INITIAL DECISION RELEASE NO. 569
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15538

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

In the Matter of	:	INITIAL DECISION
	:	February 26, 2014
LAWRENCE MAXWELL MCCOY	:	

APPEARANCES: Michelle L. Ramos and David Frohlich for the Division of Enforcement, Securities and Exchange Commission

Lawrence Maxwell McCoy, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision grants the Motion for Summary Disposition (Motion) filed by the Division of Enforcement (Division) and bars Lawrence Maxwell McCoy (McCoy) from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO), and from participating in an offering of penny stock (collectively, full industry bar) for ten years.

PROCEDURAL HISTORY

On September 30, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP), pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on September 20, 2012, McCoy pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 before the United States District Court for the Western District of Michigan in United States v. McCoy, No. 1:12-cr-222 (Underlying Proceeding). OIP at 2. The OIP further alleges that on January 3, 2013, McCoy was sentenced to fifty-four months in prison followed by two years of supervised release and was ordered to pay $690,267.37 in restitution. Id.

McCoy was served with the OIP on October 4, 2013. A telephonic prehearing conference was held on October 23, 2013, attended only by the Division. Following the prehearing conference, I issued an Order to Show Cause, directing McCoy to show cause by November 8, 2013, why this proceeding should not be determined against him for failing to

attend the prehearing conference. Lawrence Maxwell McCoy, Admin. Proc. Rulings Release No. 987, 2013 SEC LEXIS 3334 (Oct. 23, 2013). On October 30, 2013, this Office received a letter from McCoy, dated October 22, 2013 (October 22 letter), that stated in part, "I have nothing to add or detract from the findings in this matter beyond the guilty plea previously entered," and "I have no intent or desire to ever associate myself, in any manner, with the securities industry." On November 6, 2013, this Office received a second letter from McCoy, dated October 31, 2013 (October 31 letter), that explained his absence from the prehearing conference and stated that he has "no intent to protest the proceedings."

I construed McCoy's October 22 letter as an excusably late Answer to the OIP (Answer) and his October 31 letter as a sufficient response to the Order to Show Cause (Response). Lawrence Maxwell McCoy, Admin. Proc. Rulings Release No. 1032, 2013 SEC LEXIS 3509 (Nov. 8, 2013). In lieu of holding a second prehearing conference, I set a briefing schedule for motions for summary disposition, ordering that motions were due on November 22, 2013; oppositions were due on December 20, 2013; and replies, if any, were due on January 10, 2014. Id. The Division filed its Motion and the Declaration of Michelle L. Ramos in Support of Motion, attaching five exhibits (Div. Ex. 1 through Div. Ex. 5), on November 22, 2013.[1] McCoy did not file an opposition. The Division filed a letter in support of its Motion on January 6, 2014.

On January 31, 2014, I took official notice of the following facts pursuant to Rule 323 of the Commission's Rules of Practice (Rule): 1) effective as of July 17, 1968, ING Financial Partners, Inc. (ING Financial), was registered with the Commission as a broker-dealer; 2) effective as of July 11, 1994, ING Financial was registered with the Commission as an investment adviser; and 3) both of these registrations remain current. Lawrence Maxwell McCoy, Admin. Proc. Rulings Release No. 1212, 2014 SEC LEXIS 368 (Official Notice). These facts were established by the Commission's records and FINRA's BrokerCheck database. Id. I also took official notice of the docket sheet and the following documents filed in the Underlying Proceeding that were not offered into evidence in this administrative proceeding: 1) Plea Agreement, Underlying Proceeding (Sept. 14, 2012), ECF No. 5 (Plea Agreement); 2) Transcript of September 20, 2012, Plea Hearing, Underlying Proceeding (Nov. 26, 2012), ECF No. 14 (Plea Hearing Transcript); 3) Report & Recommendation, Underlying Proceeding (Sept. 20, 2012), ECF No. 11 (Report & Recommendation); and 4) Order Adopting Report & Recommendation, Underlying Proceeding (Oct. 9, 2012), ECF No. 13 (Order Adopting Report & Recommendation). Id.

