INITIAL DECISION RELEASE NO. 663
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15764

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

In the Matter of	:	INITIAL DECISION
	:	September 5, 2014
GARY L. MCDUFF	:	

APPEARANCES: Janie L. Frank for the Division of Enforcement, Securities and Exchange Commission

Gary L. McDuff, *pro se*

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition, denies Gary L. McDuff's (McDuff) Motion for Summary Disposition, and bars McDuff from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, collateral bar).

Procedural History

On February 21, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against McDuff, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that a federal district court enjoined McDuff from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act); and Exchange Act Sections 10(b) and 15(a) and Rule 10b-5 (collectively, federal securities laws), in *SEC v. McDuff*, No. 3:08-cv-526 (N.D. Tex. Feb. 22, 2013) (*McDuff*). OIP at 1-2.

At a prehearing conference held on March 27, 2014, I deemed service of the OIP to have occurred on February 27, 2014; directed McDuff to file his Answer by April 14, 2014; and granted the parties leave to file motions for summary disposition pursuant to Commission Rule of Practice (Rule) 250. *See Gary L. McDuff*, Admin. Proc. Rulings Release No. 1341, 2014 SEC

LEXIS 1105 (Mar. 27, 2014); Tr. 6-7, 14-15, 21-23.[1] On April 14, 2014, McDuff filed his Answer (Answer).[2]

On April 25, 2014, the Division filed its Motion for Summary Disposition (Division's Motion) and supporting exhibits.[3] That same day, McDuff filed his Motion for Summary Disposition (Respondent's Motion) and supporting exhibits.[4] On May 16, 2014, McDuff filed his Opposition to the Division's Motion (Respondent's Opposition) and supporting exhibits.[5] On the same day, the Division filed its Response in Opposition to Respondent's Motion

[1] Citation ("Tr.") is to the prehearing conference transcript.

[2] In support of his Answer, McDuff included the following: a collection of his filings from *McDuff*; an affidavit of McDuff and supporting documents; and affidavits of several individuals. These documents generally relate to McDuff's arguments, which he also asserts in his Motion for Summary Disposition and his Opposition to Division's Motion for Summary Disposition, that he obtained a valid judgment against the Division through an administrative proceeding in the state of Arizona, and that numerous other parties were responsible for the misconduct blamed on McDuff. I have carefully reviewed these exhibits in drafting this initial decision.

[3] In support of its Motion, the Division included the following exhibits from *McDuff*: the March 2008 complaint (Div. Ex. A); McDuff's May 2008 "Notice of Special Appearance Non Acceptance of Offer to Contract Entitled 'Summons'" (Div. Ex. B); McDuff's May 2008 "Corrected Attachment to Notice of Special Appearance Non Acceptance of Offer to Contract Entitled 'Summons'" (Div. Ex. C); McDuff's May 2008 "Notice of Non Acceptance of Offer Return of Complaint Dated March 26, 2008 Demand for Credentials/Firm Offer to Settle" (Div. Ex. D); the Commission's June 2012 motion to reopen the case in *McDuff* (Div. Ex. E); the Commission's June 2012 motion to reissue summons (Div. Ex. F); the district court's August 2012 order granting the Commission's motions to reopen the case and reissue summons (Div. Ex. G); the August 2012 reissued summons (Div. Ex. H); the August 2012 proof of service of the reissued summons (Div. Ex. I); the Commission's February 2013 motion for default judgment (Div. Ex. J); the district court's February 2013 order granting the Commission's motion for default judgment (Div. Ex. K); and the district court's February 2013 final default judgment (Div. Ex. L).

[4] In support of his Motion, McDuff included the following exhibits: his affidavit of facts and memorandum in support of Respondent's Motion (Resp. Ex. 1); a flow chart labeled "Exhibit A" (Resp. Ex. 2); documents purporting to describe the involvement of Terry Dowdell, Bradley Stark, and Robert Tringham in embezzlement (Resp. Ex. 3); and a "Certificate of Administrative Judgment," filed in *McDuff* on April 20, 2012 (Resp. Ex. 4).

