INITIAL DECISION RELEASE NO. 705
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15820

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

| | |
|---|---|
| In the Matter of<br><br>DELSA U. THOMAS AND<br>THE D. CHRISTOPHER CAPITAL<br>MANAGEMENT GROUP, LLC | INITIAL DECISION<br>November 4, 2014 |

APPEARANCES: Jessica B. Magee for the Division of Enforcement, Securities and Exchange Commission

Delsa U. Thomas, *pro se*

BEFORE: Cameron Elliot, Administrative Law Judge

## Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition, bars Respondent Delsa U. Thomas (Thomas) from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, associational bar), and revokes the D. Christopher Capital Management Group, LLC's (D. Christopher, and collectively with Thomas, Respondents) registration as an investment adviser.

## Procedural Background

On April 2, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Respondents, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that a federal district court enjoined Respondents from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (Exchange Act), and Section 203A of the Advisers Act, and from aiding and abetting violations of Sections 206(1), (2), and (4) and Rule 206(4)-8 of the Advisers Act (collectively, the federal securities laws) in *SEC v. Thomas* (*Thomas*), No. 3:13-cv-739 (N.D. Tex. Mar. 4, 2014). OIP at 2.

At a prehearing conference held on May 27, 2014, I deemed service of the OIP to have occurred on April 9, 2014, directed Respondents to file their Answer by June 20, 2014, and granted the parties leave to file motions for summary disposition pursuant to Commission Rule of Practice (Rule) 250. *See Delsa U. Thomas*, Admin. Proc. Rulings Release No. 1469, 2014 SEC LEXIS 1824 (May 28, 2014); Tr. 4, 10-12.[1] Respondents filed two motions to extend their Answer date, which I granted, whereupon Respondents filed their Answer on July 21, 2014.[2] *See Delsa U. Thomas*, Admin. Proc. Rulings Release Nos. 1547, 2014 SEC LEXIS 2173 (June 20, 2014), and 1590, 2014 SEC LEXIS 2418 (July 7, 2014).

Also on July 21, 2014, the Division filed its Motion for Summary Disposition (Division's Motion) and supporting exhibits.[3] On August 14, 2014, after I denied their motion for an extension, Respondents filed their Opposition to the Division's Motion (Respondents' Opposition), with no attached exhibits, which, although untimely, I accepted for filing. *See Delsa U. Thomas*, Admin. Proc. Rulings Release No. 1702, 2014 SEC LEXIS 2946. On August 18, 2014, the Division filed its Reply to Respondent's Opposition (Division's Reply) and supporting exhibits.[4] On August 20, 2014, Respondents filed a Reply in Opposition to Division's Reply (Respondents' Reply), which I struck from the record because Respondents were not entitled to a reply and because the argument in Respondents' Reply was identical to that raised in Respondents' Opposition. *See Delsa U. Thomas*, Admin. Proc. Rulings Release No. 1723, 2014 SEC LEXIS 3023 (Aug. 25, 2014).

Because the underlying judgment in *Thomas* was issued by default, and therefore the facts alleged in the *Thomas* complaint were not actually litigated and have no collateral estoppel effect, I determined that under Commission precedent I was not permitted to rely solely on the facts in the *Thomas* complaint to determine the appropriate sanction under *Steadman v. SEC*, 603

---

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

[2] Respondents' Answer was sent to this Office via email on the evening of July 14, 2014, but was not properly filed until July 21, 2014. I accepted Respondents' Answer even though it was untimely.

