SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 80129 / March 1, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4656 / March 1, 2017

Admin. Proc. File No. 3-17035

In the Matter of

SHREYANS DESAI

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Criminal Conviction

Injunction

Respondent was convicted of wire fraud and permanently enjoined from violations of the federal securities laws. *Held*, it is in the public interest to bar respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of penny stock.

APPEARANCES:

Shreyans Desai, *pro se*.

David Stoelting and *Christina McGill*, for the Division of Enforcement.

Appeal filed: September 12, 2016
Last brief received: November 29, 2016

Shreyans Desai appeals from the initial decision of an administrative law judge imposing remedial sanctions on him after he had been convicted of wire fraud and enjoined from violating antifraud and other provisions of the federal securities laws.[1] Upon an independent de novo review of the record, we find that it is in the public interest to bar Desai from the securities industry and from participating in the offering of any penny stock.

I. Background

A. Desai pleaded guilty to two counts of wire fraud.

In 2008, Desai co-founded ShreySiddh Capital, LLC ("SSC"), a New Jersey limited liability corporation. Although SSC was not registered as a securities firm, Desai solicited investments from individuals to trade options, futures, and other securities through SSC. In September 2011, criminal charges were brought against Desai in federal district court in New Jersey for his conduct related to SSC investors.

In May 2014, Desai pleaded guilty to two counts of wire fraud in violation of 18 U.S.C. § 1334. The counts of the operative indictment to which Desai pleaded guilty alleged that, between approximately October 2008 and February 2011, Desai engaged in a fraudulent scheme whereby he convinced individuals to invest over $225,000 with SSC by making numerous material misrepresentations. During the plea colloquy, Desai specifically admitted, among other things, that to obtain investor funds he "knowingly and willfully ma[d]e various misrepresentations to [his] investors, orally and in writing, with the intent that they would rely on [his] misrepresentations and entrust their money to [him]" and "with the intent to defraud various investors of money and property." Desai admitted that his misrepresentations included that he was "licensed to trade securities when [he], in fact, [was] not licensed to do so" and "that SSC was a registered broker/dealer when it, in fact, was not a registered entity." In addition, he admitted to "knowingly overstat[ing] to [his] investors the actual value of their investments, orally and in writing," including by sending falsified account statements and correspondence at least through November 2010. Desai admitted that these misrepresentations allowed him to "claim commissions based on overstated account values to which [he was] not entitled." In December 2014, after accepting Desai's guilty plea, the district court sentenced him to a prison term of 15 months followed by three years of supervised release and ordered him to pay $121,260 in restitution. The Third Circuit dismissed Desai's appeal.[2]

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[1] *Shreyans Desai*, Initial Decision Release No. 1044 (Aug. 5, 2016), *available at* https://www.sec.gov/alj/aljdec/2016/id1044bpm.pdf.

[2] *United States v. Desai*, No. 15-1105 (3d Cir. May 28, 2015), *cert. denied*, 136 S. Ct. 2457 (2016).

B. Desai was enjoined from committing antifraud and other violations.

The Commission also pursued parallel civil claims against Desai. Following Desai's conviction, the Commission moved for summary judgment on its civil claims for violations of Section 17(a) of the Securities Act of 1933,[3] Sections 10(b) and 15(a) of the Securities Exchange Act of 1934[4] and Rule 10b-5[5] thereunder, and Sections 206(1) and (2) of the Investment Advisers Act of 1940.[6] In November 2015, the district court granted the Commission's motion. Relying both on the preclusive effect of Desai's criminal conviction and undisputed evidence presented by the Commission, the district court found that the alleged violations had been "clearly established."[7]

