INITIAL DECISION RELEASE NO. 556
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15445

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

In the Matter of	:	INITIAL DECISION
	:	January 30, 2014
HAUSMANN-ALAIN BANET	:	

APPEARANCES: Jina L. Choi and John S. Yun for the Division of Enforcement, Securities and Exchange Commission

Hausmann-Alain Banet, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition (Motion) and permanently bars Respondent Hausmann-Alain Banet (Banet) from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO).

Procedural Background

On August 28, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Banet, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that in United States v. Banet, No. 12-cr-715 (N.D. Cal.) (the Criminal Proceeding), Banet pled guilty to two counts of mail fraud and two counts of wire fraud, was sentenced to fifty-six months in jail followed by thirty-six months of supervised release, and ordered to pay $1,217,668.40 in restitution and forfeit certain assets.

At a prehearing conference held on October 28, 2013, I deemed service of the OIP complete on September 3, 2013. See Hausmann-Alain Banet, Admin. Proc. Rulings Release No. 1000, 2013 SEC

LEXIS 3376 (Oct. 28, 2013) (Oct. 28 Order); Tr. 4.[1] Banet was given until November 22, 2013, to file an answer. Oct. 28 Order; Tr. 8-9. I also granted the parties leave to file motions for summary disposition, pursuant to Rule 250 of the Commission's Rules of Practice. See Oct. 28 Order; Tr. 10-13. On November 22, 2013, the Division filed its Motion, with supporting exhibits (Division Exhibits 1-3).[2] On November 27, 2013, Banet filed his Verified Answer to OIP Pursuant to Section 203(f) of the Advisers Act and Cross Motion for Disposition (Answer & Cross Motion), in which he denies liability under the securities laws, contends that it is improper to use his criminal guilty plea as a foundation of liability in a civil administrative proceeding, and launches an array of complaints about the Criminal Proceeding and the conditions of his incarceration.[3] Answer & Cross Motion at 2, 4-6. He further asks that the OIP be dismissed, he be moved to a different prison, and there be a jury trial in this administrative proceeding.[4] Id. at 6-7. Neither oppositions nor replies were filed in connection with the Motion or Banet's Cross Motion.[5]

Summary Disposition Standard

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made will be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. 17 C.F.R. §§ 201.250(a), .323.

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been convicted and the sole determination concerns the appropriate sanction.[6] See Gary M. Kornman, Securities Exchange Act of 1934 (Exchange Act) Release No.

[1] "Tr." citations refer to the transcript of the October 28, 2013, telephonic prehearing conference.

[2] Division Exhibits 1 to 3 are attached to the Division's Request for Official Notice in Support of Motion. The exhibits comprise these documents from the Criminal Proceeding: the indictment against Banet filed on October 2, 2012 (Division Exhibit 1); the plea agreement signed by Banet on May 21, 2013, and filed with the court on May 22, 2013 (Division Exhibit 2); and the August 15, 2013, Judgment entered against Banet (Division Exhibit 3).

[3] Banet's Answer did not comply with the deadline I gave during the prehearing conference and in my Oct. 28 Order. However, because Banet is pro se and currently incarcerated, I will treat his Answer as timely filed.

[4] Likewise, I construe Banet's filing as both an answer and a cross motion for summary disposition.

[5] Oppositions to motions for summary disposition were due on December 20, 2013, and replies on January 10, 2014. Oct. 28 Order; Tr. 12.

[6] Commission precedent contradicts Banet's contention that it is "manifestly improper" to use his guilty plea in a criminal case as the basis for imposition of a sanction in an administrative proceeding. Answer & Cross Motion at 2; see Paul M. Kaufman, 44 S.E.C. 374 (1970)

59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14262-63 pet. denied, 592 F.3d 173 (D.C. Cir. 2010); Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 & nn.21-24 (collecting cases), pet. denied, 561 F.3d 548 (6th Cir. 2009). The circumstances where summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), pet. denied, 66 F. App'x 687 (9th Cir. 2003).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice.[7] See 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

Findings of Fact

I adopt the following facts recited in Banet's plea agreement (Division Exhibit 2).

