INITIAL DECISION RELEASE NO. 738
ADMINISTRATIVE PROCEEDING
File No. 3-16101

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

In the Matter of GARY HARRISON LANE	INITIAL DECISION January 20, 2015

APPEARANCE: Marc J. Blau and Christine Connolly for the Division of Enforcement, Securities and Exchange Commission

BEFORE: James E. Grimes, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's Motion for Summary Disposition and bars Respondent Gary Harrison Lane 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.

Procedural Background

The Commission initiated this proceeding in September 2014, by issuing Lane an Order Instituting Administrative Proceedings (OIP). As authority, the OIP cites Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. OIP at 1; *see* 15 U.S.C. §§ 78*o*(b), 80b-3(f). The OIP alleges that Lane pled guilty in the United States District Court for the District of Nevada to twelve counts of mail fraud and five counts of attempted tax evasion. OIP at 2. The OIP further alleges that the district court entered judgment in February 2014, and sentenced Lane to 120 months' imprisonment and restitution of $2,103,226. *Id*.

After Lane failed to file an answer to the OIP, I held a prehearing conference in October 2014. Counsel for the Division of Enforcement attended the conference but Lane did not. During the conference, I confirmed that Lane was served with the OIP on September 15, 2014. Prehearing Conference Transcript ("Tr.") at 5. I also granted the Division leave to move for summary disposition. Tr. at 5-6.

The Division filed its Motion for Summary Disposition (Division's Motion) and supporting documents in November 2014. The Division's Motion is supported by the declaration of its counsel, Christine Connolly. Ms. Connolly's declaration is in turn supported by eight exhibits, listed as exhibits 1 through 8 (the Connolly Exhibits). Among the Connolly Exhibits are Lane's indictment, his plea colloquy, and the transcript of his sentencing hearing. *See* Connolly Exhibits at 1, 2, and 8. Lane did not file an opposition to the Division's Motion.

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed under Rule 323. *See* 17 C.F.R. § 201.323. I have applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981).

Findings of Fact

A grand jury indicted Lane in August 2012. Connolly Exhibit 1. The indictment charged that from May 2002 until March 2011, Lane was employed as a financial adviser with Bank of America Investment Services, which later merged during Lane's employment with Merrill Lynch. *Id*. at 1-2. According to the indictment, Lane lured investors with materially false promises that he would invest their money in treasury bonds with a six percent rate of return and maturity period of two years. *Id.* The indictment alleges that Lane used several million dollars of his victims' money for his own devices. *Id.* at 2. The indictment identifies twelve separate checks that investors gave Lane. *Id.* at 2-3. Lane allegedly used the United States mail to deposit each check in an E-Trade account opened in his wife's name. *Id.* at 2. The indictment also alleged that Lane attempted to evade federal income taxes for tax years 2006 through 2010. *Id.* at 3-4.

In September 2013, Lane pled guilty to all seventeen counts alleged against him. Connolly Exhibit 2 at 5, 26. In doing so, he agreed that, with certain exceptions not material to this proceeding, the facts alleged in the indictment were correct. *Id*. at 16-22. He thus agreed that he developed a scheme to fraudulently entice investors and created false investment confirmations that he distributed by mail. *Id*. at 16-17, 22-23. Lane also agreed that he never invested his victims' money in treasury bonds and instead diverted over $2.7 million out of $4.4 million invested to his own use. *Id*. at 18. Finally, he agreed that he substantially underreported his income for the years charged. *Id*. at 20-26.

In February 2014, the district court sentenced Lane to 120 months' imprisonment and restitution in the amount of $2,103,226. Connolly Exhibit 3 at 1-5; Connolly Exhibit 8 at 49-50. During the sentencing hearing, Lane's counsel admitted that Lane operated a Ponzi scheme. Connolly Exhibit 8 at 8. The district court heard evidence that one victim was in his 80s and another "was extremely naïve in investments and gave [Lane] everything she had." *Id*. at 29-31. Another investor was "in her late 80s" and "extremely physically fragile." *Id*. at 32. This latter investor lived alone on an inheritance from her father. *Id.* On the basis of the foregoing and other evidence, the district court imposed a vulnerable victim sentencing enhancement. *See Id*. at 4, 7, 38-39.

