INITIAL DECISION RELEASE NO. 754
ADMINISTRATIVE PROCEEDING
File No. 3-16167

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

In the Matter of	INITIAL DECISION March 18, 2015
RANDAL KENT HANSEN	

APPEARANCES: Polly Atkinson for the Division of Enforcement, Securities and Exchange Commission

Randal Kent Hansen, *pro se*

BEFORE: James E. Grimes, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's renewed motion for summary disposition and bars Respondent Randal Kent Hansen from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Procedural Background

The Commission initiated this proceeding in September 2014, by issuing Hansen an Order Instituting 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 Hansen was convicted in the United States District Court for the District of South Dakota of twenty-one counts of mail fraud, four counts of wire fraud, and one count of conspiracy to commit mail and wire fraud. OIP at 1. The OIP further alleges that the district court entered judgment in May and June 2014, and sentenced Hansen to 108 months' imprisonment and restitution of $17,514,258.89. *Id.* at 2.

The OIP also alleges that Hansen's convictions relate to his operation of the RAHFCO Hedge Funds as a Ponzi scheme.[1] OIP at 2. According to the OIP, Hansen acted as an unregistered broker-dealer by soliciting investments in the funds and receiving fees based on a percentage of the profits from securities transactions. *Id.* Additionally, the OIP alleges that Hansen controlled the funds, was responsible for management and investment decisions, and was an investment adviser. *Id.*

I held a prehearing conference on October 22, 2014. Counsel for the Division of Enforcement attended the conference. Appearing *pro se*, Hansen also attended. During the conference, I confirmed that Hansen was served with the OIP on September 29, 2014. Prehearing Conference Transcript (Tr.) at 5. I also granted the Division leave to move for summary disposition. Tr. at 14-15.

Following the prehearing conference, Hansen filed an Answer, generally denying the allegations and asserting the jury wrongly decided his case. The Division subsequently moved for summary disposition and Hansen filed an opposition. In December 2014, I denied the Division's motion without prejudice to renewal supplemented by evidence sufficient to carry the Division's burden. *Randal Kent Hansen*, Admin. Proc. Rulings Release No. 2171, 2014 SEC LEXIS 5018, at *6 (Dec. 29, 2014).

The Division filed a renewed motion for summary disposition on January 12, 2015. Its motion is supported by six exhibits, designated as exhibits one through six.[2] Hansen filed his opposition on February 2, 2015, and his memorandum in support on February 10, 2015.

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). All arguments and evidence inconsistent with my findings and conclusions have been considered and rejected.

Findings of Fact

For over fifty years before his conviction, Hansen was a farmer in South Dakota. Ex. 3 at 1198. Hansen created RAHFCO Funds LP in 2007. Ex. 3 at 1206; Ex. 4 at 1530. He was also the president of RAHFCO Management, which managed RAHFCO Funds. Ex. 3 at 1206-07, 1241. In his role as president of RAHFCO Management, Hansen controlled RAHFCO Funds' operations. Ex. 3 at 1248.

[1] The RAHFCO Hedge Funds are alleged to be RAHFCO Funds LP and RAHFCO Growth Fund LLP. OIP at 1.

[2] As exhibits, the Division submitted the Minute Entry from Hansen's trial (Exhibit 1), the district court's judgment and amended judgment (Exhibit 2), excerpts of Hansen's trial testimony (Exhibit 3), excerpts of Hansen's sentencing hearing (Exhibit 4), and excerpts of witness testimony (Exhibits 5 and 6).

The capital that was initially invested in RAHFCO Funds was funneled from other funds that Hansen previously managed, including a fund called Capstone. Ex. 3 at 1206, 1209; Ex. 4 at 1530. As part of the transition process from Capstone to RAHFCO Funds, Hansen sent out account statements in which he stated that Capstone employed an accounting firm, Meidinger and Associates, to review its books. Ex. 4 at 1530. In fact, Susan Meidinger simply reviewed the math Hansen used in the statements. *Id.* During this time, Hansen forged Ms. Meidinger's signature on a document he sent to one investor. *Id.*

Hansen recommended that family and friends invest in his previous funds and in RAHFCO Funds. Ex. 3 at 1199-1200. His family members invested based on his recommendation. *Id.* at 1200. Others invested as well. *Id.*