[5] In support of his Opposition, McDuff included the following exhibits: a copy of *O.N. Equity Sales Co. v. Cattan*, No. 07-cv-70, 2008 WL 361549 (S.D. Tex. Feb. 8, 2008) (Resp. Ex. 5); an affidavit of Larry W. Frank, sworn to on January 24, 2014, to which is attached a collection of documents described as Cilak Insurance attachments (Resp. Ex. 6); letters dated March 12, 2004, and April 5, 2004, on the letterhead of "Lancorp Financial Fund Business Trust" (Resp. Ex. 7); and victim impact statement affidavits from Levoy Dewey and Lawrence W. Frank (Resp. Ex. 8).

(Division's Opposition) with no attached exhibits. On May 23, 2014, the Division filed its Reply to Respondent's Opposition (Division's Reply) with a supporting exhibit.[6] McDuff did not file a reply.

On September 4, 2014, this Office received McDuff's Motion for Order Taking Official Notice Pursuant to 17 C.F.R. 201.323 and Rule 323 of Commission's Rules of Practice in Taking Official Notice (Official Notice Motion). In sum, the Official Notice Motion requests I take official notice of a variety of documents attached to the Official Notice Motion, at least one of which was attached to Respondent's Motion. I have considered the attachments to the Official Notice Motion in resolving the parties' dispositive Motions, and the Official Notice Motion will accordingly be denied as moot.

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 him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a).

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 Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40-41 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & nn.21-24 (Feb. 4, 2008) (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. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

[6] In support of its Reply, the Division included a copy of the Government's response to McDuff's motion for reconsideration and petition for rehearing, or in the alternative, for a new trial, filed in the case of *United States v. McDuff*, No. 4:09-cr-90 (E.D. Tex. May 20, 2014) (Div. Ex. M).

Findings of Fact

A. Civil Proceeding: *McDuff*

In 2008, the Commission filed a civil complaint against McDuff and two other defendants, alleging that McDuff was the "mastermind behind the fraud" connected with the Lancorp Financial Fund Business Trust (Lancorp Fund) and its investment with the Megafund Corporation (Megafund) Ponzi scheme. Div. Ex. A at 1-2. As a result of this conduct, McDuff allegedly violated the federal securities laws, and aided and abetted violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (Advisers Act). *Id.* at 8-14.

Just before the trial in the associated criminal case, discussed below, the Commission moved for default judgment against McDuff, seeking a permanent injunction against McDuff for future violations of the federal securities laws and aiding and abetting violations of Advisers Act Sections 206(1) and 206(2), disgorgement plus prejudgment interest, and a civil money penalty. Div. Ex. J at 1-2, 4, 20-21. In February 2013, the district court granted default judgment against McDuff, enjoined him from violating the federal securities laws and aiding and abetting violations of Advisers Act Sections 206(1) and 206(2), ordered McDuff to disgorge $136,336 plus $65,004 in prejudgment interest and pay a civil penalty of $125,000, and entered final judgment. Div. Exs. K-L. McDuff did not appeal. *See* Docket Sheet, *McDuff*.

B. Criminal Proceeding: *United States v. Reese*

In connection with his involvement in the Lancorp Fund and Megafund, McDuff was criminally charged in *United States v. Reese*, No. 4:09-cr-90 (E.D. Tex.) (*Reese*).[7] By superseding indictment, McDuff was charged with conspiracy to commit wire fraud, and laundering of monetary instruments. Superseding Indictment, *Reese* (Aug. 13, 2009), ECF No. 1. Following a trial, the jury found him guilty of both counts. Jury Verdict, *Reese* (Mar. 27, 2013), ECF No. 107. In April 2014, the district court sentenced McDuff to 300 months in prison and a three-year term of supervised release, and ordered him to pay $6,563,179 in restitution. Min. Entry and Judgment, *Reese* (Apr. 16 and 17, 2014), ECF Nos. 153, 158.

Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose a collateral bar on McDuff if: (1) at the time of the alleged misconduct, he was associated with a broker or dealer; (2) he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (b)(6)(A)(iii).

[7] I previously took official notice of the docket sheet, superseding indictment, jury verdict, and criminal judgment in *Reese*. *See Gary L. McDuff*, Admin. Proc. Rulings Release No. 1400, 2014 SEC LEXIS 1445 (Apr. 28, 2014). Pursuant to Rule 323, I take official notice of all the proceedings and record in *Reese* and *McDuff*.