[3] In support of its Motion, the Division included the Declaration of Jessica B. Magee (Magee Declaration), along with the following exhibits: the complaint in *Thomas* (Div. Ex. 1); proof of service of the complaint in *Thomas* (Div. Ex. 2); application of entry of default in *Thomas* (Div. Ex. 3); the clerk's entry of default in *Thomas* (Div. Ex. 4); the motion for default judgment in *Thomas* (Div. Ex. 5); the memorandum opinion and order in *Thomas* (Div. Ex. 6); the default judgment in *Thomas* (Div. Ex. 7); the abstract of judgment in *Thomas* (Div. Ex. 8); a Form ADV filed by D. Christopher on August 3, 2011 (Div. Ex. 9); a Form ADV filed by D. Christopher on August 15, 2011 (Div. Ex. 10); a Form ADV filed by D. Christopher on August 19, 2011 (Div. Ex. 11); two Form ADVs filed by D. Christopher on August 29, 2011 (Div. Ex. 12); a third Form ADV filed by D. Christopher on August 29, 2011 (Div. Ex. 13); a Form ADV filed by D. Christopher on April 2, 2012 (Div. Ex. 14); a Form ADV filed by D. Christopher on April 8, 2012 (Div. Ex. 15); and a Form ADV filed by D. Christopher on March 31, 2014 (Div. Ex. 16).

[4] In support of its Reply Motion, the Division included a Magee Declaration (Magee Declaration II) and various filings from *Thomas*.

F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *14 (Feb. 4, 2010). I therefore ordered the parties to submit supplemental briefing containing substantive information pertaining to the factors listed in *Steadman*. *Delsa U. Thomas*, Admin. Proc. Rulings Release No. 1811, 2014 SEC LEXIS 3399 (Sept. 16, 2014).

On October 17, 2014, the Division submitted its Supplemental Brief in Support of Motion for Summary Disposition (Division's Supplemental Brief), with attached exhibits.[5] On October 19, 2014, this Office received an email from Thomas, containing Respondents' Supplemental Brief (Respondents' Supplemental Brief) and referencing several exhibits that were to be sent to this Office via Federal Express. Those exhibits had not yet arrived by October 27, 2014, when I ordered Respondents to provide me with those exhibits by October 29, 2014. *Delsa U. Thomas*, Admin. Proc. Rulings Release No. 1949, 2014 SEC LEXIS 4037. On October 28, 2014, this Office received an email from a woman purporting to be Thomas' sister, claiming that Thomas had been arrested and was being detained, and requesting an extension of at least thirty days to provide Thomas' exhibits. I denied the extension request. *Delsa U. Thomas*, Admin. Proc. Rulings Release No. 1957, 2014 SEC LEXIS 4072 (Oct. 29, 2014). Respondents failed to submit the exhibits referenced in their supplemental briefing by the October 29, 2014, deadline, nor have they submitted any exhibits after that deadline.

[5] In support of its Supplemental Brief, the Division submitted the following: a Declaration by Division Senior Counsel Ronda Blair (Blair Declaration), attaching the following exhibits: a subpoena duces tecum to Respondents (Div. Ex. 17); a subpoena ad testificandum to Respondents (Div. Ex. 18); a declaration of Fifth Amendment assertion in response to subpoenas, by Thomas (Div. Ex. 19); brokerage account statements reflecting investment from the James Scott Company in The Solomon Fund LP (Solomon Fund), a fund formed and managed by Respondents (Div. Ex. 20); investment agreement and bank records reflecting investment from a Canadian investor in Solomon Fund (Div. Ex. 21); investment agreements and bank records reflecting investment from Canadian investors in Solomon Fund (Div. Ex. 22); an account statement reflecting investment from New Beginnings Church (Div. Ex. 23); an investment agreement and bank records reflecting investment from an Andorran investor (Div. Ex. 24); bank statement reflecting return of $330,000 to New Beginnings Church (Div. Ex. 25); bank records reflecting return of $90,000 to American Capital Holdings LLC (Div. Ex. 26); bank records purportedly reflecting Ponzi payments to Canadian investors (Div. Ex. 27); bank records purportedly reflecting Ponzi payments to investors in Respondents' earlier schemes (Div. Ex. 28); copies of checks purportedly reflecting Ponzi payments to investors in Respondents' earlier schemes (Div. Ex. 29); bank records reflecting payments to intermediaries (Div. Ex. 30); an account statement reflecting funds transfers to a purported consultant (Div. Ex. 31); an account statement purportedly reflecting a $100,000 transfer to Thomas and Thomas's mother (Div. Ex. 32); an account statement purportedly reflecting approximately $70,000 in payments by Thomas to unknown individuals (Div. Ex. 33); a March 2013 order of preliminary injunction in *Thomas* (Div. Ex. 34); a declaration of James Van Nest (Van Nest Declaration), attaching: the complaint in *Thomas* (Div. Ex. 35); a March 2012 Investment Contract (Div. Ex. 36); a confidential private placement memorandum for Solomon Fund(Div. Ex. 37); a declaration of Division IT specialist Christopher Villamil (Div. Ex. 38), attaching a website capture of D. Christopher's website (Div. Ex. 39); and the transcript of the September 15, 2014, prehearing conference (Div. Ex. 40).