Shortly after he started RAHFCO Funds, Hansen made Anthony Johnson his "50/50 partner" in RAHFCO Management. Ex. 3 at 1209-10; Ex. 4 at 1530-31. Indeed, the name RAHFCO stood for "Randy Anthony Hedge Fund Company." Ex. 4 at 1530. In approximately 2008, Hansen and Johnson created RAHFCO Growth.[3] Ex. 3 at 1207. They created RAHFCO Growth for two reasons. First, they had reached the maximum number of limited partners they were permitted in RAHFCO Funds. *Id.* Second the hurdle rate for RAHFCO Growth was lower than for RAHFCO Funds, thus making it possible for Hansen and Johnson to "make some money."[4] *Id.*

Neither the Private Placement Memorandum for RAHFCO Funds nor the Private Placement Memorandum for RAHFCO Growth disclosed Johnson's role in the entities. Ex. 3 at 1209, 1248; Ex. 4 at 1530-31. Investors were thus unaware that someone involved in the RAHFCO entities received a Wells notice in 2005 and was later indicted. Ex. 4 at 1531, 1534.

The Private Placement Memoranda for the RAHFCO entities described Hansen as the president of the funds' general partner, one of the principals of the sub-advisor, and "control[ling] all of the Partnership's operations and activities." Ex. 3 at 1246-47. Hansen, however, never affiliated with the sub-advisor and never informed investors of this fact. *Id.* The Memoranda also said that Hansen was responsible "for researching, selecting and monitoring the Partnership[s'] investments." *Id.* at 1246-48. In fact, Johnson took over these responsibilities in June 2007 as to RAHFCO Funds and always had these responsibilities as to RAHFCO Growth. *Id.* Hansen did not inform investors of this change or amend either Memorandum to reflect it. *Id.*

In the Private Placement Memoranda for the RAHFCO entities, Hansen pledged to annually audit the RAHFCO entities. Ex. 3 at 1253. Those audits never occurred. *Id.* Hansen acknowledged he was responsible for that failure. *Id.* He never told investors that the audits never occurred. *Id.* Instead, Hansen "assured . . . investors that the funds were being audited when in fact they were not." Ex. 4 at 1534.

[3] Collectively, I refer to RAHFCO Funds and RAHFCO Growth as the RAHFCO entities.

[4] A hurdle rate is the rate of return a fund must exceed in order for the fund's manager to receive incentive fees.

In January 2008, Hansen assured one RAHFCO Funds investor that "[w]e never are allowed to risk more than 5 percent of our funds every month," and that "95 percent of" the investor's "funds [were] either in cash or Government bonds during the month." Ex. 3 at 1259-60. In July 2008, he told another investor that Treasuries accounted for between thirty and ninety percent of the holdings in the fund in which he invested. Ex. 2 at 1503; Ex. 3 at 1260.

Overall, for five years, Hansen was responsible for issuing misleading statements to investors and for omitting material facts. Ex. 4 at 1531, 1534. In addition to the foregoing, Hansen failed to inform investors that the law firm listed in the Private Placement Memoranda for the RAHFCO entities was no longer performing services for the funds. *Id.* at 1534. During this time, Hansen repeatedly reassured investors that their investments were safe. *Id.* Some investment funds, however, were used to pay previous investors' redemptions. Ex. 3 at 1228; Ex. 4 at 1534. Hansen was responsible for paying those redemptions. Ex. 3 at 1229.

Investors eventually lost $17,514,258.29. Ex. 2 at 1502.

Hansen was indicted in 2013 on multiple counts of mail and wire fraud and one count of conspiracy to commit wire and mail fraud. Ex. 2 at 1473-74; *see* 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1349 (conspiracy). Following a jury trial, Hansen was convicted of the conspiracy charge, four counts of wire fraud, and twenty-one counts of the mail fraud. *Id.* at 1473-74, 1497-98.

Before imposing sentence, the district court remarked on the positive ways in which Hansen affected people's lives. Ex. 4 at 1577-78. The court then recounted the ways in which Hansen misled investors. *Id.* at 1579. These included the audit failures, the level of risk involved, and Johnson's indictment. *Id.* The court also recounted statements from Hansen's investors. *Id.* at 1580. One investor lost twenty-five years' savings and another lost money intended to fund the investor's children's college educations. *Id.* After noting that Johnson had been sentenced to 120 months' imprisonment, the district court sentenced Hansen to, *inter alia*, 108 months' imprisonment and restitution of $17,514,258.89. Ex. 2 at 1499, 1502.