During the time of his misconduct, McDuff was not associated with a registered broker or dealer. However, by virtue of the district court's ruling that the Commission was entitled to a permanent injunction against McDuff for violating Exchange Act Section 15(a)(1), it necessarily follows that McDuff was acting as an unregistered broker-dealer. 15 U.S.C. § 78*o*(a)(1); *see SEC v. McCaskey*, No. 98-cv-6153, 2001 WL 1029053, at *5 (S.D.N.Y. Sept. 6, 2001). Also, McDuff has submitted evidence indicating that he acted as a broker with respect to Lancorp Fund.[8] *See* 15 U.S.C. § 78c(a)(4); Resp. Ex. 8 (pgs. 2 of Frank and Dewey affidavits, stating that McDuff "plac[ed] Lancorp Fund money into the Megafund"). McDuff does not dispute that he has been enjoined from future violations of federal securities laws, i.e., "conduct . . . in connection with the purchase or sale of any security," within the meaning of Exchange Act Section 15(b)(4)(C). *See* 15 U.S.C. § 78*o*(b)(4)(C); Answer at 3-4; Div. Ex. L.

McDuff challenges the basis of his injunction, arguing that (1) the district court failed to consider the settlement and judgment he obtained against the Commission in the "Arizona Administrative Court"; (2) newly discovered evidence exonerates him in the criminal proceeding; and (3) the filing of a motion for new trial based on this newly discovered evidence has been accepted by the court in *Reese*. Respondent's Motion at 2-5; Respondent's Opp. at 2-12; Resp. Exs. 1-4. As McDuff admits, all three arguments are "direct collateral attack[s]" on the *McDuff* and *Reese* judgments. Respondent's Opp. at 6. However, McDuff may not use this administrative proceeding to collaterally attack the district court's judgment or raise issues that were litigated and decided in *Reese*. *See Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1108 (D.C. Cir. 1988); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 (Oct. 12, 2007), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Joseph P. Galluzzi*, 55 S.E.C. 1110, 1115-16 (2002). If the statutory basis for a sanction in this proceeding is nullified, McDuff may petition the Commission for reconsideration. *See Jon Edelman*, 52 S.E.C. 789, 790 (1996).

Moreover, even if McDuff's challenges to his injunction were properly before me, the evidence McDuff provides in his motions is unconvincing. As to the latter two arguments, McDuff's "newly discovered evidence" and motion for a new trial in the criminal proceeding, that motion has been denied. Order, *Reese*, (June 16, 2014), ECF No. 170. As to the first argument, McDuff claims to have obtained a settlement with the Division through a state "administrative settlement process" and a judgment against the Division for not complying with the terms of the settlement. Respondent's Opp. at 5-6; Respondents' Motion at 2. This is immaterial. Even assuming McDuff settled with the Commission, and the settlement was breached,[9] McDuff was enjoined by the district court. "[T]he mere existence of an injunction

[8] Exchange Act Section 15(b) also applies to persons acting as a broker or dealer or associated with an unregistered broker or dealer. *See Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 SEC LEXIS 3125, at *20 (Dec. 2, 2005).

[9] Such an assumption is unwarranted, because the documents McDuff submitted are so self-evidently inauthentic that they do not establish a genuine issue of material fact regarding the existence of a settlement. McDuff produced a Certificate of Administrative Judgment (Certificate), signed by a notary public, not a judge or court official, which refers to Arizona as the "Arizona state republic" and does not identify the court that allegedly entered the judgment or a docket number of the proceeding. Resp. Ex. 4. McDuff characterizes the body that issued it

may support . . . a bar from participation in the securities industry where the nature of the acts enjoined and the circumstances indicate that it is in the public interest." *Marshall E. Melton*, 56 S.E.C. 695, 700 (2003).

Accordingly, there is no genuine issue with regard to any material fact and summary disposition is appropriate. *See* 17 C.F.R. § 201.250(b). A sanction will be imposed if it is in the public interest.

Sanctions

The Division seeks a collateral bar against McDuff. Division's Motion at 8-11. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: 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 conduct; and the likelihood that the respondent's occupation will present opportunities for future violations (*Steadman* factors). 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. at 698. Collateral bars have long been considered effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

In *Ross Mandell*, the Commission directed that before imposing a collateral 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 analysis "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted).

