INITIAL DECISION RELEASE NO. 741
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16226

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

In the Matter of	:	
	:	INITIAL DECISION OF DEFAULT
MARLON QUAN and	:	January 30, 2015
STEWARDSHIP INVESTMENT ADVISORS, LLC	:	
	:	

APPEARANCES: Timothy S. Leiman for the Division of Enforcement, Securities and Exchange Commission

Marlon Quan, *pro se* and for Stewardship Investment Advisors, LLC

BEFORE: James E. Grimes, Administrative Law Judge

Summary

This Initial Decision of Default grants the Division of Enforcement's Unopposed Motion for Entry of Initial Decision by Default (Motion) and permanently bars Respondent Marlon Quan 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 investment adviser registration of Respondent Stewardship Investment Advisors, LLC.

Procedural Background

Under Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, the Securities and Exchange Commission issued an Order Instituting Administrative Proceedings (OIP) against Respondents. The OIP alleges that in February 2014, a jury in the district of Minnesota found Respondents liable for multiple counts of securities fraud, and that in September 2014, the district court permanently enjoined Respondents from future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Advisers Act Section 206(4) and Rule 206(4)-8. OIP at 2.

In accordance with Rule of Practice 141(a)(2)(i)-(ii), 17 C.F.R. § 201.141(a)(2)(i)-(ii), Respondents were served with the OIP on November 7, 2014. *See Marlon Quan*, Admin. Proc.

Rulings Release No. 2083, 2014 SEC LEXIS 4643 (Dec. 3, 2014) (December 3 Order). On December 3, 2014, I held a prehearing conference, attended by counsel for the Division and Quan, representing himself *pro se* and Stewardship. Although Quan indicated during the prehearing conference that he intended to file an Answer on behalf of himself and Stewardship, to date he has failed to do so. Respondents are now in default. *See* 17 C.F.R. §§ 201.155(a)(2), .220(f); *see also* OIP at 3. On December 19, 2014, this Office received the Division's Motion, with supporting exhibits.[1] Exhibit C to the Motion is an undated letter from Quan to the Division, in which Quan represents that: he and Stewardship do not oppose the relief sought by the Division; he does not intend to file an Answer on his or Stewardship's behalf; and he understands that he is defaulting, and thus that I likely will determine the proceedings against him and Stewardship and order the relief sought by the Division.

Quan and Stewardship are in default for not defending the proceeding. Therefore, the Division's Motion is granted, and the facts alleged in the OIP are deemed true. *See* 17 C.F.R. § 201.155(a); OIP at 3. 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, 17 C.F.R. § 201.323.[2]

Findings of Fact

Quan, age 58, is a resident of Edison, New Jersey. OIP at 1. Quan is the founder, managing member, and principal owner of Stewardship, a registered investment adviser. *Id.* Quan established Stewardship in 2001, owning and operating it ever since, and registered it with the Commission in 2005. *Id*. at 1-2. Stewardship is a Delaware limited liability company and was the investment adviser to—and managing member of—two hedge funds that Quan controlled: Stewardship Credit Arbitrage Fund, LLC and Stewardship Credit Arbitrage Fund, Ltd. (collectively, the SCAF Funds). *Id.* at 2.

From 2001 to 2009, Quan provided investors and prospective investors with preferred placement memoranda (PPMs) and marketing materials touting the risk management techniques that would be used to protect the SCAF Funds' investments. Mem. Op. & Order at 3, *Quan* (Sept. 19, 2014), ECF No. 577 (Op.); *see* OIP at 2. The promised safeguards included the use of a "lock box" account, "full due diligence" on loan transactions, audits of "intermediaries," and the retention of cash collateral in a blocked account. Op. at 3; OIP at 2. These safeguards were never put in place. Op. at 18; OIP at 2. More than half of the SCAF Funds' portfolio was invested in loans to a company owned by Thomas J. Petters, who purportedly used the borrowed funds to purchase electronic merchandise to resell to "big box" retailers. Op. at 3. In reality, Petters was operating a massive Ponzi scheme. *Id.* at 3-4*;* OIP at 2. In February 2008, when Petters's scheme started unraveling, Quan entered into a forbearance agreement on $110 million of Petters's promissory notes that had gone into arrears. Op. at 20. Although the delinquent

[1] The Division's exhibits consist of the amended complaint in Quan's underlying district court proceeding (Ex. A), the judgment and subsequent amended judgment (Ex. B), and a letter from Quan to the Division (Ex. C).

[2] Under Rule 323, I take official notice of the district court record in Quan's underlying district court proceeding.

notes represented over 25% of the SCAF Funds' assets, Quan assured investors through a newsletter that the SCAF Funds were performing well and that "few defaults have occurred." *Id.*; *see* OIP at 2. Despite having emptied a cash collateral account for the SCAF Funds as part of the forbearance agreement on the Petters notes, Quan later represented to investors that the account was still intact. Op. at 20.