The district court found that "[w]hile operating SSC, Desai made numerous misrepresentations in order to induce investors to invest with his company," that he "misappropriated the investors' funds and provided his clients with falsified records when they questioned his results or asked for the return of their money," that "[t]hese various misrepresentations were material," and that "he took these actions with the intent to defraud."[8] In determining that Desai had violated Advisers Act Sections 206(1) and (2), the district court further found that Desai, who had "agreed to receive as a fee a percentage of all profits generated in the investors' accounts," was "acting as an investment adviser."[9] Finally, the district court concluded that Desai had violated Exchange Act Section 15(a) by acting as an unregistered broker because Desai had been "actively soliciting potential investors, possessing investor funds, and receiving compensation for the transactions."[10]

After finding these violations established, the district court permanently enjoined Desai from future violations of the provisions of the federal securities laws he had violated, ordered him to disgorge $167,229.39, plus prejudgment interest, and imposed a civil penalty of $167,229.39. Again, the Third Circuit subsequently affirmed.[11]

C. An administrative law judge ordered additional remedial sanctions.

In January 2016, we instituted this proceeding to determine whether further remedial action was appropriate pursuant to Exchange Act Section 15(b)(6) and Advisers Act Section

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3 15 U.S.C. § 77q(a).

4 15 U.S.C. §§ 78j(b) & 78o(a).

5 17 C.F.R. § 240.10b-5.

6 15 U.S.C. §§ 80b-6(1) & (2).

7 *SEC v. Desai*, 145 F. Supp. 3d 329, 336 (D.N.J. 2015).

8 *Id.*

9 *Id.*

10 *Id.*

11 *See SEC v. Desai*, No. 16-1629, 2016 WL 7010887 (3d Cir. Dec. 1, 2016).

203(f). An administrative law judge concluded that the threshold statutory requirements for barring Desai from associating in the securities industry in certain capacities were satisfied and that "[e]ach public interest factor" supported permanently barring Desai "from participation in the securities industry to the broadest extent possible." This appeal followed.

II. Analysis

A. Desai was associated with a broker and an investment adviser at the time of the misconduct underlying his conviction and injunction.

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize us to bar a person from the securities industry if such a bar is in the public interest and the person (i) was associated with a broker or dealer (Section 15(b)(6)) or an investment adviser (Section 203(f)) at the time of the alleged misconduct and (ii) was convicted within ten years of the commencement of the proceeding of, among other offenses, violating the federal wire fraud statute *or* was enjoined from engaging in any conduct or practice in connection with the purchase or sale of a security.[12] Exchange Act Section 15(b)(6) also authorizes a penny stock bar on these grounds.[13]

The record establishes, and Desai does not dispute, that Desai was associated with a broker and investment adviser at the time of his misconduct. In granting the Commission's motion for summary judgment in Desai's civil case, the district court found that, although Desai was not registered at the time of his misconduct, he was acting as both a broker and an investment adviser. We give preclusive effect in this proceeding to a district court's summary judgment findings supporting an injunction.[14] The finding that Desai acted as an unregistered broker "establishes that he was associated with a broker for purposes of Exchange Act Section 15(b)(6)."[15] And the finding that Desai acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f).[16]

There is also no dispute that Desai was convicted of wire fraud within ten years of the Commission's instituting this action and that he also was enjoined by the district court from

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12 15 U.S.C. §§ 78o(b)(6)(A), 80b-3(f); *see also id.* §§ 78o(b)(4)(B)(iv), 80b-3(e)(2)(D) (providing that a violation of 18 U.S.C. § 1343 (fraud by wire, radio, or television) is a predicate criminal offense for the imposition of sanctions in an administrative proceeding).

13 15 U.S.C. § 78o(b)(6)(A).

14 *See, e.g.*, *John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 40225, at *2 (Jan. 21, 1998).

15 *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a "person associated with a broker" in Section 3(a)(18) of the Exchange Act).

16 *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who "act[s] as an investment adviser in an individual capacity" is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an investment adviser'").

conduct in connection with the purchase or sale of a security. Accordingly, the threshold statutory requirements for the imposition of industry and penny stock bars are satisfied.