## 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 parties against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the parties, 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 respondents have 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. at 101-04. 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.

## Parties' Motions and Arguments

The Division submitted numerous affidavits and exhibits in conjunction with its Motion for Summary Disposition and Supplemental Briefing, and I draw from this evidence, when not controverted by evidence presented by Respondents, to form my findings of fact.

The relevant evidence submitted by the Division falls into several broad categories. The first category, comprising Division Exhibits 1-8 and 17-20, are documents from *Thomas*, which establish the procedural history of that case. Respondents concede that a default judgment was issued in *Thomas*, but contend that they did not violate any securities laws and that the judgment was improper. Resp. Opp. at 1. However, Respondents are not permitted to attack the district court's judgment in this proceeding, as explained *infra*.

The second category of the Division's evidence is a group of Form ADVs from the years 2011-2014, filed by D. Christopher, and signed by Thomas. In particular, Division exhibits 15 and 16 contain admissions by Respondents that D. Christopher was "no longer eligible to remain registered with the SEC." Magee Decl. at 3; Div. Ex. 15 at 6, 16 at 6. The Division claims that despite these admissions, Respondents have never filed a Form ADV-W to withdraw D. Christopher's registration with the Commission and therefore remain registered today. Magee Decl. at 3. Respondents have not addressed or contested these exhibits or allegations.

The third category of Division's evidence is the Blair Declaration and related exhibits, pertaining to Respondents' alleged wrongful conduct. The following contentions are taken from the Blair Declaration and, where applicable, the Respondents' Supplemental Brief. Respondents raised at least $2.31 million from at least six investors. Blair Decl. at 3; Div. Exs. 20-24. Respondents dispute the amount raised from certain investors, but offer no evidence in support. Resp. Supp. at 14. Respondents purchased U.S. Treasury Notes with the investor's funds and began borrowing against those notes, despite it not being authorized by or disclosed to investors. Blair Decl. at 4, Div. Ex. 20. Respondents do not address or contest this. After a failed transaction, Respondents transferred $330,000 back to a client and $90,000 to a third party that Blair asserts may have been operating a Ponzi scheme. Blair Decl. at 3; Div. Exs. 25-26. Respondents contend that the $90,000 transfer was authorized, but offer no evidence. Resp. Supp. at 14. Respondents then purportedly made two Ponzi payments of $209,000 and $149,000, including a payment to investors in earlier schemes. Blair Decl. at 4; Div. Exs. 27-29. Respondents contest the timing of the $209,000 payment and claim there were no "earlier schemes," but provide no evidence and do not deny the payments happened or dispute their purpose. Resp. Supp. at 14-15. Respondents also allegedly made undisclosed payments totaling approximately $70,000 to intermediaries. Blair Decl. at 4; Div. Ex. 30. Respondents claim that the payments were disclosed, but offer no evidence. Resp. Supp. at 15. Respondents then allegedly paid $1.039 million to a Canadian consulting concern, which largely dissipated the money and in any event did not spend it on investment-related services. Blair Decl. at 4, Div. Exs. 31-32. Respondents contend these payments were disclosed but provide no evidence and plead ignorance rather than contest that the money transferred was spent on non-investment expenses. Resp. Supp. at 15. Thomas also allegedly diverted at least $290,000 out of the investment funds to herself and her relatives. Blair Decl. at 4-5; Div. Exs. 32-33. Respondents contend these payments were disclosed but again provide no evidence. Resp. Supp. at 16. The Division also spoke with two of Respondents' investors. Derrick Howard (Howard) alleges that he was induced to invest $100,000 with Respondents on the promise of a return of $3,000,000 within forty-five days, only to never receive his money back. Blair Decl. at 5. Respondents do not address or contest this. James Van Nest (Van Nest) alleges Respondents have never paid back his investment. Blair Decl. at 6. Respondents do not address or contest this.