A. Banet's Fraudulent Representations That He Would Invest Investors' Money

Beginning in or about November 2008 and continuing through July 2012, Banet induced numerous individuals, including Individual A, who was acting on behalf of Entity A, Entity B, and Entity C, to deposit money into bank accounts that Banet controlled by falsely and fraudulently representing that he, on behalf of his San Francisco-based investment management company Lion Capital, which was formerly registered with the Commission as an investment adviser, would invest the money. Investment Adviser Profile; Form ADV; Div. Ex. 2 at 3. In furtherance of the scheme to defraud, Banet falsely and fraudulently stated that he would and did invest the money in a hedge fund, the Lion Absolute Value Fund, L.P. Div. Ex. 2 at 3. As a result of Banet's false and fraudulent representations, from approximately November 2008 through August 2011, Individual A and the entities Individual A managed deposited approximately $554,344 with Banet. Id. In furtherance of the scheme, Banet also created false and fraudulent quarterly account statements and sent those statements to Individual A. Id. at 3-4. The account statements falsely stated that the

---

(Commission relied on prior criminal convictions as basis for imposition of bars, despite availability of appeal of the convictions).

[7] Pursuant to Commission Rule 323, I take official notice of Division Exhibits 1-3, the docket sheet of the Criminal Proceeding, and the Commission's public official records relating to Lion Capital Management, LLC (Lion Capital) – specifically (1) the investment adviser firm information on Lion Capital, showing that the firm is no longer registered and is not filing reports with the Commission or any state (Investment Adviser Profile), and (2) Lion Capital's last Form ADV, filed on March 24, 2006 (Form ADV). The Investment Adviser Profile and Form ADV are both available at www.adviserinfo.sec.gov (last visited Jan. 15, 2014).

investment accounts had sustained trading gains. Id. at 4. Banet also intentionally failed to disclose that he never invested the money provided and that, instead, he spent the money for his own personal and business expenses, unrelated to generating investment income. Id. All of these false statements and omissions were material to the individuals in deciding whether to provide him with funds and not withdraw their funds once given to him. Id.

As part of this scheme to defraud, on or about November 12, 2008, Banet caused Individual A to send $281,917.19 from JP Morgan Chase Bank in Massachusetts to a bank account in Michigan, via the Fed Wire system through New Jersey. Id. As part of this scheme to defraud, on or about May 22, 2009, he caused Individual A to send $100,000 from JP Morgan Chase Bank in Louisiana to a bank account in Michigan, via the Fed Wire system through New Jersey. Id. These wire communications traveled in interstate commerce, and Banet directed or orchestrated these wire transfers from the Northern District of California. Id.

As part of the scheme to defraud, on or about January 15, 2009, Banet created and caused false and fraudulent account statements for Entity A and Entity C to be sent by mail. Id. On or about March 31, 2011, he created and caused false and fraudulent account statements for Entity A, Entity B, and Entity C to be sent by mail. Id.

In addition to the money received from Individual A, Entity A, Entity B, and Entity C, as part of his scheme to defraud, he induced Individual B, Individual C, and Individual D to deposit a total of approximately $773,324 into bank accounts he controlled by making substantially the same false and fraudulent representations that he made to Individual A. Banet did not invest the money provided by Individual B, Individual C, and Individual D, as he falsely represented to them, and he spent the money for his personal and business expenses, unrelated to generating investment income for them. Id.

As a result of his scheme to defraud, including all relevant conduct, Banet received approximately $1,317,668 from investors. Id.

B. United States v. Banet

On October 2, 2012, the U.S. Attorney for the Northern District of California (the U.S. Attorney) criminally indicted Banet, alleging among other things that Banet committed mail fraud, in violation of 18 U.S.C. § 1341, and wire fraud, in violation of 18 U.S.C. § 1343. See Div. Ex. 1. On May 21, 2013, the U.S. Attorney, Banet, and Doron Weinberg, who was Banet's attorney in the Criminal Proceeding, signed a plea agreement between the U.S. Attorney and Banet. By signing this plea agreement, Banet agreed to plead guilty to two counts each of mail fraud and wire fraud, and admitted to the facts recited above. Div. Ex. 2 at 1-5. Banet further agreed to pay restitution of at least $1,217,688, and forfeit assets in Scottrade and Ecobank (Ghana) accounts, property at 1083 Clay Street, San Francisco, California, and a 2004 Mercedes Benz CLK 500C. Id. at 7-8. Also on May 21, 2013, a plea hearing was held before Judge William Alsup of the U.S. District Court for the Northern District of California, and on May 22, 2013, the plea agreement was filed in the Criminal Proceeding. Div. Ex. 2. On August 15, 2013, judgment was entered in the Criminal Proceeding against Banet, and Banet was: adjudged guilty of two counts each of mail fraud and wire fraud, under 18 U.S.C. §§ 1341 and 1343; ordered to pay restitution in the amount of

$1,217,668.40; and ordered to forfeit assets in Scottrade and Ecobank (Ghana) accounts, property at 1083 Clay Street, San Francisco, California, and a 2004 Mercedes Benz CLK 500C. Div. Ex. 3.

