

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

In the Matter of : INITIAL DECISION OF DEFAULT
: October 2, 2014
KENNETH C. TEBBS :

APPEARANCE: Daniel J. Wadley 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) Motion for Sanctions (Motion) and permanently bars Respondent Kenneth C. Tebbs (Tebbs) 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, associational bar).

Procedural Background

On April 16, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Tebbs, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that on February 11, 2013, Tebbs pled guilty in federal district court to one count of wire fraud in violation of 18 U.S.C. § 1343, in *United States v. Tebbs*, No. 2:12-cr-672 (D. Utah) (*Tebbs*), and on September 16, 2013, Tebbs was sentenced to seventy-eight months in prison followed by three years of probation and was ordered to pay restitution of \$12,583,599. OIP at 2.

Tebbs was served with the OIP on April 21, 2014, in accordance with Commission Rule of Practice (Rule) 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i). *Kenneth C. Tebbs*, Admin. Proc. Rulings Release No. 1436, 2014 SEC LEXIS 1665 (May 15, 2014). Tebbs did not file an answer to the OIP, and I ordered him to show cause by May 29, 2014, why this proceeding should not be determined against him. *Id.* Tebbs did not respond to that Order. Accordingly, on May 30, 2014, I deemed Tebbs in default and ordered the Division to file a motion for sanctions by June 20, 2014, providing legal authority and evidentiary support relating to the OIP's allegations and the Division's requested sanctions. *Kenneth C. Tebbs*, Admin. Proc. Rulings Release No. 1473, 2014 SEC LEXIS

1840; *see* 17 C.F.R. §§ 201.155(a)(2), .220(f). On June 19, 2014, the Division filed its Motion, with supporting exhibits.¹ To date, Tebbs has not responded to the Division's filings, has not filed an answer, and has not otherwise defended the proceeding.

The Motion is granted. The facts alleged in the OIP are deemed true. *See* 17 C.F.R. § 201.155(a). This proceeding will be determined upon consideration of the record, including the OIP and the Division's exhibits, as well as on facts officially noticed pursuant to Rule 323.² *See* 17 C.F.R. §§ 201.155(a), .323.

Findings of Fact

A. Background

From September 2000 until February 2006, Tebbs was a registered representative associated with Farmers Financial Solutions, LLC, a registered broker-dealer. *See* OIP at 1; Div. Ex. A at 3. From January 2005 through October 2007, Tebbs, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and misleading pretenses, representations, and omissions, devised a plan to solicit investors to invest in his companies' business of buying and selling residential properties and undeveloped lots located in Salt Lake County and Utah County. Div. Ex. B at 1, 3. Tebbs told investors that their investment would generate an annual return of approximately eighteen percent, plus origination points ranging from one to five percent, and he promised them monthly payments including both interest and principal with full payment of the remaining principal and interest at the end of the term, which ranged from one month to twenty-four months. *Id.* at 3. Tebbs prepared promissory notes documenting this agreement, and he also provided some investors with trust deeds purporting to reflect that their investments were secured by the property in which they had agreed to invest. *Id.* at 3-4.

In 2006, Tebbs decided to expand his companies' business to include the purchase and acquisition of large subdivision projects, but the money needed for such projects quickly exceeded his companies' cash flow. Div. Ex. B at 4. Needing new investors but lacking the money to acquire new investment properties, Tebbs began falsifying and forging recording stamps on old trust deeds and providing new investors with those deeds, such that multiple investors were secured by the same property. *Id.* Around this time, Tebbs also began using new investor money to make interest payments to old investors. *Id.* Tebbs knowingly and intentionally concealed these actions from investors and knew that his misrepresentations and omissions were material to investors and their decision to invest in his companies. *Id.* Between January 2005 and October 2007, Tebbs received a total of approximately \$49 million from investors and paid out approximately \$37 million in Ponzi payments. *Id.* at 3-4.

¹ The Division's exhibits consist of the Central Registration Depository or Investment Advisers Registration Depository System Report for Tebbs obtained from the Financial Industry Regulatory Authority, Inc. (Div. Ex. A); and Tebbs' statement in advance of plea of guilty in *Tebbs* (Div. Ex. B).

² Pursuant to Rule 323, I take official notice of the district court record in *Tebbs*.

B. Criminal Proceeding

On February 11, 2013, Tebbs pled guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343. OIP at 2; Min. Entry, *Tebbs*, ECF No. 15. In September 2013, the district court sentenced Tebbs to a seventy-eight month prison term followed by three years of supervised release, and entered judgment. OIP at 2; Min. Entry, Judgment, and Sentencing Hr'g Tr., *Tebbs* (Sept. 19, Sept. 23 and Nov. 5, 2013), ECF Nos. 25, 28, 34. In January 2014, the district court ordered him to pay restitution of \$12,583,599. Am. Judgment, *Tebbs* (Jan. 24, 2014), ECF No. 37. Tebbs is currently incarcerated in Lompoc federal penitentiary in Lompoc, California. OIP at 1.

Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose an associational bar as a sanction against Tebbs 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); (2) at the time of the misconduct, he was associated or seeking to become associated with a broker or dealer; and (3) the sanction is in the public interest. 15 U.S.C. § 78o(b)(6)(A)(ii).

Tebbs' wire fraud conviction involved the violation of 18 U.S.C. § 1343, one of the offenses specified in Exchange Act Section 15(b)(4)(B). *See* 15 U.S.C. § 78o(b)(4)(B)(iv). During the time of much of his misconduct, Tebbs was associated with a registered broker-dealer. Tebbs did not file an answer or oppose the Motion and therefore has not offered any evidence to refute the conclusion that the statutory basis for a sanction has been satisfied. Accordingly, a sanction will be imposed if it is in the public interest.

Sanctions

The Division seeks an associational bar against Tebbs. Motion at 5-7. 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. 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, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *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. *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. 695, 698 (2003). Associational 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).

After analyzing the public interest factors in light of the protective interests served, Tebbs' current competence, and his risk of future misconduct, I have determined that it is appropriate and in the public interest to bar Tebbs from participation in the securities industry to the fullest extent possible. *See Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014). Tebbs' conduct was egregious. Tebbs devised and participated in a scheme to defraud investors in which he obtained approximately \$49 million of investors' money and disbursed approximately \$37 million in Ponzi payments. Div. Ex. B at 1, 4. His fraud had over forty-nine victims and resulted in investor losses of between \$7 million and \$20 million. *Id.* at 7. The seriousness of his misconduct is underscored by the district court's order that he pay restitution of \$12,583,599. Am. Judgment, *Tebbs* (Jan. 24, 2014), ECF No. 37. In order to carry out this large fraudulent scheme, Tebbs forged stamps on trust deeds, and provided the falsified deeds to investors as if they were new and actually represented a secure investment in property. Div. Ex. B at 4. In reality, multiple investors were secured by the same property, despite Tebbs' representation to investors that the deeds protected their investment by ensuring that, if all else failed, the investors held title to the underlying property. *Id.* Tebbs intentionally made these misrepresentations in order to obtain money to keep afloat his foundering real estate companies, which were unable to generate sufficient cash flow to continue operating. *Id.*

Tebbs' conduct was also recurrent in that he solicited funds from and paid out Ponzi payments to at least fifty investors over the course of many months, repeatedly making material representations and omissions which he knew to be false and misleading. Div. Ex. B at 2-4, 7. His fraudulent scheme lasted for nearly three years. *Id.* at 3. This reflects a longstanding pattern of violative conduct that demonstrates unfitness for the securities industry.

Tebbs' level of scienter was high, as demonstrated by the fact that he pled guilty to wire fraud committed in execution or furtherance of a scheme and artifice to defraud. OIP at 2; Div. Ex. B at 1; *see United States v. Ransom*, 642 F.3d 1285, 1289 (10th Cir. 2011) (stating that conviction for wire fraud under 18 U.S.C. § 1343 requires an intent to defraud). He knew that the total amount of new investor funds used to pay old investors far exceeded any cash flow generated by his companies, and he intentionally made Ponzi payments to investors in an attempt to hide his companies' failure. Div. Ex. B at 4. His violations cannot be categorized as isolated or merely technical. *Cf. John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42 (Dec. 13, 2012); Div. Ex. B at 3-4.

Tebbs' guilty plea ostensibly involved acknowledging his misconduct. However, he has not appeared in this proceeding to offer any assurances against future violations, has not expressed remorse for his misconduct, and has not demonstrated that he recognizes his wrongdoing. 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). Tebbs has offered no evidence to rebut that inference.

Tebbs' prison term is seventy-eight months. OIP at 2; Am. Judgment, *Tebbs* (Jan. 24, 2014), ECF No. 37. Absent an associational bar, Tebbs would be permitted upon his release to continue activities within the securities industry, which would present opportunities for future violations and the risk that his conduct will be repeated. "Each area of the industry covered by the [associational] bar presents continual opportunities for similar dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence." *Ross Mandell*, 2014 SEC LEXIS 849, at *22 (internal quotation marks and alteration brackets 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)). If Tebbs does intend to reenter the industry, his egregious conduct reflects that the likelihood of future violations is high.

In conclusion, it is in the public interest to impose a permanent associational bar against Tebbs.³

Order

It is ORDERED that the Division of Enforcement's Motion for Sanctions against Kenneth C. Tebbs is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Kenneth C. Tebbs 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, 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. 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.

³ Under Exchange Act Section 15(b)(6), the Commission is authorized to impose the full range of permanent bars, including the penny-stock bar, against Tebbs if, in relevant part, at the time of the alleged misconduct, he was associated with a broker or dealer. 15 U.S.C. § 78o(b)(6)(A); see, e.g., *Herbert Steven Fouke*, Initial Decision Release No. 660, 2014 SEC LEXIS 3095, at *21 n.10 (Aug. 29, 2014); *George Louis Theodule*, Initial Decision Release No. 607, 2014 SEC LEXIS 1866, at *15 n.6 (June 2, 2014).

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.

Tebbs 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.*

Cameron Elliot
Administrative Law Judge