Altogether, investors invested over $500 million in the SCAF Funds from 2001 to 2009. *Id.* at 3; OIP at 2. During this period, the SCAF Funds paid Stewardship performance and management fees (together with interest, origination, and consulting fees to Quan's commercial finance business), in excess of $95 million, approximately $33 million of which was distributed to Quan. Op. at 3; OIP at 2. As a result of the fraud, SCAF Fund investors faced losses exceeding $221 million. OIP at 2.

On February 11, 2014, after a nine-day jury trial, Respondents were found liable for multiple counts of securities fraud, and on September 22, 2014, the district court permanently enjoined Respondents from future violations of Securities Act Sections 17(a)(2) and 17(a)(3), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(4) and Rule 206(4)-8. Op. at 2; Ex. B; OIP at 2. The district court found Respondents jointly liable for disgorgement of $80,613,589. Ex. B. The court later amended its judgment to include liability for over $16 million in prejudgment interest. *Id.*

Conclusions of Law

Advisers Act Section 203(f) authorizes the Commission to impose an associational bar against Quan if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he 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 Section 203(e) empowers the Commission to revoke Stewardship'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 the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4).

The statutory bases to impose an associational bar against Quan and to revoke Stewardship's registration have been satisfied. During the time of his misconduct, Quan was associated with Stewardship, an investment adviser. Quan and Stewardship were both 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), (f). Respondents did not file Answers or oppose the Motion and therefore have not offered any evidence to refute the conclusion that the statutory bases for a sanction have been satisfied. Accordingly, 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 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*, 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 inquiry into the appropriate sanction to protect the public interest is flexible, 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*., Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35-36 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). Associational bars have long been considered effective deterrence. *See Guy P. Riordan*, Securities Act Release No. 9085, 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, Respondents' current competence, and their risk of future misconduct, I have determined that it is appropriate and in the public interest to bar Quan from participation in the securities industry to the fullest extent possible, and to revoke Stewardship'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 recruited investors through the use of fraudulent offering and marketing materials that misrepresented safeguards in place to protect investor capital. Op. at 3; OIP at 2. Respondents sold promissory notes issued by Petters, the perpetrator of a massive Ponzi scheme, to the SCAF Funds, and then provided false assurances to the SCAF Funds to conceal the fraud. Op. at 2-4; OIP at 2. Through their misconduct, Stewardship received performance and management fees exceeding $95 million from the SCAF Funds, approximately $33 million of which was distributed to Quan. Op. at 3; OIP at 2. As a result of the fraud, SCAF Funds investors lost over $221 million. OIP at 2. The district court ordered Respondents jointly and severally liable for disgorgement of $80,613,589. Ex. B. The size of the disgorgement reflects the egregiousness of Respondents' actions and the substantial harm that they caused their clients. Moreover, Respondents' conduct was recurrent and took place over the course of several years, from 2001 to 2009, and was therefore not a "momentary lapse in judgment." *Ross Mandell*, 2014 SEC LEXIS 849, at *17-18; Op. at 23. This reflects a longstanding pattern of violative conduct that demonstrates unfitness for the securities industry. Additionally, the conduct continued for a year even after Quan entered into the forbearance agreement in 2008.

Moreover, Respondents were enjoined for conduct involving fraud. *See* Ex. B. 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)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Richard C. Spangler, Inc*., Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 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 SEC LEXIS 4193, at *37 (Oct. 29, 2014).

Respondents acted with scienter. *See* Op. at 18, 20, 23. Respondents lured investors through fraudulent offering and marketing materials that described safeguards that were never put in place. *Id.* at 18-20. Moreover, once Petters' Ponzi scheme came to light, rather than inform investors of the truth, Respondents concealed the situation from them and provided false assurances, leading investors to believe their investments were safe. *Id.* at 20. These wrongful acts are representative of conduct evincing a high level of scienter.

Respondents have offered no evidence that they recognize the wrongful nature of their conduct, nor have they offered any assurance that they will not violate securities laws in the future. *Id.* at 23. Although Quan has previously represented that he does not intend to return to the securities industry, absent an associational bar there would be nothing to prevent Quan from resuming these activities, which would present opportunities for future violations and the risk that his conduct will be repeated. *Id.* "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.*, 1976 SEC LEXIS 2418, at *34.

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 *24 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). Respondents have failed to rebut that inference. Failure to make assurances against future violations and to recognize wrongdoing demonstrates the threat of future violations. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *16-19 (Aug. 30, 2002).

In conclusion, it is in the public interest to impose a permanent associational bar against Quan and to revoke Stewardship's registration as an investment adviser.

Order

It is ORDERED that the Division of Enforcement's Unopposed Motion for Entry of Initial Decision by Default against Marlon Quan and Stewardship Investment Advisors, LLC, is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Marlon Quan is permanently BARRED from associating with an investment 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 Stewardship Investment Advisors, LLC, is REVOKED.

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

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

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James E. Grimes
Administrative Law Judge