Conclusions of Law

Section 203(f) of the Advisers Act authorizes the Commission to sanction Banet if, as relevant here, (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he has been convicted of any offense specified in Section 203(e)(2)-(3) of the Advisers Act within ten years of the commencement of the proceeding; and (3) the sanction is in the public interest.[8] 15 U.S.C. § 80b-3(f). During the time of his misconduct, Banet was associated with and controlled investment adviser Lion Capital. Form ADV; Div. Ex. 2 at 3. Further, in the Criminal Proceeding, Banet was convicted of mail and wire fraud under 18 U.S.C. §§ 1341 and 1343, within the meaning of Section 203(e)(2) of the Advisers Act. 15 U.S.C. § 80b-3(e)(2)(D); Div. Ex. 3.

Banet attempts to use this proceeding to attack aspects of the Criminal Proceeding. It is, however, well established that findings and conclusions made in an underlying action may not be challenged in a follow-on administrative proceeding; the proper forum for such a challenge is an appeal of the conviction. See Phillip J. Milligan, Exchange Act Release No. 61790 (Mar. 26, 2010), 98 SEC Docket 26791, 26796-97; Ted Harold Westerfield, 54 S.E.C. 25, 32 n.22 (1999). Banet also alleges that the conditions of his incarceration have been unfair or inhumane, which I interpret as either a counterclaim or impleader against a non-party to this proceeding. I have no authority to consider such complaints, because the Commission's Rules of Practice do not permit counterclaims and do not contemplate impleader. See Gupta v. SEC, 796 F. Supp. 2d 503, 513 (S.D.N.Y. 2011) (counterclaims not permitted in Commission administrative proceedings). Further, this proceeding, brought under Section 203(f) of the Advisers Act, does not contemplate my consideration of such a constitutional claim having no connection to the Division's allegations or the conduct in this proceeding. See OIP at 2 (questions to be resolved in this administrative proceeding).

Accordingly, there is no genuine issue with regard to any material fact and summary disposition is appropriate.[9] See 17 C.F.R. § 201.250(b). A sanction will be imposed if it is in the public interest. See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (Commission has authority to bar persons from association with investment advisers or otherwise sanction them under Section 203 of the Advisers Act).

---

[8] As to the sanction, Section 203(f) of the Advisers Act authorizes the Commission to bar Banet from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. 15 U.S.C. § 80b-3(f); John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

[9] While Banet requests a hearing by jury in this proceeding, no in-person hearing is necessary. Further, there are no juries in administrative proceedings. See 17 C.F.R. § 201.100 et seq. (no mention of juries in the Commission's Rules of Practice); Vladlen "Larry" Vindman, Securities Act of 1933 Release No. 8679 (Apr. 14, 2006), 87 SEC Docket 2626, 2645 n.60 (quoting Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n, 430 U.S. 442, 450 (1977)).

Sanctions

The Division seeks a permanent industry bar against Banet. Mot. at 7. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC, namely: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations (Steadman factors). 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see Kornman, 95 SEC Docket at 14255. The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Kornman, 95 SEC Docket at 14255. The Commission also considers the deterrent effect of administrative sanctions. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. Industry bars have long been considered effective deterrence. See Guy P. Riordan, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478 & n.107 (collecting cases).

Here, each Steadman factor favors imposing a permanent industry bar. Banet's conduct was egregious and recurrent, because over the course of more than three years, he repeatedly stated, falsely, that he would and did invest over $1 million provided to him by investors, but instead spent the money for his own personal and business expenses. Div. Ex. 2 at 3-4. Banet's conduct involved significant scienter. Banet admitted to intentionally failing to disclose that he never invested money provided to him by investors, but used it for personal and business expenses. Id. at 4. He also created and sent false account statements to investors. Id. at 3-4. Banet's prison term may be some protection against future violations of the securities laws in the short term, yet Banet has provided no assurances that he will neither return to work in the securities industry nor return to illegal business activities. Banet's Answer & Cross Motion is notably devoid of any expression of remorse for his misconduct and any recognition of its wrongfulness.

Ultimately, it is in the public interest that Banet be barred from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Further, there is no merit in the Cross Motion aspect of Banet's Answer & Cross Motion, which seeks a dismissal of the proceeding against him, and therefore Banet's Cross Motion is denied.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition against Respondent Hausmann-Alain Banet is GRANTED.

It is FURTHER ORDERED that Respondent Hausmann-Alain Banet's Cross Motion for Disposition is DENIED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Hausmann-Alain Banet is permanently BARRED from associating with an investment

adviser, broker, dealer, municipal securities dealer, municipal advisor, 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 of the Commission's Rules of Practice. See 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. See 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party will 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 will not become final as to that party.

_____

Cameron Elliot
Administrative Law Judge