INITIAL DECISION RELEASE NO. 607
ADMINISTRATIVE PROCEEDING
FILE NO. 3- 15784

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

In the Matter of	:	INITIAL DECISION OF DEFAULT
	:	June 2, 2014
GEORGE LOUIS THEODULE	:	

APPEARANCES: Robert K. Levenson for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision of Default grants the Division of Enforcement's (Division) Amended Motion for Sanctions (Amended Motion) and permanently bars Respondent George Louis Theodule (Theodule) from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock (collectively, collateral bar).

Procedural Background

On March 12, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Theodule, 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 October 28, 2013, Theodule pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 before the United States District Court for the Southern District of Florida (Southern District of Florida), in United States v. Theodule, No. 9:13-cr-80141 (Criminal Proceeding); on February 24, 2014, Theodule was sentenced to twelve and a half years in prison and three years of supervised release, with restitution to be set at a later date, in the Criminal Proceeding; on March 26, 2010, a Final Judgment was entered against Theodule before the Southern District of Florida, in SEC v. Creative Capital, No. 08-cv-81565 (Civil Proceeding); and Theodule was ordered to pay disgorgement of $5,099,512, prejudgment interest of $202,638, and a civil penalty of $250,000 in the Civil Proceeding. OIP at 2.

At a prehearing conference held on April 11, 2014, I deemed service of the OIP to have occurred on April 4, 2014, in accordance with Rule 141(a)(2)(i) of the Commission's Rules of

Practice. Tr. 4[1]; see George Louis Theodule, Admin. Proc. Rulings Release No. 1376, 2014 SEC LEXIS 1299 (Apr. 14, 2014); 17 C.F.R. § 201.141(a)(2)(i). Theodule did not file an answer to the OIP, and I ordered him to show cause by May 12, 2014, why this proceeding should not be determined against him. George Louis Theodule, Admin. Proc. Rulings Release No. 1399, 2014 SEC LEXIS 1436 (Apr. 25, 2014). Theodule did not respond to that order. On May 13, 2014, I found Theodule in default, and ordered the Division to file a motion for sanctions, by May 23, 2014, providing legal authority and evidentiary support relating to the allegations in the OIP and sanctions sought by the Division. George Louis Theodule, Admin. Proc. Rulings Release No. 1433, 2014 SEC LEXIS 1642; see 17 C.F.R. §§ 201.155(a), .220(f). On May 22, 2014, the Division filed a Motion for Sanctions, and the next day it filed the Amended Motion.[2] Attached to the Amended Motion are seven exhibits (Exs. 1-7).[3] Theodule did not respond to the Amended Motion.

The Amended Motion is granted. This proceeding will be determined upon consideration of the record,[4] including the OIP, the allegations of which are deemed true. See 17 C.F.R. § 201.155(a).

Findings of Fact

Theodule and Creative Capital

Theodule, age fifty-two, formerly resided in Loganville, Georgia, and is now incarcerated in federal prison. OIP at 1. From July 2007 through December 2008, Theodule was president and sole officer and director of Creative Capital Consortium, LLC, which was never registered with the Commission, and also managed A Creative Capital Concept$, LLC, which was never registered with the Commission (collectively, Creative Capital). Id. Creative Capital is now defunct, but was previously used to raise investor funds. Id.

Theodule's Misconduct

In July 2007, Theodule began falsely holding himself out as a "financial wizard" in the South Florida Haitian community who, through proven investment strategies, could double investors' principal in thirty to ninety days. OIP at 2; Ex. 2-A at 1. In meetings with potential investors, Theodule claimed to be a highly successful investor in stock options and that he could use his proven investment strategies to enrich investors; this was not true. Ex. 2-A at 1.

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[1] Citation is to the prehearing transcript.

[2] The Amended Motion, unlike the original May 22, 2014, Motion for Sanctions, requests a penny stock bar against Theodule.

[3] The exhibits include, from the Criminal Proceeding, the Plea Agreement (Ex. 2), including Theodule's Factual Proffer (Ex. 2-A), and the February 26, 2014, Judgment (Ex. 3); and from the Civil Proceeding, the Judgment of Permanent Injunction and Other Relief as to Defendant George L. Theodule (Ex. 7).