[1] Div. Ex. 1 is McCoy's Answer; Div. Ex. 2 is McCoy's Response; Div. Ex. 3 is a copy of a Web CRD printout of McCoy's employment history from the website of the Financial Industry Regulatory Authority, Inc. (FINRA); Div. Ex. 4 is a copy of the January 3, 2013, Judgment in the Underlying Proceeding; and Div. Ex. 5 is a copy of the September 7, 2012, Felony Information in the Underlying Proceeding (Felony Information). I take official notice of Div. Exs. 3, 4, and 5 pursuant to Rule 323 of the Commission's Rules of Practice. 17 C.F.R. § 201.323.

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 shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 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 enjoined or convicted and the sole determination concerns the appropriate sanction. See 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). Under Commission precedent, the circumstances in which 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. 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

A. McCoy's Background and Criminal Activity

McCoy was the principal of Hallbrook Asset Management and Hallbrook Group, LLC, where he acted as a financial advisor to clients, providing them with investment advice and recommendations. Plea Agreement at 2.[2] McCoy's clients entrusted their money to him to place into legitimate investments on their behalf. Id. From 1995 until 2009, McCoy devised a scheme and artifice to defraud by fabricating an investment that he called the Marsico Private Ledger (Marsico Investment), and which he represented was an investment offered through Marsico Capital Management, LLC (Marsico), a real mutual fund provider based in Colorado. Id. at 2-3; Div. Ex. 5 at 3-4. McCoy initially diverted funds for a down payment on a house in 1995. Plea Agreement at 3. After that initial diversion of funds, McCoy continued to induce his clients to give him money for the purported Marsico Investment and continued to divert their funds for his own use. Id.

[2] The Plea Agreement was agreed to and signed by McCoy, McCoy's attorney in the Underlying Proceeding, and an Assistant U.S. Attorney for the Western District of Michigan, and it contains a summary of the factual basis for McCoy's guilt. Plea Agreement at 1-3, 8. The Plea Agreement states that McCoy and the U.S. Attorney's Office also stipulate to the facts set forth in the Felony Information regarding how McCoy perpetrated his scheme to defraud certain clients. Id. at 3; see Div. Ex. 5.

Once McCoy obtained his clients' money, he used wires in interstate commerce to communicate to his clients the value of their purported positions in the Marsico Investment through Albridge Wealth Reporting, a third-party Internet-based reporting service offered by Albridge Wealth Management (Albridge). Id. Specifically, on or about September 30, 2007, McCoy manually updated the price per share of the Marsico Investment on the Albridge website; that information was stored at an Albridge data center, and on or about October 17, 2007, a client accessed the Albridge website, and the fake price per share information lulled the client into believing that the investment was legitimate. Div. Ex. 5 at 3.[3]

McCoy also used wires in interstate commerce to send lulling communications by email to his clients about their investment, so as to not arouse suspicion and to cover up his scheme. Plea Agreement at 3. Specifically, on or about September 8, 2008, McCoy sent an email to two people providing the annual return on their Marsico Investment; these two people received the email, and the annual return information lulled them into believing the Marsico Investment was legitimate. Div. Ex. 5 at 3. On or about December 24, 2008, McCoy sent an email to the same two people representing that they were on the "pecking list" with Marsico to withdraw funds from their Marsico Investment and the funds would come out "when available"; the two people received the email and it lulled them into believing the Marsico Investment was legitimate. Id. at 4.

On or about January 14, 2009, McCoy sent an email to a client falsely claiming that Marsico had not yet established the direct deposit the client had requested McCoy to set up so that the client and his wife could withdraw funds from their Marsico Investment; the client received the email and it lulled him into believing that the Marsico Investment was legitimate. Id. On or about March 3, 2009, McCoy sent an email to this same client, falsely claiming that on March 15, 2009, Marsico would be dispensing funds to McCoy out of the client's Marsico Investment to satisfy the client's request to withdraw funds; the client received the email and it lulled him into believing the Marsico Investment was legitimate. Id.

From January 2004 to April 2008, McCoy was a registered representative associated with ING Financial, which currently is, and was at the time of McCoy's association, a broker-dealer and an investment adviser registered with the Commission. Div. Ex. 3; Official Notice.

