F.R. § 201.323. Because Cooper did not file an answer to the OIP or respond to the Division's dispositive motion, he is in default.[3] *See* 17 C.F.R. §§ 201.155(a)(2), .220(f). As a result, I have accepted as true the factual allegations in the OIP. *See* 17 C.F.R. § 201.155(a). In making the findings below, I have applied preponderance of the evidence as the standard of proof.[4]

Cooper's case concerns "prime bank" fraud. Ex. 2 at 4. Generally, perpetrators of prime bank schemes induce investment by promising incredible returns with little or no risk. *See Anthony Fields, CPA*, Investment Advisers Act of 1940 Release No. 4028, 2015 WL 728005, at *3 (Feb. 20, 2015); Ex. 9 at 11-13. Victims are often told that their investment will fund the purchase of "instruments supposedly representing obligations of well-known international banks—which the promoters call 'prime banks'—at a steep discount." *Anthony Fields, CPA*, 2015 WL 728005, at *2. The "association with reputable financial institutions" in combination with "the use of complex-sounding jargon," boosts the promoter's credibility. *Id.* Prime bank

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[2] *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 WL 1362796, at *9 (May 15, 2009), *recons. denied*, Advisers Act Release No. 2901, 2009 WL 2082893 (July 16, 2009); *see Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5 & nn.21-24 (Feb. 4, 2008), *pet. denied*, 561 F.3d 548 (6th Cir. 2009).

[3] Cooper may move to set aside the default in this case. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id*.

[4] *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005) ("[I]t is well settled that the applicable standard . . . is preponderance of the evidence."), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).

fraud promoters typically invoke a purported need for secrecy, which "mak[es] it impossible to verify the claims with the banks themselves." *Id*.; *see* Ex. 9 at 29-30.

From 2008 through 2011, Cooper was the sole managing member of Global Funding Systems LLC, Dream Holdings, LLC, and PWD Philadelphia Unit, LLC. OIP at 1. PWD Philadelphia Unit was the general partner of Peninsula Waterfront Development, L.P. *Id*. Cooper was also the founder and sole principal of Fortitude Investing, LLC and the sole director of REOP Group Inc. *Id*. These entities were fictional; they did not observe corporate formalities and existed simply as devices to further Cooper's fraudulent schemes. Ex. 2 at 27-28; Ex. 3 at 3-6. None of the entities has ever been registered with the Commission and Cooper has never been registered as a broker or dealer nor associated with a registered broker or dealer. OIP at 1-2; Ex. 2 at 3, 29-30.

Acting through the above entities, Cooper induced investors to invest by promising fantastical returns within a short period with little or no risk.[5] Cooper told investors they were investing in bank instruments "from major international banks," and that the instruments would be "monetized" or "traded" in secret transactions. Ex. 2 at 4-5; Ex. 8 at 17-18, 27-28, 39-40, 44. In fact, the bank instruments did not exist and Cooper invested his victims' money in nothing more than his own lavish lifestyle. Ex. 2 at 7, 21-23, 28; *see* Ex. 8 at 18-19, 24, 30, 33, 38, 42, 46. During the relevant period, Cooper induced at least ten investors to invest over $2.1 million. Ex. 2 at 29-30; Ex. 8 at 15. With one exception, all investors lost everything they invested. Ex. 2 at 17; *see* Ex. 8 at 33.

Cooper induced investment through a web of lies. He told investors that their money was safe and would be returned if the deal he conceived fell through. Ex. 2 at 21; Ex. 8 at 27-28, 31-32, 44. But this was clearly untrue because the bank instruments did not exist and Cooper planned to steal investors' funds without actually investing anything. Ex. 2 at 21-22.

In addition, Cooper pretended to use an escrow agent in order to provide the appearance of legitimacy. Ex. 2 at 21. But the escrow agent did not exist—Cooper posed as the agent, created a fake website and personnel for the agent, and tricked investors into wiring their money to accounts Cooper controlled. *Id*. at 21-24; Ex. 8 at 18, 22, 24, 28-29, 32, 40-42. When asked by an investor about whether he had been involved with frauds in the past, Cooper lied and said that he had not. Ex. 2 at 22; Ex. 8 at 45. When he needed to supply investors with account statements, Cooper invented facts. Ex. 2 at 23-24; *see* Ex. 8 at 24-25. Finally, after being sued for fraud, Cooper forged a letter showing that he was entitled to a $50,000 finder's fee for services he did not actually render. Ex. 2 at 25-26, 31; Ex. 8 at 48-50.