B. The public interest requires that Desai be barred.

In analyzing whether sanctions are in the public interest, we consider, among other things: 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 violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[17]

Desai acted egregiously. We have held repeatedly that "'conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws.'"[18] Here, Desai made material misrepresentations to induce investors to part with their funds. He also falsified account documents and lied to these same investors about the status of their accounts. As a result, these investors lost over $100,000.

Desai's conduct was also recurrent. As the district court noted in deciding to enjoin him, "Desai deceived multiple investors in order to obtain their money, and did so over a period of approximately two years."[19] At Desai's sentencing hearing, the district court found it "bothersome . . . that [the misconduct] went on for so long" and noted that Desai "repeatedly misled people that appeared to be unsophisticated and vulnerable investors who trusted him."

Desai acted with a high degree of scienter. "Scienter is 'a mental state embracing intent to deceive, manipulate, or defraud.'"[20] At the time of his guilty plea, Desai admitted that his misrepresentations were "made knowingly and willfully with the intent to defraud various investors of money and property." In his civil case, the district court found that in addition to "misappropriat[ing] . . . investors' funds for his own benefit[,] . . . when confronted by investors, Desai attempted to conceal the actual value of the accounts and sought to maintain control of the funds."[21] The district court concluded that "[t]his effort to mask his violations of federal securities law demonstrates a high degree of scienter."[22]

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17 *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *4 (Apr. 20, 2012) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

18 *Id.* at *5 (quoting *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *9 (July 25, 2003)).

19 *Desai*, 145 F. Supp. 3d at 337.

20 *SEC v. Infinity Grp. Co.*, 212 F.3d 180, 192 (3d Cir. 2000) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976)).

21 *Desai*, 145 F. Supp. 3d at 337.

22 *Id.*

Desai has provided no meaningful assurances against future misconduct. To the contrary, the district court concluded that "Desai's appeal of his previously agreed upon guilty plea evidences a failure to recognize the wrongfulness of his conduct, and leads the Court to conclude that there is a substantial likelihood that Desai will engage in future violations of the federal securities laws."[23] Given these facts and absent any evidence to the contrary, we agree there is a likelihood that Desai will be presented with opportunities for future violations.

Accordingly, all the factors that we consider demonstrate the necessity of stringent sanctions. Moreover, we have held that, "[a]bsent extraordinary mitigating circumstances," an individual that has been convicted of fraud "cannot be permitted to remain in the securities industry."[24] "Based on our experience enforcing the federal securities laws," we have also held that "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions."[25] Here, Desai was both convicted of fraud and enjoined from antifraud violations. We conclude that industry and penny stock bars are necessary to protect the public.[26]

C. Desai's challenges to the proceedings lack merit.

Rather than address the factors relevant to determining whether remedial sanctions are in the public interest, Desai attacks the civil proceedings against him on various grounds. He does not attempt to challenge the criminal conviction that provides an alternative basis for imposing remedial sanctions. In any case, Desai "is collaterally estopped from challenging in this administrative proceeding the decision of the district court in the injunctive proceeding."[27]

Desai's arguments also lack merit. He argues that the Commission should have named his business partner as a defendant in the civil case against him, deposed the partner and the partner's brother, and allowed Desai to cross-examine them. Desai claims that these decisions

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[23] *Id.*

[24] *John S. Brownson*, Exchange Act Release No. 46161, 2002 WL 1438186, at *2 (July 3, 2002).

[25] *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *9 (July 25, 2003).

[26] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), which was signed into law July 21, 2010, expanded the categories of associational bars authorized by Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) and allowed the Commission to impose a broad collateral bar on participation throughout the securities industry. Desai's violative conduct between Dodd-Frank's effective date and the end of his fraudulent scheme in 2011 included, among other things, repeatedly misrepresenting the account status of SSC's clients and misappropriating investor funds. We find that this fraudulent misconduct amply supports imposing the broad industry-wide bar Dodd-Frank authorized.

