INITIAL DECISION RELEASE NO. 508
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15240

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

In the Matter of	:	INITIAL DECISION
	:	October 9, 2013
CHRISTOPHER A. SEELEY	:	

APPEARANCES: Nicholas Heinke and Gregory Kasper for the Division of Enforcement, Securities and Exchange Commission

Christopher A. Seeley, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision finds that Respondent Christopher A. Seeley (Seeley) has been enjoined from future violations of the securities laws, and permanently bars him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO).

I. Introduction

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Administrative Proceedings (OIP) on March 11, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Seeley filed his Answer on April 19, 2013.

A hearing was held on May 15 and 16, 2013, in Salt Lake City, Utah. The admitted exhibits are listed in the Record Index issued by the Commission's Office of the Secretary on August 26, 2013. By agreement, the Division of Enforcement (Division) and Seeley gave closing arguments in lieu of post-hearing briefs.[1] Tr. 18.

[1] Citations to the transcript of the hearing are noted as "Tr. ___.". The Division offered forty-nine exhibits, forty-five of which were admitted and which are cited as "Ex. ___." Seeley did not offer any exhibits.

B. Summary of Allegations

The OIP alleges as follows. A final judgment was entered against Seeley on February 13, 2013, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled SEC v. Seeley, Case No. 2:11-cv-00907-CW (D. Utah) (Seeley). OIP, p. 2; Ex. 49. The complaint in that case alleged that from July 2006 to January 2009, Seeley offered and sold securities of AVF, Inc. d/b/a Alden View Funding (AVF) and AV Funding, LLC d/b/a Alden View Funding (AV Funding) (collectively, Alden View), and in connection with the offer and sale of those securities, Seeley made material misrepresentations and omissions to investors regarding Alden View's financial status and business activities. OIP, p. 2; Ex. 43, pp. 1-3. The complaint also alleged that Seeley acted as an unregistered broker and offered and sold unregistered securities. OIP, p. 2; Ex. 43, pp. 3, 23-25. The OIP directed me to determine whether the allegations are true, and if so, what, if any, remedial action is appropriate in the public interest against Seeley pursuant to Section 15(b) of the Exchange Act. OIP, p. 2. The Division urges imposition of a "full collateral bar." Tr. 358.

Seeley does not dispute that he consented to entry of the final judgment against him. Tr. 58, 359. He also acknowledges that he "said things that [he] shouldn't have said" and "should have done a lot better job of making sure" that what he said was based on accurate information. Tr. 364. However, he is concerned that an associational bar could unduly limit his ability to serve as an executive in certain businesses, and accordingly disputes the appropriateness of such a bar. Id.

II. Findings of Fact

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). Pursuant to Marshall E. Melton, 56 S.E.C. 695, 712 (2003), the factual allegations of the Seeley complaint cannot be disputed by Seeley, and they generally constitute the initial sections of the Findings of Fact. I have considered and rejected all arguments, proposed findings, and conclusions that are inconsistent with this Initial Decision.

A. Respondent and Other Relevant Individuals and Entities

1. Christopher A. Seeley

Seeley resides in Herriman, Utah, and was age thirty-six at the time the Seeley complaint was filed. Ex. 43, p. 5. He formed AVF, held at least a 49% ownership interest in it, and served as an officer and director of it. Id. He co-founded AV Funding, held a 51% ownership interest in it, and served as its president, chief financial officer, and director. Id. He has never been registered with the Commission as a broker-dealer, or been associated with a registered broker-dealer. Id.

2. Justin G. Dickson

Justin G. Dickson (Dickson) resides in Salt Lake City, Utah, and was age thirty-five at the time the Seeley complaint was filed. Ex. 43, p. 5. Dickson was a founder and independent contractor for AVF. Id. He co-founded AV Funding, held a 49% ownership interest in it, and served as its chief executive officer, vice president, treasurer, secretary, and director. Id. He has never been registered with the Commission as a broker-dealer, or been associated with a registered broker-dealer. Id.

3. AVF, Inc.

AVF is a defunct Utah corporation that had its principal place of business in Draper, Utah. Ex. 43, p. 5. AVF was owned by Seeley and his ex-wife. Id. Seeley formed AVF in 2006 to raise funds from investors to make "hard money loans." Id. Seeley exercised control over all aspects of AVF's operations. Id. From 2006 to 2008, Seeley and Dickson raised approximately $3.2 million from approximately forty investors in an offering of promissory notes through AVF. Id. AVF has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. Id.

4. AV Funding, LLC

AV Funding is a defunct Utah limited liability company that had its principal place of business in Draper, Utah. Ex. 43, p. 6. AV Funding was owned 51% by Seeley and 49% by Dickson. Id. Seeley and Dickson founded AV Funding in 2007 to raise funds from investors to make hard money loans. Id. Seeley exercised majority control over all aspects of AV Funding's operations. Id. From approximately September 2007 to January 2009, Seeley and Dickson raised approximately $4.7 million from approximately thirty investors in an offering of promissory notes through AV Funding.[2] Id. AV Funding has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. Id.