[4] Pursuant to Commission Rule of Practice 323, I take official notice of the proceedings and the docket sheets in the Criminal and Civil Proceedings, including Exhibits 2, 2-A, 3, and 7. 17 C.F.R. § 201.323.

Theodule formed about 100 investment clubs with more than 2,500 members who invested from $1,000 to $100,000, based on Theodule's representations that the investment would double in thirty to ninety days. OIP at 2; Ex. 2-A at 2. The investment clubs were located in Florida, New York, New Jersey, and other states, and included Alpha Investment Strategies (Alpha), The Eagles Private Investment Club, LLC, and Monte Cristo Investment Club. Ex. 2-A at 2. Money from these investment clubs would often be forwarded to accounts controlled by Theodule. Id. On or about July 23, 2008, Alpha wire-transferred $33,300.27 from its account at Washington Mutual Bank to a Bank of America account Theodule controlled. Id. at 3. This transfer was made for the purpose of investing the funds in Theodule's trading programs. Id.

From 2007 to 2008, Theodule raised more than $30 million from investors, and deposited about $19 million in trading accounts. OIP at 2; Ex. 2-A at 2. None of these accounts were profitable, and Theodule quickly lost the funds invested and used a substantial amount of investors' funds for his personal benefit and the benefit of family members and friends. OIP at 2; Ex. 2-A at 2. Despite these losses, Theodule continued to recruit new investors through late 2008 under the false pretext that he would earn substantial returns. OIP at 2; Ex. 2-A at 2. He also continually assured investors that their money was safe and earning profits while he operated a Ponzi scheme, eventually running out of funds to pay returns, leading to the scheme's collapse. OIP at 2; Ex. 2-A at 2-3.

From 2007 to 2008, Theodule solicited investor contributions, touted his stock trading strategy, made investment decisions on behalf of clients, controlled clients' trading accounts through agreements with the investment clubs that authorized him to trade in securities and act on behalf of each member of the clubs, transacted business with independent investment clubs, received transaction-based compensation in the forms of commission, and misappropriated investor funds. OIP at 2-3. Theodule and his companies charged investors a ten percent upfront fee and a forty percent commission on any profits obtained. OIP at 3.

Criminal Proceeding

On October 28, 2013, Theodule pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 in the Criminal Proceeding. OIP at 2; Ex. 2 at 1; Ex. 3 at 1. On February 24, 2014, Theodule was sentenced to twelve and a half years in prison and three years of supervised release, with restitution to be set at a later date. OIP at 2; Ex. 3 at 2-3, 5. The count of the criminal indictment to which Theodule pleaded guilty alleged that, beginning around July 2007 and continuing through December 2008, Theodule knowingly and willfully devised and intended to devise a scheme and artifice to defraud others and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and that he knowingly transmitted and caused to be transmitted wire transfers of funds in furtherance of a scheme to defraud. OIP at 2.

Civil Proceeding

On October 22, 2009, a Judgment of Permanent Injunction and Other Relief (Civil Injunction) was entered against Theodule in the Civil Proceeding. Ex. 7. The Civil Injunction ordered and adjudged that Theodule is permanently restrained and enjoined from violating, directly or indirectly, Exchange Act Section 10(b) and Exchange Act Rule 10b-5. Ex. 7 at 2. On March 26, 2010, a final Judgment of Disgorgement, Prejudgment Interest and Civil Penalty (Civil Final

Judgment) was entered against Theodule. OIP at 2; Civil Proceeding, ECF No. 226. The Civil Final Judgment ordered Theodule to pay disgorgement of $5,099,512, prejudgment interest of $202,638, and a civil penalty of $250,000. OIP at 2; Civil Proceeding, ECF No. 226 at 2.

Conclusions of Law

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize the Commission to impose a collateral bar as a sanction against Theodule if: (1) 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); or he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C) or Advisers Act Section 203(e)(4); (2) at the time of the misconduct, he was associated or seeking to become associated with a broker, dealer, or investment adviser; and (3) the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(6)(A)(ii), 80b-3(f). Theodule's wire-fraud conviction involves the 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). Also, Theodule is permanently enjoined from future violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5, i.e., "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security," within the meaning of Exchange Act Section 15(b)(4)(C) and Advisers Act Section 203(e)(4). 15 U.S.C. §§ 78*o*(b)(4)(C), 80b-3(e)(4).