In September 2013, the Commission filed an injunctive complaint against Cooper and five of his fictitious alter-ego entities. Ex. 1. In November 2015, the United States District Court for the District of New Jersey granted summary judgment against Cooper and permanently

[5] Ex. 2 at 4; *see* Ex. 8 at 17, 21-22 ("$3 million 'within weeks'"), 27 (60% return within 120 days), 29 ("at least a 100% return . . . within 10 days"), 31 ($60 million return on $500,000 investment within thirty days), 35-36 ($900,000 return on $150,000 investment), 44-45 (1000% in 60 days).

enjoined him from committing future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5, and from "participating directly or indirectly in the issuance, offer, or sale of any securities." Ex. 2 at 1-2; Ex. 3 at 1-5. The district court found Cooper and his alter-ego entities jointly and severally liable for disgorgement of $2,146,160 plus $301,479 in prejudgment interest. Ex. 3 at 5. The court also ordered Cooper to pay a civil penalty of $2,447,639. *Id*. at 7.

Conclusions of Law

Section 15(b)(6) of the Exchange Act gives the Commission authority to impose a collateral bar against Cooper if, among other things, (1) he was associated with or seeking to become associated with a broker or dealer at the time of the misconduct at issue; (2) he was enjoined from engaging in or continuing conduct in connection with the purchase or sale of any security; and (3) imposing a bar is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii).

The first two factors are met in this case. First, a broker is a "person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). Cooper acted as a broker during his misconduct, because, "[f]or nearly four years, [he] effected transactions in securities, or induced the purchase or sale of securities." Ex. 2 at 29. While it is true that Cooper never registered with the Commission, the definition of the term "broker" is not limited to those who register with the Commission.[6] Cooper, therefore, was associated with a broker—himself—at the time of his misconduct.[7]

Second, the district court enjoined Cooper from committing future violations of the antifraud provisions of the federal securities laws, and from "participating directly or indirectly in the issuance, offer, or sale of any securities." Ex. 3 at 4. This meets the requirement of Section 15(b)(4)(C)—being enjoined from engaging in or continuing conduct in connection with the purchase or sale of any security—and thus Section 15(b)(6)(A)(iii)—being "enjoined from any action, conduct or practice specified in" paragraph (4)(C).

To determine whether the public interest supports imposition of a collateral bar, I must consider the public interest factors described in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *5 (Oct. 29, 2014). The public interest factors include:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future

[6] *Daniel Imperato*, Exchange Act Release No. 74596, 2015 WL 1389046, at *4 (Mar. 27, 2015) ("Although Imperato was not registered as a broker or dealer or associated with a registered broker or dealer, we have authority to sanction persons, such as Imperato, who act as unregistered brokers."), *recons. denied*, Exchange Act Release No. 74886, 2015 WL 2088435 (May 6, 2015).

[7] *David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472, at *100 (Oct. 29, 2015) (a broker is, by definition, a "person associated with a broker.").

> violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

David R. Wulf, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016). Other relevant factors include the degree of harm resulting from the violation[8] and the deterrent effect of administrative sanctions.[9] The public interest "inquiry . . . is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

Before imposing a collateral bar, an administrative law judge must determine, based on the evidence presented, "whether such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014). I must therefore "'review [Cooper's] case on its own facts' to make findings regarding [his] fitness to participate in the industry in the barred capacities." *Id*. (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). A decision to impose a collateral bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'" *Id*. (quoting *McCarthy*, 406 F.3d at 189-90).[10]

The Commission has explained that "because '[f]idelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud,' in most fraud cases the *Steadman* factors, such as egregiousness, scienter, and opportunity for future misconduct, will weigh in favor of a bar."[11] In some measure, this is a reflection of the fact that the securities industry must "depend[] very heavily on the integrity of its participants"[12] because those participants are "present[ed] [with] continual opportunities for dishonesty and abuse."[13]

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[8] *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *100 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

[9] *David R. Wulf*, 2016 WL 1085661, at *4.