B. Alden View Promissory Notes and Offering Materials

In approximately 2002, Seeley began making personal loans to Louis Dean Parrish (Parrish), a friend and former business associate. Ex. 43, p. 6. Parrish told Seeley that he used the loan proceeds for real estate projects, including purchasing real property. Id. Several years later, Seeley began soliciting money from friends and family to make additional loans to Parrish. Id.

In approximately 2006, Seeley formed AVF as an entity from which to run his loan business. Ex. 43, p. 6. From about June 2006 until June 2007, Seeley and Dickson offered and sold AVF promissory notes, which were securities, to investors in four states. Id., pp. 6-7 Most of the funds were provided to Parrish, although AVF also loaned funds to other borrowers. Id., p. 7.

[2] The Seeley Complaint states that the funds were raised through AVF. Ex. 43, p. 6. Given the context, I assume this was a typographical error.

An accredited investor is one who satisfies certain high net worth or income regulatory standards. Ex. 43, p. 7. Some AVF investors were unaccredited, and until at least May of 2007, AVF did not conduct any review to determine if its investors were accredited or not. Id. Although AVF did not provide investors with any financial statements, Seeley provided at least some investors with an "overview letter" (Overview Letter) regarding AVF, which contained a type-written closing indicating that the letter was from Seeley. Id. Seeley provided the Overview Letter to prospective investors via email during at least May and June 2007. Id. Seeley had ultimate control and authority over the content of the Overview Letter and how the statements in it were communicated to investors. Id.

Seeley directly solicited investments in AVF promissory notes through phone calls, in-person meetings, and referrals from current investors. Ex. 43, p. 7. AVF did not have employees, but at Seeley's direction, AVF paid some people, including Dickson, commissions that were indirectly based upon the amount of funds raised from investors. Id.

Seeley and Dickson co-founded AV Funding in July 2007. Ex. 43, p. 7. AV Funding engaged in the same business as AVF, and its promissory notes were also securities under federal law. Id., pp. 7-8. Seeley and Dickson directly solicited investments in AV Funding promissory notes through email, phone calls, in-person meetings, and referrals from current investors. Id., p. 8.

At the direction of Seeley and Dickson, prospective investors in AV Funding were provided with written offering materials, including executive summaries dated August 30, 2007 (August 2007 Executive Summary), and May 30, 2008 (May 2008 Executive Summary) (collectively, Executive Summaries). Ex. 43, p. 8. AV Funding did not provide investors with audited financial statements with the Executive Summaries. Id. Both Seeley and Dickson provided content for, reviewed, and approved the AV Funding Executive Summaries. Id.

Seeley had ultimate authority over the content of the Executive Summaries, as well as whether and how to communicate that content to investors, and he was responsible for drafting several key misstatements in them. Ex. 43, pp. 7-8. Seeley, Dickson, and/or their assistant (at their direction) provided prospective investors with the Overview Letter and the Executive Summaries by mail and/or email. Id., pp. 7-8. The August 2007 Executive Summary was distributed to investors from at least August 30, 2007 until April 2008. Id., pp. 8-9. The May 2008 Executive Summary was distributed to investors from at least May 30, 2008 until September 2008. Id., p. 9.

Alden View issued promissory notes to investors in amounts ranging from approximately $2,600 to $700,000, with terms ranging from thirty days to one year. Ex. 43, p. 9. The promissory notes promised returns in the form of monthly interest rates ranging from 1% to 8%, paid either in monthly or quarterly installments or at maturity. Id. The notes were issued in the name of AVF or AV Funding. Id. When promissory notes came due, Seeley often encouraged investors to roll over their investment with Alden View for another term. Id.

C. Material Misrepresentations

Seeley, through Alden View, made numerous materially misleading statements and omissions to investors.

1. Loan Security

AVF's Overview Letter explained that all of AVF's investments were protected against loss because AVF obtained collateral for its loans. Ex. 43, p. 10. The Overview Letter stated that AVF "require[d] the borrower to sign a deed of trust against the property along with the contract to secure funding," so that the investor's "money is secured and protected against real property." Id.; Ex. 1, p. 1. In fact, Alden View obtained no collateral for its $3.1 million in loans to Parrish, and this fact was not communicated to investors. Ex. 43, p. 12. Also, Seeley failed to disclose to investors that Parrish had refused Seeley's repeated requests to provide proof of collateral, and Seeley did not work to confirm the assets actually held by Parrish until after Parrish stopped making payments on the loans. Id.

The August 2007 Executive Summary stated: "[W]e typically require our borrowers to provide us security for the loans we make to them. Our investors benefit indirectly from the secured positions we take with our borrowers, but they have no direct right to enforce any security rights we receive." Ex. 43, pp. 10-11; Ex. 13, p. 3. It also stated that AV Funding "intend[ed] to build and maintain a cash reserve of between 15% and 20% of the aggregate amount loaned by Alden View Funding. Initially we will fund the reserve pool with at least $100,000." Ex. 43, pp. 12-13; Ex. 13, p. 6. Again, Alden View obtained no collateral for its $3.1 million in loans to Parrish, and this fact was not communicated to investors. Ex. 43, p. 12. Also, throughout the time period in which the August 2007 Executive Summary was disseminated to investors, AV Funding never funded a reserve account with either $100,000 or 15-20% of the aggregate amount loaned by Alden View, and this fact was not disclosed to investors. Id., p. 13.