Conclusions of Law

A. Summary Disposition Standard

Motions for summary disposition are governed by Rule of Practice 250. *See* 17 C.F.R. § 201.250. An administrative law judge "may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a 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). In order "to survive a motion for summary disposition, the non-moving party must do more than 'simply show that there is some metaphysical doubt as to the material facts.'" *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *21 n.24 (Feb. 13, 2009) (citation omitted), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

Summary disposition is appropriate in "follow-on" proceedings—an administrative proceeding instituted following a conviction or entry of an injunction—where the only real issue involves the determination of the appropriate sanction. *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *27 (May 15, 2009); *see Jeffrey L. Gibson*, Exchange Act Release. No. 57266, 2008 SEC LEXIS 236, at *19-20 & nn.21-24 (Feb. 4, 2008), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). The exception occurs in those "rare circumstances" in which "a respondent may present genuine issues with respect to facts that could mitigate his or her misconduct." *Mitchell M. Maynard*, 2009 SEC LEXIS 1621, at *27 (internal quotation marks omitted).

B. The Division's evidence demonstrates that a full collateral bar is warranted

As is relevant to this proceeding, Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act empower the Commission to impose a collateral bar[1] against Lane if three statutory factors are met: (1) at the time of his misconduct, he was associated with a broker, dealer, or investment adviser; (2) he has been convicted of an offense that (a) involved the purchase of sale of any security; (b) "arises out of the conduct of the business of a broker, dealer," or "investment adviser;" (c) "involves the larceny, theft, . . . fraudulent conversion, or misappropriation of funds;" *or* (d) is a violation of 18 U.S.C. § 1341; and (3) imposition of the

[1] The term "collateral bar" refers to the authority to "exclude[] an associated person of a regulated entity not only from the type of business the person was in when" that person violated federal securities laws, "but also from any aspect of the securities business." *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, *1 n.1 (Oct. 29, 2014). Under the authority to issue a collateral bar, the maximum sanctions authorized in this proceeding are barring Lane from being associated 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. *See* 15 U.S.C. §§ 78o(b)(6)(A), 80b-3(f).

bar is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(B)(i), (ii), (iii), (iv), (6)(A)(ii), 80b-3(e)(2)(A), (B), (C), (D), (f).

As to the first factor, the indictment to which Lane pled guilty alleged that Lane carried out his scheme while employed as a "financial advisor" by Bank of America/Merrill Lynch. Connolly Exhibits 1 at 1, 2 at 18. Evidence submitted by the Division confirms Lane's employment, that Bank of America and Merrill Lynch were registered as broker-dealers and as investment advisers, and that Lane was a registered representative of them. Connolly Exhibit 5, 6, 7. The Division has thus met the first factor.

For four separate reasons, the second factor is easily met. First, following his guilty plea, Lane was found guilty of twelve violations of 18 U.S.C. § 1341. By definition, any single violation of Section 1341 would meet the second factor. *See* 15 U.S.C. §§ 78*o*(b)(4)(B)(iv), (b)(6)(A)(ii), 80b-3(e)(2)(D), (f). Second, Lane's plea colloquy reflects that his offenses involved his sale of securities. Connolly Exhibit 2 at 16-23; 15 U.S.C. §§ 78*o*(b)(4)(B)(i), (b)(6)(A)(ii), 80b-3(e)(2)(A), (f). Third, Lane's plea colloquy reflects that his offenses arose "out of the conduct of the business of a broker, dealer," and "investment adviser." Connolly Exhibit 2 at 16-23*;* 15 U.S.C. §§ 78*o*(b)(4)(ii), (b)(6)(A)(ii), 80b-3(e)(2)(B), (f). Fourth, Lane induced his victims to invest by falsely telling them he would invest their money in treasury bonds. Connolly Exhibit 1 at 1-2; Connolly Exhibit 2 at 22-23. His offenses thus involved theft and fraudulent conversion. *See* 15 U.S.C. §§ 78*o*(b)(4)(iii), (b)(6)(A)(ii), 80b-3(e)(2)(C), (f).

With respect to the third factor, whether imposition of a collateral bar would be in the public interest, I must consider the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See Toby G. Scammell*, 2014 SEC LEXIS 4193, at *23. The public interest factors include:

> 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, 603 F.2d at 1140 (quoting *SEC v. Blatt*, 603 F.2d 1325, 1334 n.29 (5th Cir. 1978)). "The . . . inquiry into the appropriate sanction to protect the public interest is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *13 (Sept. 26, 2007), *pet denied*, 548 F.3d 129 (D.C. Cir. 2008). The Commission also considers the degree of harm resulting from the violation, *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *100 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002), and the deterrent effect of administrative sanctions, *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). In this latter regard, industry bars are considered an effective deterrent. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

In *Ross Mandell*, the Commission 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." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). The Commission also explained that an administrative law judge's decision "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'" *Id*. at *8 (quoting *McCarthy*, 406 F.3d at 189, 190).