B. United States v. McCoy

In September 2012, the U.S. Attorney's Office for the Western District of Michigan filed a Felony Information against McCoy, charging him with one count of wire fraud in violation of 18 U.S.C. § 1343. Div. Ex. 5. That same month, McCoy waived his right to indictment by grand jury and pled guilty to one count of wire fraud before a magistrate judge. Plea Agreement

[3] During the plea hearing in the Underlying Proceeding, McCoy admitted that he did all of the things listed in paragraph nine of the Felony Information, including manually updating the price per share of the fabricated Marsico Investment on the Albridge website and sending the emails described in the Felony Information to clients. Plea Hearing Transcript at 39-40; see Div. Ex. 5 at 3-4.

at 1; Plea Hearing Transcript at 6-7, 29, 42-43. The magistrate judge recommended that the district court accept McCoy's guilty plea. Report & Recommendation. The district court judge accepted McCoy's guilty plea and adjudicated him guilty of wire fraud. Order Adopting Report & Recommendation. In January 2013, McCoy was sentenced to fifty-four months in prison followed by two years of supervised release, and was ordered to pay $690,267.37 in restitution. Div. Ex. 4. McCoy did not appeal. See Dkt. Sheet, Underlying Proceeding.

CONCLUSIONS OF LAW

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize the Commission to impose a full industry bar as a sanction against McCoy if: 1) at the time of the alleged misconduct, he was associated with a broker, dealer, or investment adviser; 2) within ten years of the commencement of this proceeding, he was convicted of any offense specified in Exchange Act Section 15(b)(4)(B) or Advisers Act Section 203(e)(2); and 3) the sanction is in the public interest.[4] 15 U.S.C. §§ 78*o*(b)(6)(A)(ii), 80b-3(f).

McCoy was convicted of one count of wire fraud in violation of 18 U.S.C. § 1343, within the meaning of Exchange Act Section 15(b)(4)(B) and Advisers Act Section 203(e)(2). 15 U.S.C. §§ 78*o*(b)(4)(B)(iv), 80b-3(e)(2)(D). McCoy was associated with a registered broker-dealer and registered investment adviser during at least portions of the time he was engaging in wrongdoing.[5] See Div. Ex. 3; Official Notice. Accordingly, there is no genuine issue of material fact and summary disposition is appropriate. See 17 C.F.R. § 201.250(b). A sanction will therefore be imposed if it is in the public interest.

SANCTION

The Division seeks a full industry bar against McCoy. Motion at 1, 7. 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 Advisers Act Section 203(f). 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."

[4] Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize the Commission to bar McCoy from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO; and Exchange Act Section 15(b)(6) further authorizes a bar on participating in an offering of penny stock. 15 U.S.C. §§ 78*o*(b)(6), 80b-3(f).

[5] The fact that McCoy was not associated during the entire period of his wrongdoing with a registered broker-dealer or investment adviser does not insulate him from a bar. See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (affirming the Commission's authority to bar persons from association with investment advisers, whether registered or unregistered); Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (barring an unregistered associated person of an unregistered broker-dealer from association with a broker or dealer);

John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737. Accordingly, the imposition of a full industry bar against McCoy, despite the fact that the violative acts ended in 2009, is an appropriate sanction if it is in the public interest.

The appropriate remedial sanction is guided by the well-established public interest factors listed in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); Vladimir Boris Bugarski, Exchange Act Release No. 66842 (Apr. 20, 2012), 103 SEC Docket 53374, 53378. They include: (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, 603 F.2d at 1140. Deterrence should also be considered. Steven Altman, Exchange Act Release No. 63306 (Nov. 10, 2010), 99 SEC Docket 34405, 34435. The inquiry into the appropriate remedial sanction is flexible and no one factor is controlling. Chris G. Gunderson, Exchange Act Release No. 61234 (Dec. 23, 2009), 97 SEC Docket 24040, 24048; Conrad P. Seghers, Advisers Act Release No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2298, aff'd, 548 F.3d 129 (D.C. Cir. 2008).