The fourth category of Division's evidence is the Van Nest Declaration and its exhibits. Van Nest, one of Respondents' investors, claims that he agreed to invest $1,000,000 with Respondents for a return of $7,500,000 within thirty-five banking days, and that his investment would be placed in treasury notes, would be used as proof of funds for trading transactions, would not be encumbered, and would be covered by insurance. Van Nest Decl. at 1-3; Div. Ex. 36. Respondents dispute this characterization, claiming the transaction involved a third-party monetizer and third-party consultant, that Respondents only coordinated the transaction, and that the idea for the transaction was Van Nest's. Resp. Supp. at 4-9. However, Respondents provide no evidence for their claims. *Id.* Van Nest claims that Respondents then repeatedly failed to make the promised payments, told conflicting stories about whether the underlying trade transactions were successful, and failed to provide documents showing the whereabouts of his funds, the treasury notes allegedly purchased, or any trades allegedly made by Respondents. Van Nest Decl. at 4-5. Respondents contest these claims, alleging that Van Nest was an accredited investor and was fully informed of all aspects of the transaction, but again provide no evidence. Resp. Supp. at 5-9.

Respondents asserted the Fifth Amendment in response to the Commission's subpoenas. Blair Decl. at 2, Div. Exs. 17-19. Respondents do not dispute this. Resp. Supp. at 3.

## Findings of Fact

### A. Background

Thomas formed D. Christopher, a registered investment adviser, in 2011. Answer at 1. Thomas is and has always been D. Christopher's sole principal. *Id.* Respondents raised at least $2.31 million from at least six investors. Blair Decl. at 3; Div. Exs. 20-24. At least some investors were promised enormous returns within a short period of time. Blair Decl. at 5; Van Nest Decl. at 1-3; Div. Exs. 24, 36 (describing promised returns of $3,000,000 within forty-five days on an investment of $100,000, $770,000 within thirty-five days on an investment of $385,000, and $7,500,000 within thirty-five days on an investment of $1,000,000). Respondents purchased U.S. Treasury Notes with the investments and began borrowing against those notes despite those activities not being authorized by or disclosed to investors. Blair Decl. at 4, Div. Ex. 20. Respondents made multiple payments of investor money to various third parties. Blair Decl. at 3-5; Div. Exs. 25-31. At least some of these payments were not disclosed to Respondents' investors, and some of these payments may have been to entities or individuals involved in Ponzi schemes. Blair Decl. at 3-4; Div. Exs. 25-29. Thomas also diverted at least $290,000 of investor money to herself and her family. Blair Decl. at 4-5; Div. Exs. 32-33. At least two investors have not received their investments back, despite repeated promises by Respondents. Blair Decl. at 5; Van Nest Decl. 4-5.