In this case, the public interest would best be served by imposing a full collateral bar. Several facts show that Lane's conduct was egregious. Lane was as an investment adviser who owed a fiduciary duty to his clients to act with "'utmost good faith'" and "'to employ reasonable care to avoid misleading'" his clients. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *40 (Dec. 13, 2012) (quoting *SEC v. Capital Gains Research Bureau, Inc*., 375 U.S. 180, 194 (1963)). Indeed, "[i]nvestors in the securities industry place a high degree of trust and confidence in the investment advisory relationship." *Montford and Co., Inc*., Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *78 (May 2, 2014). Instead of acting in a manner that was consistent with the duty he owed his clients, Lane caused them significant harm, defrauding them out of over $2 million. Rather than act for the benefit of his clients, Lane abused his position of trust by operating a Ponzi scheme for his own benefit. Connolly Exhibit 8 at 8. Lane's abuse of his position was made all the worse because he preyed on people with whom he had developed long-term "personal relationship[s]" and on those who were especially vulnerable. *Id*. at 15, 29-32, 38-39. That Lane was willing to abuse the trust his victims placed in him shows that he lacks the fitness to participate in the securities industry and that the interest in protecting investors would be best served by imposing a permanent industry-wide bar. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *39 (Mar. 7, 2014) (highlighting the fact that respondent "victimized financially unsophisticated investors"); *cf. John W. Lawton*, 2012 SEC LEXIS 3855 at *43 ("[Respondent's] willingness to violate his fiduciary duty to his clients is more than sufficient to demonstrate his unfitness to take on another role as a fiduciary.").

Further, although Lane was not convicted of a securities law violation, he admitted that in the course of his Ponzi scheme, he intentionally made false representations in order to induce investment and then converted his investors' funds for his own use. Conduct of this sort, that amounts to multiple violations of the anti-fraud provisions, "is especially serious and subject to the severest of sanctions under the securities laws." *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *29-30 (July 25, 2003); *cf. John S. Brownson*, Exchange Act Release No. 46161, 2002 WL 1438186, at *2 (July 3, 2002) (holding that "[a]bsent extraordinary mitigating circumstances," an individual who has been criminally convicted of securities fraud "cannot be permitted to remain in the securities industry"), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

Inasmuch as Lane operated a Ponzi scheme, his conduct was necessarily recurrent. Lane needed to attract new victim-investors in order to pay older investors. *See* Connolly Exhibit 8 at 47. He thus induced new investors to give him over $4.4 million, of which he retained $2.7 million for his own use. Connolly Exhibit 2 at 18.

Lane necessarily acted with a high degree of scienter. No one accidentally engages in a Ponzi scheme. Lane was no different. In order to continue his scheme and deter detection, he lured in new victims and created false account statements for his existing victims. Connolly Exhibit 2 at 17. Lane knew he was making false statements when he told investors he would invest their funds in treasury bonds with a six percent rate of return and maturity period of two years; no such bond existed at the time. Connolly Exhibit 1 at 1-2; Connolly Exhibit 2 at 16-24. And he obviously knew the statements he sent investors were false when he made and sent them.

Inasmuch as Lane has not answered the OIP or opposed the Division's Motion, he has made no assurances against future violations or demonstrated that he recognizes the wrongfulness of his conduct. I thus infer that if Lane were given the opportunity, he would likely engage in similar conduct. *Cf. Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) ("'the existence of a violation raises an inference that'" the acts in question will recur) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). In this regard, it is self-evident that Lane's "occupation as an investment adviser presents opportunities for future illegal conduct in the securities industry." *Lawton*, 2012 SEC LEXIS 3855, at *43.

As a final matter, I find that a full collateral bar will serve as a general and specific deterrent. It will deter Lane and will further the Commission's interest in deterring others from engaging in similar misconduct. Given the foregoing, I find that it is in the public interest to impose a permanent, collateral bar against Lane.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition 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 1934, Gary Harrison Lane is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Gary Harrison Lane is permanently BARRED 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.

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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James E. Grimes