[27] *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *3 (Dec. 2, 2005).

were the result of an unspecified "hidden agenda" that denied him due process. But the court of appeals could not "discern any error in the District Court proceedings" to justify Desai's claim of a due process violation.[28] As the court of appeals recognized, the Commission was not required to bring a claim against Desai's partner.[29] The court of appeals recognized further that nothing prevented Desai from seeking the discovery that he claims was necessary to defend the civil action.[30] We therefore give no weight to Desai's unsupported speculation that his business partner's brother would have provided testimony favorable to Desai had he been deposed.

Desai's other challenges to the district court order enjoining him similarly fail. Although Desai argues that the district court judge permitted the Commission to file an "illegal and untimely" summary judgment motion against Desai, the court of appeals found that the judge properly extended the deadline for filing the summary judgment motion as authorized by the relevant rule of civil procedure.[31] Desai claims that the courts and the Commission lacked jurisdiction over funds deposited in foreign exchange accounts, but the court of appeals found that there was jurisdiction over the funds because they were obtained through Desai's fraudulent scheme.[32] And Desai cannot dispute the harm he caused because the court of appeals found that he failed to do so before the district court.[33] Desai cannot revisit these issues now.[34]

Desai also complains that the Commission improperly characterized his business as a Ponzi scheme in its brief before the court of appeals. But that characterization has no bearing on

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28 *Desai*, 2016 WL 7010887, at *3.

29 *Id.*

30 *See id.*

31 *See id.* at *1 n.2 (rejecting Desai's argument that the Commission's summary judgment motion was untimely because the district court's "order here extended the time for the SEC's filing, so the motion was properly considered").

32 *Id.* at *3 ("The [District] Court concluded that the funds were not exempt from regulation under federal securities law simply because Desai transferred them to Forex accounts. We agree. . . . [B]ecause the funds were involved in Desai's fraudulent scheme, the fact that some of the funds were used to purchase foreign currencies does not bring them outside the District Court's, or the SEC's, jurisdiction."); *see also Desai*, 145 F. Supp. 3d at 338 (holding that "the fact that Desai transferred these fraudulently obtained funds to Forex accounts does not exempt them from regulation under federal securities laws, prohibit the SEC from filing suit in regards to these sums, or deprive this Court of jurisdiction in ordering their disgorgement").

33 *Desai*, 2016 WL 7010887, at *4; *see also Desai*, 145 F. Supp. 3d at 338 (holding that "Desai fail[ed] to offer any credible evidence contradicting the SEC's [disgorgement] calculations"). We also reject Desai's speculation that his victims would have been made whole if his partner had been permitted to continue foreign exchange trading.

34 *See supra* note 27.

Desai's underlying liability and plays no role in our determination of whether to bar him.[35] "It is the actual conduct . . . —not merely the labels used—that convinces us that collateral and penny stock bars against [Desai] are in the public interest."[36]

Desai further contends that one of his investors was an accredited investor and that Desai was deprived of the opportunity to send interrogatories to him. But such status (if proven) would not excuse Desai's conduct because "accredited investors . . . are also vulnerable to fraud."[37] In any event, "the Federal Rules of Civil Procedure only provide[] for sending interrogatories to another party in the lawsuit," and Desai did "not demonstrate how he was prohibited from taking the necessary depositions or contacting the relevant individuals with connections to this case."[38]

Finally, Desai raises procedural challenges to this proceeding. He suggests that this proceeding should have been "conducted prior to filing the [federal court] Complaint." Because this proceeding is predicated on the judgments entered against Desai in the criminal and civil actions, it was properly brought after entry of those judgments.[39] Desai also asserts that counsel for the Division of Enforcement purposely delayed sending him a courtesy copy of the scheduling order in this appeal. But the Office of the Secretary sent the order by certified mail to Desai on the date it was issued in accordance with our Rules of Practice.[40] And in any event, Desai does not identify any harm from the alleged delay.[41]

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35 *See Desai*, 2016 WL 7010887, at *2 ("Desai argues that his business did not involve a Ponzi scheme and he disputes the number of victims involved. But he does not point to any facts whatsoever that would negate the elements of the civil charges at issue here.").