Because the underlying judgment in *McDuff* was issued by default, and the facts alleged in the *McDuff* complaint were not actually litigated, reliance upon the *McDuff* complaint to conduct a *Steadman* analysis would normally be inappropriate. *See Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *14 (Feb. 4, 2010) (*Reinhard 1*). However, I am permitted to consider the facts underlying McDuff's conviction in *Reese*. *See*

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as a "private administrative ministerial court." Official Notice Motion at 7 and Attachment III. The Certificate and its various related documents are troubling, because their filing may well be an attempt to perpetrate fraud upon this tribunal. However, it is also possible that McDuff was himself the victim of fraud by the person who notarized the Certificate, and that McDuff sincerely believes that he settled with the Commission. I have given him the benefit of the doubt and drawn no adverse inferences against him based on the Certificate or related documents.

Don Warner Reinhard, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *15-17, *26 (Jan. 14, 2011) (*Reinhard 2*). McDuff concedes that *Reese* and *McDuff* were "predicated entirely on the same alleged conduct," "the merits are identical," and "the facts must be identical in relation to the actual conduct of the Respondent." Respondent's Opp. at 1. Reliance on the facts alleged in the *Reese* superseding indictment and the *McDuff* complaint is therefore proper. *See Reinhard 2*, 2011 SEC LEXIS 158 at 20-26; *Ross Mandell*, 2014 SEC LEXIS 849 at *10 n.13.[10]

Under the analysis required by *Ross Mandell* and *Steadman*, the record clearly demonstrates that it is appropriate and in the public interest to collaterally bar McDuff from participation in the securities industry to the fullest extent possible.

Here, the *Steadman* factors weigh in favor of imposing the full collateral bar. McDuff's conduct was egregious. McDuff created a prospectus (otherwise referred to as a private placement memorandum) for the Lancorp Fund that contained a number of affirmative false material representations and material factual omissions. Superseding Indictment at 3, *Reese*, ECF No. 16 (Aug. 13, 2009); Div. Ex. A at 1-2, 4-5. The prospectus failed to disclose, among other omissions, that McDuff was a felon convicted of money laundering and lacked the requisite securities licenses. Superseding Indictment at 3; Div. Ex. A at 3. McDuff and others caused the prospectus to be sent to potential investors in order to induce them to make payments to the Lancorp Fund. Superseding Indictment at 4. Relying on that prospectus and other false representations made by McDuff and others, over fifty investors provided payments in excess of $10 million to the Lancorp Fund.[11] Superseding Indictment at 4. In violation of the investment guidelines in the prospectus, McDuff then recommended, and he and others directed, that Lancorp Fund invest in Megafund, a Ponzi scheme. Superseding Indictment at 3, 5; Div. Ex. A at 5-6. Lancorp Fund was paid by Megafund for its investment, and then, though his payment was prohibited by the prospectus, McDuff devised a method by which an entity he controlled would receive part of that payment. Superseding Indictment at 7; Div. Ex. A at 7. McDuff's misconduct "violated bedrock antifraud principles that apply throughout the securities industry,

[10] In a follow-on administrative proceeding after a criminal conviction based on a general guilty verdict, I may "draw[] from the allegations in the . . . indictment underlying [the respondent's] criminal conviction," without reference to whether such allegations were necessarily put in issue and determined in the criminal case. *Ross Mandell*, 2014 SEC LEXIS 849, at *10 n.13. Thus, in adopting the allegations from an indictment pursuant to *Ross Mandell*, I need not engage in a particularized collateral-estoppel analysis, as might be required in other contexts. *See, e.g.*, *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 307 (2d Cir. 1999) ("[E]stoppel does not apply to a finding that was not legally necessary to the final sentence."); *SEC v. Bilzerian*, 29 F.3d 689, 694 (D.C. Cir. 1994) ("Our review of the record indicates that Bilzerian's criminal convictions conclusively established all of the facts the [Commission] was required to prove with respect to the specified claims."); *Demitrios Julius Shiva*, 52 S.E.C. 1247, 1249 (1997) ("factual issues that were actually litigated and necessary to the Court's decision to issue [an] injunction" may not be relitigated). *Ross Mandell* does not draw a distinction between relying on an indictment in a criminal case and a complaint in a civil case.