During a telephone call with investor William Dominek (Dominek) in approximately September 2007, Seeley orally represented that every loan made by Alden View was secured by a "first lien" on property owned by Alden View's borrowers. Ex. 43, p. 11; Tr. 229. Dominek understood this to mean that if the borrower reneged on the loan, the property would be turned over to Seeley. Tr. 230. Again, Alden View obtained no collateral for its $3.1 million in loans to Parrish, and this fact was not communicated to investors. Ex. 43, p. 12.

2. Due Diligence and Use of Investor Funds

The Overview Letter stated that Alden View lent funds to four types of business ventures: bridge loans, development financing, real estate acquisition, and real estate speculation. Ex. 43, p. 13; Ex. 1, pp. 1-2. The Overview Letter detailed the steps taken to protect against default, including, as to bridge loans, "research[ing] each opportunity carefully to make sure that we understand the value of the property and that the individual we are loaning the money to can qualify for financing on that value." Ex. 43, pp. 13-14; Ex. 1, p. 1. The August 2007 Executive Summary further stated that Alden View generally protected its loans against default by

conducting research on the prospective borrower and relevant real estate. Ex. 43, p. 14; Ex. 13, pp. 4-5. In an August 18, 2007 email to investor Stephen Young (Young), Seeley stated that "the best thing we can do is to take the time upfront to evaluate each deal and each borrower in an effort to minimize the possibility of having to move to [foreclosure] in the first place. This is what we are very good at and ultimately what we get paid to do." Ex. 43, p. 14; Ex. 12, p. 2. During the September 2007 telephone call with Dominek, Seeley stated, "I do my due diligence before I lend out," on every loan made. Ex. 43, p. 14; Tr. 231.

In fact, neither Seeley nor Dickson performed any advance due diligence on Parrish's purported real estate projects. Ex. 43, p. 14. Before Alden View lent the funds to Parrish, Seeley relied entirely on Parrish's representations as to what he planned to do with the loan proceeds. Id., pp. 14-15. These facts were not communicated to investors. Id., p. 15.

3. Parrish's Loan and Payment History

The August 2007 Executive Summary stated that "[a]ll but one of AVF's borrowers have repaid their loans on time. The delinquent note remains outstanding, however, and it is anticipated that AVF will still receive full payment of the principal of this note." Ex. 43, p. 16; Ex. 13, p. 7. It also stated that a "majority of AVF's loans were, and we anticipate that a majority of our loans will be, made to three separate entities that have a proven track record of repaying those loans." Ex. 43, p. 16; Ex. 13, p. 3. It further stated that "[a]t no time to date have any of these borrowers defaulted on a loan or taken any action to cause doubt about their ability to repay loans." Ex. 43, p. 16; Ex. 13, p. 3. In the August 18, 2007 email to Young, Seeley asserted that he "had one default by a borrower in the amount of 86K . . . we have done 65 loans this year and have not had a single default so the odds are in our favor." Ex. 43, p. 17; Ex. 12, p. 1.

In reality, as of August 30, 2007, although one borrower had failed to repay any principal or interest on a $86,500 loan, Parrish had been late in making principal and/or interest payments on numerous loans dating back to July 2006. Ex. 43, p. 17. At least one of the three separate entities that Alden View lent to was controlled by Parrish, and that entity had also been late in making principal and/or interest payments on numerous loans dating back to July 2006. Id. Throughout 2007, Parrish engaged in conduct that cast considerable doubt on his ability to repay his loans, including repeatedly rolling principal owed into new notes, failing to provide Alden View with collateral for loans despite repeated requests, and notifying Seeley that he had previously declared bankruptcy. Id., p. 18. These facts were known to Seeley; indeed, on June 12, 2007, while he was drafting the August 2007 Executive Summary, Seeley emailed Parrish, stating that "I waived late fees where I could but I am burning through my reserves now that we are getting so far behind." Id.; Ex. 6.

Also, the August 2007 Executive Summary included, within the calculation of loaned funds, transactions in which Alden View had rolled over principal and interest due from Parrish into new notes without requiring repayment of the original note. Ex. 43, p. 18. For example, the August 2007 Executive Summary stated that Alden View had "made 53 loans for a total of $4,381,000 loaned. Currently, AVF has $2,900,000 in outstanding loans." Id., pp. 18-19; Ex. 13, p. 7. This created the misleading appearance that Alden View had been fully paid on more

loans than it actually had. Ex. 43, p. 18. The true figures were not disclosed to investors. Ex. 43, p. 19.

4. Parrish's Default

Parrish's repayment history was troubled beginning no later than July 27, 2006, when he emailed Seeley and explained that he was paying late fees in connection with three loans and rolling the principal owed into new notes. Ex. 43, p. 19; Ex. 2, p. 1. By November 2007, Parrish had accumulated nearly $400,000 in past due interest, prompting Seeley to email Parrish: "[W]e are closing in on about 400K of past due interest. I am working diligently to get everything cleaned up on our end but a lot of these notes we are 90 days over due on." Ex. 43, pp. 19-20; Ex. 19. Parrish made his last, partial payment of $200,000 on November 30, 2007. Ex. 43, p. 20; Tr. 117. On December 13, 2007, Seeley sent Parrish a chart by email, documenting the fact that Parrish owed Alden View approximately $2.7 million in principal and nearly $600,000 in interest. Ex. 43, p. 20; Ex. 21.