### B. *Thomas*

In 2013, the Commission filed a civil complaint against Respondents and Solomon Fund, a fund managed by Respondents, alleging that Respondents persuaded investors to invest with them based on false representations that their investments would be used in bond transactions or to purchase U.S. Treasury notes. Div. Ex. 1 at 1-2. The complaint also alleges that Respondents used their investors' money on highly suspect offshore transactions, to make Ponzi payments, and to cover Thomas' personal expenses. *Id.* at 8-9. Therefore, as a result of this conduct, the Division contended that Respondents violated the federal securities laws. *Id.* at 10-12. In May 2013, the Commission moved for default judgment against Respondents, seeking a permanent injunction against Respondents for violations of the federal securities laws, disgorgement plus prejudgment interest, and a civil monetary penalty. Div. Ex. 5 at 21-22. In March 2014, the district court granted default judgment against Respondents, enjoined Respondents from violating the federal securities laws, and ordered Respondents, along with Solomon Fund, to disgorge $1,980,000 plus prejudgment interest of $9,939.56 and pay a civil penalty totaling $875,000.[6] Div. Ex. 6 at 8-9. Respondents have moved to vacate the judgment and the Commission has opposed. *See* Docket Sheet, *Thomas*.[7] The motion to vacate remains pending. *See id.*

[6] Thomas was ordered to pay $150,000 in civil penalties, and D. Christopher, together with Solomon Fund, was ordered to pay $725,000. Div. Ex. 6 at 8.

[7] Pursuant to Rule 323, I take official notice of all the proceedings and record in *Thomas*.

## Conclusions of Law

Advisers Act 203(f) authorizes the Commission to impose an associational bar against Thomas, if: (1) at the time of the alleged misconduct, she was associated with an investment adviser; (2) she has been enjoined from any action, conduct, or practice specified in Advisers Act Section 203(e)(4); and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). Advisers Act 203(e) empowers the Commission to revoke D. Christopher's registration if: (1) the sanction is in the public interest and (2) the investment adviser is permanently enjoined by any court of competent jurisdiction from "engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4).

The statutory bases to impose an associational bar against Thomas and to revoke D. Christopher's registration have been satisfied. Thomas admits that, at the time of the alleged misconduct, she was associated with D. Christopher, an investment adviser. Answer at 1. Thomas was enjoined from future violations of the federal securities laws, well within the meaning of "conduct . . . in connection with the purchase or sale of any security" under Advisers Act Section 203(e)(4). 15 U.S.C. § 80b-3(e)(4). Likewise, D. Christopher was similarly enjoined. Div. Ex. 6.

Respondents contend that they did not violate the federal securities laws and note that a Motion to Vacate Default Judgment has been filed in *Thomas*. Resp. Opp. at 2. However, Respondents may not use this administrative proceeding to collaterally attack the district court's judgment. *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, Respondents may petition the Commission for reconsideration. *See Jon Edelman*, 52 S.E.C. 789, 790 (1996).

Once the Division has shown that it has satisfied the criteria for summary disposition, Respondents are "required to produce documents, affidavits, or some other evidence to demonstrate that there was a genuine and material factual dispute that the law judge could not resolve without a hearing." *Jeffrey L. Gibson*, 2008 SEC LEXIS 236, at *22. Respondents have not provided any affidavits, exhibits, or other evidence that raises any genuine and material factual dispute. Accordingly, 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

In determining whether sanctions are in the public interest, the Commission considers the 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 her conduct; and the likelihood that the respondent's occupation will present opportunities for future violations (*Steadman* factors). 603 F.2d at 1140; *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. 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).

Relying on the evidence presented by the Division that is uncontroverted by evidence from Respondents, after analyzing the public interest factors in light of the protective interests served, Respondents' current competence, and their risk of future misconduct, I have determined that it is appropriate and in the public interest to bar Thomas from participation in the securities industry to the fullest extent possible, and to revoke D. Christopher's registration. *See Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014). Respondents' conduct was egregious. Respondents induced investors by promising enormous returns on investment. Blair Decl. at 5; Van Nest Decl. at 1-3; Div. Exs. 24, 36. Respondents then purchased U.S. Treasury Notes and began engaging in activities not authorized by or disclosed to investors. Blair Decl. at 4, Div. Ex. 20. Respondents made payments of investor money to third parties that may have been involved in Ponzi schemes. Blair Decl. at 3-5; Div. Exs. 25-31. Thomas diverted at least $290,000 of investor money to herself and her family. Blair Decl. at 4-5; Div. Exs. 32-33.