[11] The *McDuff* complaint alleges that Lancorp Fund raised approximately $11 million from 105 investors. Div. Ex. A at 6. Relying on the figures alleged in the superseding indictment prejudices McDuff less, but still reflects the egregious and recurrent nature of his misconduct.

including the 'philosophy of full disclosure' of accurate and non-misleading information to investors." *Ross Mandell*, 2014 SEC LEXIS 849, at *15.

As a result of his misconduct, McDuff was enjoined from violating the federal securities laws, including the antifraud provisions, convicted of conspiracy to commit wire fraud and laundering of monetary instruments, ordered to pay disgorgement of $136,336 plus prejudgment interest and a $125,000 civil penalty in *McDuff*, and sentenced to a 300-month prison term and ordered to pay $6,563,179 in restitution in *Reese*. Judgment, *Reese*, ECF No. 158 (Apr. 16, 2014); Div. Ex. at L. Moreover, McDuff's conduct was recurrent and not a "momentary lapse in judgment," as his scheme continued for approximately two years and defrauded over fifty investors. *Ross Mandell*, 2014 SEC LEXIS 849, at *17-18; Superseding Indictment at 2, 4.

McDuff's conduct involved both civil and criminal fraud. The Commission considers past misconduct involving fraud to be particularly egregious and requiring a severe sanction. *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (the Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." (internal quotation marks omitted)); *see Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)).

In committing securities fraud, McDuff acted with scienter. Although the court in *McDuff* made no explicit findings as to scienter, scienter is an element of several of the securities fraud provisions under which McDuff was enjoined. *See Aaron v. SEC*, 446 U.S. 680, 691, 697 (1980) (violations of Exchange Act Section 10(b) and Rule 10b-5, and Securities Act Section 17(a)(1) Act require scienter). Moreover, McDuff was convicted in *Reese*, a proceeding he concedes involved the same facts and conduct as *McDuff*, of conspiracy to commit wire fraud, which requires a finding that he joined the conspiracy with the "specific intent to defraud," *United States v. Brooks*, 681 F.3d 678, 700 (5th Cir. 2012), and of laundering of monetary instruments, which requires a finding of "intent to promote the carrying on of specified unlawful activity." 18 U.S.C. §1956(a)(1)(A)(i); *see* Judgment at 1.

There is no evidence that McDuff recognizes the wrongful nature of his conduct. Instead, McDuff continues to pin the blame for the losses incurred by investors in the Lancorp Fund on others. Resp. Ex. 1 at 18-24. McDuff persists in claiming his innocence and denying that he violated any laws. Answer at 21. He has also offered no assurance that he will not violate securities laws in the future, instead continuing to deny that he ever violated securities laws in the past. *Id.* Weighing against the application of a collateral bar is the fact that McDuff is currently incarcerated for a term of 300 months, rendering immediate violations of the securities laws less likely. Judgment at 2. However, absent a bar, McDuff would be permitted to continue activities within the securities industry, which would present opportunities for future violations and the risk that his conduct will be repeated.

Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC

LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). McDuff does little to rebut that inference. In his many filings in this proceeding, he has repeatedly attacked the underlying proceeding and pinned the blame on others. Resp. Ex. 1 at 18-24; Resp. Exs. 4, 8; Answer at 21. Failure to make assurances against future violations and to recognize wrongdoing demonstrates the threat of future violations. *See Christopher A. Lowry*, 55 S.E.C. 1133, 1143-44 (2002).

The balance of *Steadman* factors weighs in favor of a full collateral bar, given McDuff's egregious and recurrent misconduct, high degree of scienter, refusal to recognize his wrongdoing, and lack of assurances against future violations of the federal securities laws. Moreover, a sanction will further the Commission's interest in deterring others from engaging in similar misconduct. In conclusion, it is in the public interest to impose a permanent collateral bar against McDuff.

Order

It is ORDERED that, pursuant to Rule 250(b), the Division of Enforcement's Motion for Summary Disposition against Respondent Gary L. McDuff is GRANTED.

It is FURTHER ORDERED that, pursuant to Rule 250(b), Gary L. McDuff's Motion for Summary Disposition is DENIED and his Motion for Order Taking Official Notice Pursuant to 17 C.F.R. 201.323 and Rule 323 of Commission's Rules of Practice in Taking Official Notice is DENIED as moot.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Gary L. McDuff is permanently BARRED from associating with a 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. *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 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