[10] *See also John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402 (May 27, 2016) ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors.")).

[11] *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 n.71 (Dec. 12, 2013) (alteration in original, internal citation omitted) (quoting *Jeffrey L. Gibson*, 2008 WL 294717, at *7), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

[12] *Bruce Paul*, Exchange Act Release No. 21789, 1985 WL 548579, at *2 (Feb. 26, 1985).

[13] *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) (quoting *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 (July 26, 2013)).

The facts of this case leave little doubt that a full collateral bar is warranted. Cooper worked hard to lie to every investor with whom he interacted. And his lies were sophisticated. He created a fake escrow company, complete with a website and personnel. He created false account documents. He even created investments that did not exist. Cooper compounded these falsehoods by lying to investors and telling them that their investments were safe and that they would earn ridiculous returns. And he offered these latter lies while knowing he had no intention of investing in anything other than his lifestyle. Cooper set out to steal investors' money and succeeded in taking over $2.1 million from at least ten investors. Given Cooper's conduct, a collateral bar is necessary to protect the investing public.

By any measure, Cooper's conduct was egregious. *See* Ex. 2 at 31 (holding that Cooper "acted with a high degree of scienter and engaged in multiple, recurrent and egregious violations of the securities laws"). Cooper set out to steal investors' money. He induced investment by convincing investors that their money was safe. But their money was not safe because Cooper did not invest it and instead spent it on himself. *See, e.g.*, *id*. at 7.

Cooper's conduct was not isolated. *See* Ex. 2 at 34 ("Defendants' securities violations were egregious, repeated, and carried a high degree of scienter."). He did not simply lie to one investor about a fake investment and a fake escrow agent; he lied for over three years to at least ten investors who invested over $2 million.

Cooper acted with scienter. *See* Ex. 2 at 31. Cooper carried out a premediated scheme. It was no accident that his investment and escrow agent were fictitious. Cooper did not accidently use his investors' money to fund clothes, hotels, cars, first-class travel, vacations, and gambling trips to Las Vegas, Atlantic City, and the Bahamas. *Id*. at 7, 22-23, 28. He did all of these things and more as part of a plan to steal investors' money.

Cooper has neither made assurances against future violations nor shown that he recognizes the wrongful nature of his conduct. *See* Ex. 2 at 31, 35. During depositions in the underlying civil matter, he refused to answer questions, relying on his privilege against self-incrimination. *Id*. at 5, 13. And he did not file an answer to the OIP, oppose the Division's motion, or respond to the order to show cause.

Cooper's occupation will present opportunities for future violations. The Commission has held that "the existence of a violation raises an inference that" the acts in question will recur. *Tzemach David Netzer Korem*, 2013 WL 3864511, at *6 n.50 (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). During the time Cooper was perpetrating his scheme, "[h]e had no gainful employment." Ex. 2 at 35. And even after being sued for fraud and learning that the Commission was investigating him, Cooper continued to engage in fraud. *Id*. at 31. Given Cooper's actions and his unrepentant attitude, it is apparent that if he were to continue working in the securities industry, his occupation would "present[] opportunities for future illegal conduct in th[is] . . . industry." *John W. Lawton*, 2012 WL 6208750, at *11.

Considering Cooper's actions, the harm he caused, and his failure or inability to recognize the wrongfulness of his actions, it is clear that Cooper is unfit to participate in the securities industry. Because there is a great risk that Cooper will engage in future misconduct,

the goal of protecting the investing public weighs heavily in favor of imposing a collateral bar against Cooper. The public interest thus favors imposing a collateral bar.[14]

Order

The Division of Enforcement's motion for summary disposition is GRANTED.

Under Section 15(b)(6) of the Securities Exchange Act of 1934, Brett A. Cooper is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under 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 a 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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James E. Grimes
Administrative Law Judge

[14] Imposing a bar will hopefully serve as a deterrent to those who might seek to follow Cooper's example. *See David R. Wulf*, 2016 WL 1085661, at *4 (noting that among other factors, the Commission "consider[s] the extent to which sanctions will have a deterrent effect").