Despite these problems, and knowing that it contained false statements and omissions, Seeley continued to solicit investors using the August 2007 Executive Summary until April 2008. Ex. 43, p. 20. On January 24, 2008, Seeley emailed Ryan Hunt, an investor who was hesitant to recommit his funds, and stated that "[c]urrently we have not seen any real issues on any fronts . . . we really couldn't ask for a better time." Ex. 43, p. 21; Ex. 23, p. 1. In February 2008, Alden View consolidated the outstanding principal owed by Parrish into a single promissory note. Ex. 43, p. 21; Ex. 26.

On May 1, 2008, Alden View sued Parrish, seeking over $2.6 million in past due principal and $769,133 in past due interest. Ex. 43, p. 21. The May 2008 Executive Summary characterized Parrish's default as follows:

> Over the past two years, AVF Inc. has made over 76 loans to Louis Parrish and his associated entities for a total of $7,002,800. From July 2007 through October 2007, Mr. Parrish and affiliates issued 17 unsecured notes to [Alden View] with a total aggregate principal amount of approximately $2.2 million. These loans were used primarily for venture capital projects and import and export ventures and as such are unsecured. Starting December 2007, Mr. Parrish failed to make any payments on these loans. Mr. Parrish and his affiliates had not previously defaulted on any obligations pursuant to any loans, and had paid all principal and interest owing on such loans pursuant to the terms of the notes.

Id.; Ex. 34, p. 2. In fact: (1) Alden View did not "make" over seventy-six loans to Parrish totaling approximately $7 million, because many of the loans were simply principal rollovers; (2) Seeley and Dickson did not know whether Parrish used the loan proceeds for venture capital and import and export ventures; and (3) Parrish first fell behind on principal payments in 2006 and interest payments in early 2007, not December 2007. Ex. 43, p. 22. Alden View essentially ceased operating in November 2009. Id.

D. Miscellaneous Issues

The promissory notes issued by Alden View constituted an investment of money in a common enterprise with an expectation of profits to be derived solely from the efforts of Alden View. Ex. 43, p. 23. By using the telephone, mails, and email, Seeley used the instrumentalities of interstate commerce to sell Alden View promissory notes. Ex. 43, p. 24. No registration statement was in effect or filed with the Commission for the offers and sales of any Alden View promissory notes, nor is there an applicable registration exemption for them. Id. Seeley personally solicited investors to purchase Alden View promissory notes, and participated in key points in the chain of their distribution, including: (1) creating the promissory notes; (2) receiving investor funds; (3) preparing written offering materials; and (4) determining interest rates for the promissory notes. Id., p. 25. Seeley also received compensation based indirectly on the transactions in Alden View promissory notes. Id.

E. Seeley's Testimony

In his testimony, Seeley generally focused on the underlying allegations of the injunctive complaint. Seeley testified that he and the other officers of Alden View "acted in good faith [and] to the best of [their] ability." Tr. 333. Additionally, Seeley testified that the officers of Alden View followed the advice of their retained counsel, Dorsey & Whitney, LLP (Dorsey), "as best as [they] could." Tr. 54, 175.

Seeley began his testimony with a basic overview of Alden View's business and a quick timeline of the company's history. Alden View was in the business of providing "hard money" real estate loans to various borrowers. Tr. 56. These were short-term loans funded by Alden View's investors for borrowers who wanted to use the money to buy or improve real estate. Tr. 56-57. Seeley first began offering securities in May 2006 as part of AVF. Tr. 57. In early 2007 Seeley was contacted by the Utah Division of Securities about hiring counsel and working towards becoming compliant with the securities laws. Tr. 57, 306-08. As a result of this contact, Seeley hired Dorsey and subsequently formed AV Funding. Tr. 57. AV Funding was created to provide a fresh start, where the company would remain compliant with the securities laws by only accepting investments from accredited investors. Tr. 153, 179-80. Between 2006 and 2009, Alden View raised almost $8 million from approximately fifty investors. Tr. 57-58.

In September 2011, the Commission filed Seeley, alleging several violations of the securities laws. Tr. 58. The civil action settled with a final judgment entered against Seeley in September 2012. Tr. 58. Seeley agreed to the final judgment enjoining him from violating various antifraud provisions of the securities laws, from selling unregistered securities, and from acting as a broker-dealer. Tr. 58-60; Ex. 49. Seeley was also ordered to pay over $480,000 in disgorgement and civil penalties. Tr. 60; Ex. 49.