At the time of the misconduct, Theodule was not associated with a registered broker or dealer or investment adviser. See OIP at 1. However, he engaged in the business of effecting transactions in securities for the account of others, meaning he engaged in broker conduct. 15 U.S.C. § 78c(a)(4)(A); OIP at 2-3; Ex. 2-A at 2; see SEC v. Parrish, No. 11-cv-558, 2012 WL 4378114 (D. Colo. Sept. 25, 2012) (defendant acted as unregistered broker where he directly solicited investors and received transaction-based compensation). Further, for compensation, he gave advice about the value of securities or the advisability of investing in securities, meaning he engaged in investment adviser conduct. 15 U.S.C. § 80b-2(a)(11); OIP at 2-3; Ex. 2-A at 2; see Anthony J. Benincasa, Investment Company Act of 1940 Release No. 24854 (Feb. 7, 2001), 74 SEC Docket 924, 925-26 ("[T]he term [investment adviser] is not limited to persons or entities that register with the Commission."). He was thus associated with a broker, within the meaning of Exchange Act Section 15(b)(6), and an investment adviser, within the meaning of Investment Adviser Act Section 203(f). 15 U.S.C. §§ 78*o*(b)(6)(A), 80b-3(f); see Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (affirming Commission authority to bar persons from association with investment advisers, whether registered or unregistered); Alchemy Ventures, Inc., Exchange Act Release No. 70708, 2013 SEC LEXIS 3459 (Oct. 17, 2013) (affirming sanctioning by default of unregistered brokers); Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627 (barring unregistered associated person of an unregistered broker-dealer from association with a broker or dealer), recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584.

Theodule did not file an answer or oppose the Amended Motion and therefore he has not offered any evidence to refute the conclusion that the statutory basis for a sanction has been satisfied. A sanction will be imposed if it is in the public interest.

Sanction

The Division seeks a collateral bar against Theodule.[5] Am. Mot. at 1, 5, 11. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC (Steadman factors) 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. 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see Gary M. Kornman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). 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).

The Commission has directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and that the law judge's findings "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Ross Mandell, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). After engaging in such an analysis, I have determined that it is appropriate and in the public interest to collaterally bar Theodule from participation in the securities industry to the fullest extent possible.

Theodule's conduct was egregious, recurrent, and involved a high level of scienter. Over the course of well over a year, Theodule repeatedly coerced investors, through false statements, to invest in numerous investment clubs that he controlled. OIP at 2; Ex. 2-A at 2. He raised over $30 million from investors, and deposited much of these funds in trading accounts, none of which were profitable. OIP at 2; Ex. 2-A at 2. He quickly lost investor funds, and used a substantial amount of the investors' funds for his personal benefit. OIP at 2; Ex. 2-A at 2. He continued to recruit investors through late 2008, despite earlier investor losses. OIP at 2; Ex. 2-A at 2. He also assured investors that their money was safe and earning profits, when it was not, and when in fact he was operating a Ponzi scheme. OIP at 2; Ex. 2-A at 2.

Theodule has not offered assurances against future violations, having defaulted in this proceeding, and his prison sentence, while lengthy, leaves open the possibility that he would attempt to reenter the securities industry upon his release. While Theodule's Plea Agreement in the Criminal Proceeding acknowledges his "recognition and affirmative and timely acceptance of personal responsibility," such recognition, where all other Steadman factors fully support imposition of a robust sanction, does not justify a lesser sanction. Ex. 2 at 3.

[5] Collateral bars are applicable here regardless of the date of Theodule's violations. See John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

In conclusion, it is in the public interest to impose a permanent, collateral bar against Theodule.[6]

Order

It is ORDERED that the Division of Enforcement's Amended Motion for Sanctions against George Louis Theodule is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, George Louis Theodule is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Commission Rule of Practice (Rule) 360. 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. 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 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

[6] Under Section 15(b)(6)'s plain language, the Commission is authorized to impose the full range of permanent bars, including the penny-stock bar, against Theodule if, in relevant part, at the time of the alleged misconduct, he was associated with a broker or 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 range of permanent bars 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. 66842 (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) (analyzing Steadman factors, 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 range of permanent bars best comports with the statute's remedial purpose and is in the public interest for the reasons discussed.

Decision as to a party. If any of these events occurs, the Initial Decision shall not become final as to that party.

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

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Cameron Elliot
Administrative Law Judge