36 *Bugarski*, 2012 WL 1377357, at *5.

37 *Ira William Scott*, Advisers Act Release No. 1752, 1998 WL 611726, at *4 (Sept. 15, 1998); *see also Anthony Fields, CPA*, Exchange Act Release No. 74344, 2015 WL 728005, at *13 (Feb. 20, 2015) (finding "no merit to Fields's contention that individuals are free to offer fictitious securities to accredited investors because such investors are more likely to be able to ferret out the fraud on their own" because "'a sophisticated person is [as] entitled to the protection of the antifraud provisions of the securities laws,'" as a less knowledgeable investor) (quoting *Brian A. Schmidt*, Exchange Act Release No. 45330, 2002 WL 89028, at *9 & n.40 (Jan. 24, 2002)); *Everest Secs., Inc.*, Exchange Act Release No. 37600, 1996 WL 487682, at *4 (Aug. 26, 1996) (noting that seeking "to limit the offerees to accredited investors does not insulate applicants from antifraud charges"), *aff'd in relevant part*, 116 F.3d 1235 (8th Cir. 1997).

38 *Desai*, 2016 WL 7010887, at *3 (quoting *Desai*, 145 F. Supp. 3d at 334).

39 *See* 15 U.S.C. §§ 78o(b)(6)(A), 80b-3(f).

40 *See* Rule of Practice 141(b), 17 C.F.R. § 201.141(b).

41 In connection with his argument about an alleged "misuse of authority" by the Commission, Desai points to an April 27, 2011 letter to SSC following an inquiry by the Commission's examination staff, which stated, "At this time, we will not be requesting any additional documents." The letter is not in any way exonerating. It states that it "should not be

(*continued*…)

As demonstrated above, Desai's arguments largely amount to impermissible attempts to relitigate his civil case, are not mitigating, and provide no reason to impose a sanction other than a bar. Indeed, even if we were persuaded that his contentions had merit (which we are not), Desai's arguments do not address his criminal conviction for wire fraud, which provides an independent basis for this proceeding. Based upon our weighing of the relevant factors, we conclude that it is in the public interest to impose industry and penny stock bars.[42]

An appropriate order will issue.[43]

By the Commission (Acting Chairman PIWOWAR and Commissioner STEIN).

Brent J. Fields
Secretary

(…*continued*)
construed as [an] indication that [SSC's] activities comply with the federal securities laws or other applicable rules and regulations."

[42] After the deadline for Desai to file a reply brief had passed, Desai requested a stay or an adjournment of this proceeding until he completes an anticipated appeal to the Supreme Court in his civil case. Consistent with our practice, we treat this request as a motion for a postponement or adjournment under Commission Rule of Practice 161, but not for a stay under Rule 401. *See Joseph John VanCook*, Exchange Act Release No. 59550, 2009 WL 605322, at *1-2 (Mar. 10, 2009) (finding that Rule 401 did not authorize motion to stay pending appeal because "the Commission has not yet entered a final order, reviewable by an appellate court, that we could consider staying"). We deny the motion for an adjournment because, "[a]s we have repeatedly held, . . . the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related 'follow-on' administrative proceedings." *Thomas D. Melvin*, Exchange Act Release No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015). Here, even if the Supreme Court were to take up Desai's case and vacate the civil judgment against him, his criminal conviction, which he unsuccessfully challenged in both the court of appeals and the Supreme Court, would remain.

[43] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80129 / March 1, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4656 / March 1, 2017

Admin. Proc. File No. 3-17035

In the Matter of

SHREYANS DESAI

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Shreyans Desai be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

By the Commission.

Brent J. Fields
Secretary