Seeley began making personal loans to Parrish beginning in 2002, approximately four years before AVF was created. Tr. 41. Over several years, Seeley established a trusting relationship with Parrish, and when Alden View was created, Parrish became its biggest borrower. Tr. 42, 50. Alden View conducted due diligence on Parrish, relying on both past experience and third party background checks. Tr. 94-96. Seeley testified that Alden View ran a

background check on Parrish in 2006 and updated it in 2007. Tr. 96. This testimony contradicted Seeley's prior deposition testimony in Seeley, where he testified that Alden View never updated the original background check on Parrish. Tr. 97. While due diligence on Parrish had been conducted to some extent, Seeley testified that no due diligence was conducted with respect to Parrish's company, J&L Mortgage, to which Alden View also lent funds. Tr. 98. The 2006 background check on Parrish was inadequate because Seeley did not learn that Parrish had previously filed for bankruptcy until Parrish made Seeley aware of that fact in early 2007. Tr. 95-96.

Seeley testified that the fact that Parrish had previously filed for bankruptcy was of no concern to Seeley, even though Parrish was behind on his payments at the time. Tr. 97, 105. Parrish's first late fee was incurred in July 2006, a mere two months after the creation of AVF; by the summer of 2007, Parrish was "getting so far behind" in his payments. Ex. 6; Tr. 105-06. Seeley nonetheless testified that Parrish's late payments were not a concern. Tr. 43, 105, 333. Seeley had years of experience lending to Parrish without any problems, and he admitted that this past relationship skewed his view of Parrish, causing him to trust Parrish more than he should have. Tr. 360. Seeley believed his past experience with Parrish was "adequate" to satisfy the due diligence requirement. Tr. 96.

Seeley also testified concerning the advice that Alden View received from Dorsey. AVF hired Dorsey to help the company become compliant with the securities laws, and as part of the legal advice offered, Dorsey sent Seeley a letter with a section titled "How Do You Satisfy Disclosure Obligations." Ex. 17, p. 7; Tr. 63-64. In the letter, Dorsey advised Seeley about the importance of disclosing material information to Alden View investors. Ex. 17; Tr. 64. The letter defined "material information" as information a "reasonable investor" would consider "important in making an investment decision," a definition consistent with Seeley's understanding of Dorsey's advice. Ex. 17, p. 7; Tr. 65. Seeley testified that Dorsey advised him that it was important to update the company's disclosures if material information changed. Tr. 67. Furthermore, Dorsey told him if there was any doubt concerning whether information would be considered material, he should check with counsel immediately. Ex. 17, p. 8; Tr. 67-68. However, it is clear from Seeley's testimony that the August 2007 Executive Summary did not reflect accurate information. Tr. 103-04. The August 2007 Executive Summary stated that "[a]ll but one of AVF's borrowers have repaid their loans on time." Ex. 13, p. 2; Tr. 103. Seeley confirmed that "all but one" referred to a borrower named Bob Hoffman, even though Parrish was also behind on his payments when the Executive Summary was released. Tr. 103-05. Seeley testified that he was unable to recall informing Dorsey that Parrish was $400,000 past due in interest payments as of November 2007. Tr. 119. Overall, Dorsey's advice was based on incomplete and even false information.

In addition to advice on material disclosures, Seeley testified that Dorsey informed Seeley that he should start placing the required loan collateral in Alden View's name. Tr. 74-77. Following counsel's advice, Seeley attempted to obtain collateral in May of 2007 for one of AVF's loans to Parrish. Ex. 3; Tr. 78-79. The $365,000 loan to Parrish was meant to be used to purchase specialty built homes from China, and Parrish offered 230 acres of land in Idaho as collateral. Ex. 3; Tr. 78-80. Based on the verbal assurances of Parrish, Seeley lent the money in May 2007 before confirming that the collateral was in Alden View's name. Tr. 82. In August

2007, three months after Seeley lent the requested funds to Parrish, the required collateral still had not been moved into Alden View's name. Tr. 84. Despite Seeley's frequent reminders, Parrish never put the Idaho collateral in Alden View's name. Tr. 88. Seeley further testified that it was during this time that he began to wonder how Parrish was actually using the capital he received. Tr. 86-87. Seeley and Dickson took their first trip to Hawaii in September 2007 to meet with Parrish and discuss the "best process to begin transferring collateral to [Alden View's] name alone." Tr. 322-23. Seeley and Dickson left Hawaii under the impression that Alden View "would not be making any further loans [to Parrish] without direct collateral." Tr. 323-24.

In July 2008, Seeley and Dickson returned to Hawaii to review Parrish's outstanding loans and how exactly he was using the money. Tr. 100, 141. It was during this second trip that Seeley learned Parrish had been using Alden View funds in a bank fraud scheme, and to pay off Parrish's other investors. Tr. 141-43. Seeley testified that it was during the July 2008 trip to Hawaii that he finally realized how bad the situation with Parrish had become. Tr. 144. However, even with everything he learned during the trip, Seeley did not think it was important to inform Alden View's investors of the change in circumstances. Tr. 144-45. In fact, in response to investor inquiries, Seeley informed them that "[t]hings went well," painting a picture of a "productive" trip overall. Ex. 37; Tr. 144-46.