As a result of their misconduct, the *Thomas* court ordered Respondents to pay disgorgement of $1,988,838.56, plus prejudgment interest, Thomas to pay a third-tier civil penalty of $150,000, and D. Christopher to pay a third-tier civil penalty of $725,000. Div. Ex. 7. The size of the disgorgement and civil penalty reflect the egregiousness of Respondents' actions and the substantial harm that they caused their clients. Moreover, Respondents conduct was recurrent and not a "momentary lapse in judgment," as their scheme involved numerous payments and defrauded multiple investors. *Ross Mandell*, 2014 SEC LEXIS 849, at *17-18; Blair Decl. 3-5; Div. Exs. 25-31.

Moreover, Respondents were enjoined for conduct involving fraud. The Commission considers past misconduct involving fraud to be particularly egregious and requiring a severe sanction. *See 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)); *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)). Where a respondent has been enjoined from violating antifraud provisions of the securities laws, the Commission "typically" imposes a permanent bar. *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *8 (Oct. 29, 2014).

In committing securities fraud, Respondents acted with scienter. Scienter is an element of several of the securities fraud provisions under which Respondents were enjoined. *See Aaron*

*v. SEC*, 446 U.S. 680, 691, 697 (1980) (violations of Exchange Act Section 10(b) and Rule 10b-5 require scienter). The wrongful acts performed by the Respondents, including payments of investor funds to Thomas and her family, are representative of conduct evincing scienter. Moreover, Respondents were assessed with third-tier civil penalties, which requires a finding that they acted with scienter. *See SEC v. Mannion*, 10-cv-3374, 2014 WL 2957265, at *6 (N.D. Ga. July 1, 2014); *SEC v. Novus Tech., LLC*, 07-cv-235, 2010 WL 4180550, at *13 (D. Utah Oct. 20, 2010).

Respondents do not recognize the wrongful nature of their conduct. Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission's witnesses of bias or lying. Resp. Supp. at 4-16. Respondents have offered no assurance that they will not violate securities laws in the future, instead continuing to ignore the judgment in *Thomas* and deny that they ever violated securities laws in the past. *Id.* at 16, 20-21. Moreover, Thomas is currently acting as an investment adviser, and D. Christopher is currently registered as an investment adviser, creating opportunities for future violations and risk that this 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). Respondents do little to rebut that inference, instead continuing to claim that they never committed any wrongdoing. Resp. Supp. 15-16. 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).

In conclusion, it is in the public interest to impose a permanent associational bar against Thomas and to revoke D. Christopher's registration as an investment adviser.[8]

## Order

It is ORDERED that, pursuant to Rule 250(b), the Division of Enforcement's Motion for Summary Disposition against Respondents Delsa U. Thomas and D. Christopher Capital Management Group, LLC, is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Delsa U. Thomas is permanently BARRED from associating with an investment

[8] Under Advisers Act 203(f), the Commission is authorized to impose the full range of permanent bars against Thomas if, in relevant part, at any time of the alleged misconduct, she was associated with an investment adviser. 15 U.S.C. § 80b-3(f); *see, e.g.*, *Aaron Jousan Johnson*, Initial Decision Release No. 608, 2014 SEC LEXIS 1867, at *7 (June 2, 2014). Under Advisers Act 203(e), the Commission is authorized to revoke an investment advisor's registration if the investment adviser is permanently enjoined by any court from practices in connection with the purchase or sale of a security. 15 U.S.C. § 80b-3(e), *see, e.g.*, *EagleEye Asset Management, LLC*, Initial Decision Release No. 497, 2013 SEC LEXIS 2113, at *18-20 (July 24, 2013).

adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It Is FURTHER ORDERED that, pursuant to Section 203(e) of the Investment Advisers Act of 1940, the investment adviser registration of D. Christopher Capital Management Group, LLC, is REVOKED.

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.

_____

Cameron Elliot
Administrative Law Judge