The Steadman factors weigh in favor of imposing a full industry bar against McCoy for ten years. First, McCoy's criminal conduct was egregious in that it involved a scheme and artifice to defraud his clients out of their investments and resulted in the diversion of investor funds for McCoy's own personal use. Plea Agreement at 2-3; Plea Hearing Transcript at 39-40. McCoy was ordered to pay restitution of $690,267.37 to four investors, highlighting the egregiousness of his misconduct. Div. Ex. 4. When questioned by the court during the plea hearing in the Underlying Proceeding, McCoy agreed that he had abused a position of trust and had provided a client with a false valuation of his investment to mislead him, among other deceptive acts. Plea Hearing Transcript at 25, 39. Second, McCoy's conduct was recurrent. McCoy's overall fraudulent scheme occurred between 1995 and 2009, and McCoy sent at least four misleading emails to his clients to cover up his scheme. Plea Hearing Transcript at 40; Div. Ex. 5. Third, in committing wire fraud, McCoy acted with a high degree of scienter, as he intended to defraud his victims. Plea Agreement at 1, 3; United States v. Brown, 147 F.3d 477, 483 (6th Cir. 1998) (violations of 18 U.S.C. § 1343 involve specific intent to defraud).

Fourth, with respect to assurances against future violations and the likelihood of future violations, McCoy stated in his Answer that he has no intent or desire to ever associate himself, in any manner, with the securities industry, and that upon release from prison he "shall be homeless, destitute, and will need to rely on low paying jobs" to get by and work toward paying restitution. Answer. Lastly, McCoy has recognized the wrongful nature of his conduct. During the plea hearing in the Underlying Proceeding, the magistrate judge asked McCoy whether he was pleading guilty because he "truly" believed he was guilty of the offense, and McCoy responded "I am." Plea Hearing Transcript at 33. McCoy testified that there were reasons "but no justification" for taking the money in 1995—namely, using the money for a down payment on a house—and that he thereafter "got caught in a downward spiral." Id. at 34. When asked by the magistrate judge whether he had any belief that what he was doing was fair and equitable, McCoy responded, "Not from day one, no, sir." Id. at 38. McCoy has also stated that he has no intention of protesting this administrative proceeding. Response at 2.

In sum, although the egregiousness and recurrence of McCoy's misconduct and McCoy's high degree of scienter support permanently imposing a full industry bar against McCoy, McCoy's recognition of the wrongful nature of his conduct, his assurances against future violations, and the likelihood of future violations weigh in McCoy's favor and are mitigating circumstances. Therefore, on balance, and under the particular circumstances of this case, the Steadman factors weigh in favor of imposing a full industry bar against McCoy for ten years.[6]

ORDER

It is ORDERED, pursuant to Rule 250 of the Commission's Rules of Practice, that the Division of Enforcement's Motion for Summary Disposition is GRANTED.

It is FURTHER ORDERED, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Lawrence Maxwell McCoy is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for ten years.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Lawrence Maxwell McCoy is BARRED from participating in an offering of penny stock for ten years, including acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. See 17 C.F.R. § 201.360. Pursuant to that

[6] Under Exchange Act Section 15(b)(6)'s plain language, the Commission is authorized to impose a full industry bar, including the penny-stock bar, against McCoy if, in relevant part, at the time of the alleged misconduct, he was associated with a broker-dealer, or was participating in an offering of penny stock. 15 U.S.C. § 78*o*(b)(6)(A); see Peter Siris, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *19-20 (Dec. 12, 2013) (Commission imposed full industry bar against the respondent based on his participation in an offering of penny stock at the time of the alleged misconduct, without requiring a separate broker-dealer nexus); Vladimir Boris Bugarski, Exchange Act Release No. 66824 (Apr. 20, 2012), 103 SEC Docket 53374, 53378 (same). Here, the broker-dealer nexus is satisfied. In two opinions, the Commission held that a penny-stock bar was inappropriate under the circumstances of those cases. See James Harvey Thornton, 53 S.E.C. 1210, 1217 (1999) (finding imposition of penny-stock bar inappropriate because, among other considerations, the respondent's failure to supervise did not involve penny-stock fraud and it appeared unlikely that he would commit such fraud or enter the penny-stock industry in the future), aff'd, 199 F.3d 440 (5th Cir. 1999) (unpublished); Alan E. Rosenthal, 53 S.E.C. 767, 770-71 (1998) (under Steadman analysis, Commission declined to impose penny-stock bar because such bar would not serve a remedial purpose). However, under the circumstances of this proceeding, imposing the full industry bar best comports with the statute's remedial purpose and is in the public interest for the reasons discussed.

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 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 occurs, the Initial Decision shall not become final as to that party.

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Cameron Elliot
Administrative Law Judge