Seeley testified that Alden View followed the advice of counsel by selling securities solely to accredited investors. Tr. 174-75. After learning the benefits of pursuing an all-accredited investor approach, Alden View tried to comply to "the best of [its] ability." Tr. 175. Alden View sent out a questionnaire to identify which of its investors were accredited. Tr. 311. Only those who qualified as accredited were allowed to sign a new subscription agreement and continue investing with Alden View. Tr. 311. All other investors were given their money back without exception. Tr. 311. Seeley testified that he told investors with questions about their accredited status to be honest. Tr. 177-78. However, in at least one instance, Seeley instead told an investor who was confused about accreditation that he should "mark what you feel defines your status as a sophisticated investor" so that Alden View would be "release[d] . . . from liability in the eyes of the SEC." Tr. 179-81.

Seeley testified that he was too trusting and has learned from his past mistakes. Tr. 363. He testified that he used every personal asset he had to remain in business to see some projects through in an attempt to return capital to his investors. Tr. 361. Nonetheless, many of Seeley's investors only received a small portion of their principal investment back, if anything at all. Tr. 130, 134, 180-182. One of Seeley's investors, Ryan Hunt, invested a total of $50,000 with Alden View; of that investment he received a fifth back, or approximately $10,000. Tr. 130. Two other investors, Carl Cornista (Cornista) and Jim McKay, jointly invested a total of $60,000 with Alden View, and neither of them received a principal repayment. Tr. 134, 260. Seeley's own father lost $500,000 of his investment. Tr. 360. In contrast, while Alden View's investors received little to none of their principal back, and collectively lost approximately $6.3 million, Seeley recovered approximately seventy percent of his $200,000 investment with Alden View. Tr. 181-83; Ex. 43, p. 3.

Seeley stated that he is very remorseful about the unfortunate financial losses that his friends and family endured. Tr. 360. He has no desire to continue working in the securities

industry but is concerned that a collateral bar will limit his ability to "grow other businesses outside the securities industry." Tr. 364. He opposes a permanent bar because of the impact it may have on his future business endeavors. Tr. 359.

F. Testimony of Other Witnesses

The Division also called Dickson, Seeley's business partner, Sam Gardiner (Gardiner), a Dorsey attorney, and three of Alden View's investors. Dickson testified principally about the relationship between Alden View and Dorsey. Dickson testified that AVF hired Dorsey to help the company become compliant with the laws governing the sale of securities. Tr. 151. He said that AVF reached out to Dorsey after it had been contacted by Utah regulators and told to find representation. Tr. 151. He testified that Dorsey asked for and received a full disclosure of all the elements of AVF's business. Tr. 152, 156, 165. Dickson also testified that Dorsey advised AVF to create a separate entity, AV Funding, which served as a way to "start things over." Tr. 153. He described the September 2007 trip that he and Seeley took to Hawaii to talk to Parrish about the status of his existing projects and the likelihood that he would be able to pay off his loans from Alden View. Tr. 159-60. Dickson testified that there was nothing out of the ordinary that became apparent during the trip to Hawaii, and the fact that Parrish was late with some of his payments was to be expected as part of the business of hard money lending. Tr. 160. Dickson testified that Dorsey was kept fully informed regarding the business of Alden View, including the fact that Parrish was behind but had been making partial payments. Tr. 161. When Parrish officially defaulted, Dickson said that Dorsey was informed and helped Alden View with the subsequent steps of informing the investors and creating a new Executive Summary. Tr. 161-63. Overall, Dickson testified that Dorsey was intimately involved in the business of Alden View, and Alden View followed Dorsey's advice completely to remain compliant with the relevant laws. Tr. 161-65.

Gardiner also testified about the relationship between Alden View and Dorsey. Dorsey had been hired to help Alden View become compliant with federal and state securities laws. Tr. 203-04. As part of its representation, Dorsey advised Alden View to only offer securities to accredited investors, which would exempt Alden View from securities registration requirements. Ex. 17; Tr. 204-05. Gardiner helped Seeley comply with an all-accredited offering by creating a standard subscription agreement to be sent to investors, to provide a reasonable basis to conclude that an investor was accredited and could continue investing with Alden View. Tr. 206-07. Gardiner testified that Dorsey also helped Alden View compile an Executive Summary based on the information given to Dorsey by Seeley and Dickson. Tr. 192-93. Gardiner drafted the August 2007 Executive Summary to provide Alden View's potential investors with the disclosures required by the securities laws. Tr. 192-93. He relied solely on Seeley and Dickson to provide the information in the August 2007 Executive Summary. Tr. 193, 197-98. Since Seeley and Dickson were Gardiner's only source of information about Alden View's business, Gardiner testified that he advised them on multiple occasions that it was important for Seeley or Dickson to inform him if "the Executive Summary contains inaccurate information or new material information becomes known." Ex. 17; Tr. 209-10.

Gardiner testified about several examples of Alden View's lack of candor with him, and testified that Dorsey's advice would have been different had Seeley and Dickson been more

forthcoming. Tr. 193-203. Gardiner agreed that the August 2007 Executive Summary stated that the majority of Alden View loans were secured by collateral. Tr. 194. Gardiner believed this statement to be true at the time, and he was never informed Parrish failed to provide collateral at the time the August 2007 Executive Summary was prepared. Tr. 195. He testified that, had he known the true facts regarding Alden View's collateral, he would have advised Alden View to modify the August 2007 Executive Summary accordingly. Tr. 195-97. Gardiner agreed that the August 2007 Executive Summary also states that none of the borrowers had given Alden View any reason to doubt their ability to repay their loans. Tr. 198. He testified that this statement fails to mention that Parrish had defaulted on his loans, and that he was unaware that Parrish was late making payments when the statement was made. Tr. 199. Gardiner eventually learned the status of Parrish's payments when Seeley emailed Gardiner in March 2008, asking him to prepare a notice of default. Tr. 200-02. Because Seeley candidly admitted that he cannot remember whether he told Gardiner of Parrish's delinquency, and Gardiner testified that he was not so informed, I find as a matter of fact that Gardiner was not informed of Parrish's delinquency prior to March 2008. Tr. 119, 200-02. I do not credit Dickson's testimony to the contrary, not only because it is inconsistent with Seeley's and Gardiner's testimony, but also because Dickson has a strong interest in shading the facts to suggest that Gardiner was fully informed. Tr. 161.

Dominek testified about his investment with Alden View and how he relied on Seeley's assurances in making his decision to invest. Tr. 229. Dominek asserted that Seeley informed him that loans were backed by propery liens. Tr. 229. Additionally, Dominek testified that "Seeley talked about the due diligence he did on every single loan he made." Tr. 231. Both the presence of collateral and the prior due diligence were important factors in Dominek's decision to invest with Alden View. Tr. 231. Dominek testified that he was unaware that Alden View was having trouble with repayment by its borrowers, which was another fact that he would have wanted to know before making his decision to invest. Tr. 237. In fact, Dominek testified he learned of Alden View's issues with Parrish through third party sources. Tr. 237-239.

Cornista testified that he, too, relied on the information provided by Seeley when making an investment with Alden View. Tr. 252. Cornista relied on Seeley's assurances that Alden View's loans were backed by collateral and that Alden View conducted due diligence on each of its borrowers before making a loan. Tr. 256-57. Cornista also relied on Alden View's representation that Parrish and others had never taken any action to cause doubt about their ability to repay their loans. Tr. 259.

The third investor who testified was Dr. Mark Rosenbaum (Rosenbaum), who was Dominek's brother in law. Tr. 299. Rosenbaum, too, testified about his reliance on Seeley's affirmations. Tr. 278-79. Rosenbaum testified that he did not learn where his money was being invested until it reached a point where Seeley was no longer able to pay the interest due on Rosenbaum's notes. Tr. 282. Rosenbaum further testified that Seeley downplayed the importance of the August 2007 Executive Summary and on multiple occasions gave verbal assurances that there were safeguards in place, such as collateral and reserve funds, to protect investors' money. Tr. 299.

III. Conclusions of Law

Section 15(b)(6) of the Exchange Act authorizes the Commission to bar from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO any person who, at the time of the misconduct, was associated with a broker or dealer, if the person has been enjoined from any action specified in Section 15(b)(4)(C) of the Exchange Act, and if it is the public interest. 15 U.S.C. §§ 78o(b)(4)(C), (6). In Seeley, Seeley was permanently enjoined against violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, and Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder. Ex. 49. Accordingly, a sanction will be imposed on Seeley if it is in the public interest.

The Division requests a permanent direct and collateral bar against Seeley from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Tr. 339. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted on July 21, 2010, added collateral bar sanctions to Exchange Act Section 15(b) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The Commission has held that Dodd-Frank's collateral bars "are prospective remedies whose purpose is to protect the investing public from future harm," and therefore applying the bars in a follow-on proceeding addressing pre-Dodd-Frank conduct is "not impermissibly retroactive." John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737. Accordingly, a collateral bar against Seeley, despite the fact that the violative acts ended by January 2009, is an appropriate sanction if it is in the public interest.

IV. Sanction

In determining whether a sanction is in the public interest, the Commission considers the following factors: 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 (the Steadman factors). See Vladimir Boris Bugarski, Exchange Act Release No. 66842 (Apr. 20, 2012), 103 SEC Docket 53374, 53378 (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)). The Commission also considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46.

Scienter is defined as a "mental state embracing the intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976); see Aaron v. SEC, 446 U.S. 680, 686 n.5 (1980). Scienter is a key element in violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b), and Exchange Act Rule 10b-5. See Aaron, 446 U.S. at 691- 697. Thus, by agreeing to be enjoined from future scienter-based violations, Seeley has admitted to acting with scienter. Ex. 49; Tr. 338. The Commission has previously stated that "the allegations in an injunctive complaint settled by consent may be given considerable weight in assessing the public interest in a subsequent proceeding." Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 80 SEC Docket 2812, 2814. Seeley cannot now dispute the underlying facts necessary to imposition of the injunction. Id.; Tr. 338.

Seeley acted with a high degree of scienter by conveying knowing falsehoods and intentional misrepresentations to his investors on numerous occasions. The August 2007 Executive Summary emphasized both Alden View's claimed due diligence and its claimed collateral. Tr. 72-73, 90-91. Seeley personally assured investors that due diligence was conducted on every single loan Alden View made. Tr. 231. In fact, Alden View never conducted due diligence before making a loan to Parrish's company, J&L Mortgage. Tr. 98. The due diligence conducted on Parrish himself was so inadequate that it failed to reveal the publicly available fact that Parrish had previously filed for bankruptcy, a fact Seeley later learned from Parrish himself. Tr. 94-96. Seeley's efforts to secure land in Idaho as collateral for a $365,000 loan to Parrish were lackadaisical, at best. Tr. 76-88. During his 2008 trip to Hawaii, Seeley learned that Parrish had been using Alden View funds to commit bank fraud and pay off other investors, that is, to perpetrate a Ponzi scheme. Tr. 141-43. However, when asked by investors, Seeley misled them by assurances that "things went well" and it was "a very productive trip." Tr. 144-45. In an unsolicited follow-up email to an investor, Seeley described the Hawaii trip as "very successful." Ex. 38; Tr. 146.

Seeley's violations were egregious and recurring. His violations spanned three years, from May 2006 through the summer of 2009. Ex. 43, p. 2; Tr. 57. During that time, Seeley repeatedly misled investors with assurances of due diligence and collateral. While the necessary due diligence and collateral were not missing completely, the little collateral Seeley did secure in Alden View's name was utterly insufficient to cover the loans made by the company. Tr. 302, 344. Out of the $7.9 million investor funds that Alden View raised, $6.3 million was lost. Ex. 43, pp. 2-3. Necessarily, therefore, the majority of Alden View's dozens of investors received little to no return of their principal. Tr. 130, 134. Meanwhile, Seeley recouped approximately seventy percent of his own $200,000 investment with Alden View. Tr. 181-83.

Seeley testified that he recognizes the wrongful nature of his conduct to some extent. Tr. 363. Seeley believes that he followed the advice of counsel as best he could in order to remain compliant with the securities laws. Tr. 54, 156, 361-63. However, Seeley has failed to realize that his counsel's advice was based upon the information he provided, and by withholding crucial facts from counsel, he received poor and even irrelevant advice. Tr. 197-98. Gardiner advised Seeley that it was important to update the company's disclosures if material information changed, and if there was any doubt concerning whether information would be considered material, he should check with counsel immediately. Ex. 17; Tr. 67. Yet Seeley never informed Gardiner that Parrish failed to provide collateral at the time the August 2007 Executive Summary was prepared. Tr. 195. Nor was Gardiner informed that Parrish had given Alden View any reason to doubt his ability to repay his loans. Tr. 198-99, 203. If Seeley had provided Gardiner with all the necessary information about Alden View and its borrowers, Gardiner's advice would have been different, and would presumably have been more pertinent. Tr. 195-96. Seeley does not take responsibility for withholding information from counsel; instead, Seeley states that his mistake was the fact that he trusted Parrish more than he should have. Tr. 360. He does not take responsibility for the insufficient due diligence Alden View performed on Parrish. Tr. 96. Seeley testified that he relied heavily on his past experience with Parrish and felt that that was "adequate." Tr. 96. Seeley testified that, in hindsight, he was too trusting and would not make the same mistakes again. Tr. 360, 363. Seeley also testified that he was remorseful and worked

hard to return the money to his investors. Tr. 360-61. However, despite whatever money Seeley was able to recover for investors, he made sure he recovered the bulk of his own lost investment. Tr. 130, 134, 180-182. In light of his failure to take full responsibility for insufficient due diligence and collateral, and for the many falsehoods and omissions directed toward his victims for which he accepts no responsibility at all, his assurances against future violations are not fully credible.

Seeley now works as a partner in a telecommunications firm. Tr. 186, 359. Seeley has not been involved in the securities industry for the last four years and has no intention of working as a broker-dealer in the future. Tr. 55, 363-64. Based purely on Seeley's current occupation, a future violation would ordinarily be unlikely; however, he is concerned that a collateral bar will limit his "ability to grow any future business." Tr. 359. This concern shows that although Seeley does not intend to work as a broker-dealer, he does foresee a future connection with the securities industry, which preserves the possibility of future violations notwithstanding his current occupation.

The high degree of scienter, the egregiousness and recurrent nature of his violations, and his failure to provide assurance against future violations all strongly support a permanent associational bar. His current occupation and his recognition of the wrongful nature of his misconduct are not as clear cut. These two factors weigh neither in support of nor against a permanent bar. Nonetheless, four of the six factors provide strong support for the maximum sanction, and overall it is clear that the Steadman factors weigh in favor of a permanent bar. Additionally, a permanent bar will further the Commission's interests in deterrence, particularly general deterrence. See Steven Altman, Esq., Exchange Act Release No. 63306 (Nov. 10, 2010), 99 SEC Docket 34405, 34438 ("Other attorneys, who might be encouraged by a more lenient sanction to act in a similar fashion, must also be deterred."), pet. denied, 666 F.3d 1322 (D.C. Cir. 2011); Steadman, 603 F.2d at 1140 ("even if further violations of the law are unlikely, the nature of the conduct mandates permanent debarment as a deterrent to others in the industry"). Finally, a permanent bar is remedial rather than punitive because it will protect the integrity of the regulatory process and will thereby protect the investing public from future harm.

V. Record Certification

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Secretary of the Commission on August 26, 2013.

VI. Order

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Respondent Christopher A. Seeley is permanently 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 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.

_____

Cameron Elliot
Administrative Law Judge