Conclusions of Law

A. Summary Disposition Standard

Rule of Practice 250 governs motions for summary disposition. *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) (quoting *Jeffrey L. Gibson*, Exchange Act Rel. No. 57266, 2008 SEC LEXIS 236, *22 n.26 (Feb. 4, 2008)).

Summary disposition is appropriate in "follow-on" proceedings—administrative proceedings instituted following a conviction or entry of an injunction—where the only real issue involves the determination of the appropriate sanction. *See Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *27 (May 15, 2009); *Jeffrey L. Gibson*, 2008 SEC LEXIS 236, at *19-20 & nn.21-24. 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 (quoting *Conrad P. Seghers*, Advisers Act Rel. No. 2656, 2007 SEC LEXIS 2238, at *17 (Sept. 26, 2007)).

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 give the Commission authority to impose a collateral bar[5] against Hansen 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 bar is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(B)(i), (iv), (6)(A)(ii), 80b-3(e)(2)(A), (C), (D), 80b-3(f).

As to the first factor, the Division's evidence plainly shows that Hansen was an investment adviser. An investment adviser is:

> any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

15 U.S.C. § 80b-2(a)(11). First, Hansen received compensation in the form of management fees. Ex. 6 at 926; *see also* Ex. 3 at 1224. Second, in his role as president of RAHFCO Management, Hansen initially "control[led] all of the . . . operations and activities" of the RAHFCO entities and was responsible "for researching, selecting and monitoring the [RAHFCO entities'] investments." Ex. 3 at 1247-48.

[5] 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 Hansen from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *See* 15 U.S.C. §§ 78*o*(b)(6)(A), 80b-3(f).

The second factor is also met. Following his trial, Hansen was found guilty of numerous violations of 18 U.S.C. §§ 1341 and 1343. Ex. 2 at 1473-74, 1497-98. By definition, any single violation of Sections 1341 or 1343 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).

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*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *23 (Oct. 29, 2014). 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*, 2007 SEC LEXIS 2238, at *13. 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).

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." *Ross Mandell*, 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)). An administrative law judge's decision to impose an industry-wide bar "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 189-90).

The public interest would best be served by imposing a full collateral bar. Hansen's conduct was egregious. Through his conspiracy, Hansen defrauded investors out of over $17 million. And he did so by misleading investors or not giving them material information. Ex. 4 at 1531, 1534. Hansen did not tell investors that, contrary to the Private Placement Memoranda, he was not actually managing their investments. Ex. 3 at 1248. Instead, someone with a checkered history was doing so. *See id.*; Ex. 4 at 1531. As the district court found, Hansen worked to present the false image that investment funds were safe. Ex. 4 at 1531, 1534. He used an

accounting firm to send misleading statements that audits were conducted and paid earlier investors with funds invested by later investors. *Id.*

Hansen's conduct was recurrent. First, as the district court held, Hansen's scheme lasted five years. Ex. 4 at 1534. Second, Hansen essentially operated a Ponzi scheme which necessarily required recurring misconduct. *See id.*

Hansen acted with a high degree of scienter. Hansen cannot credibly claim that he accidentally ran a Ponzi scheme. In order to continue his scheme and deter detection, he falsely reassured investors that all was well. Ex. 4 at 1534. He sent out misleading statements. *Id.* He used an auditing firm to create the impression that his funds were being audited when he knew no audits were conducted. *Id.* Hansen must have known he was making false and misleading statements.

Hansen has made no assurances against future violations or demonstrated that he recognizes the wrongfulness of his conduct. To the contrary, in his answer he said others are to blame and he did nothing wrong. Answer at 1. Hansen also attempted to contradict his own testimony during his trial. At trial, he conceded that he was the president of RAHFCO Management and was responsible for investment decisions. Ex. 3 at 1247-48. He also conceded that he took "draws" out of the funds as management fees. Ex. 3 at 1224-25. Now, however, Hansen denies that he was an investment adviser or that he received management fees. Answer at 1; Mem. of L. to Opposition to Renewed Summary Disposition at 3. Indeed, he says he was a victim.[6] Answer at 1; Mem. of L. to Opposition to Renewed Summary Disposition at 2-3.

Based on Hansen's refusal to accept responsibility and the fact of his long-running fraud, I infer that if he 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 Hansen's "occupation as an investment adviser presents opportunities for future illegal conduct in the securities industry." *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *43 (Dec. 13, 2012).

Hansen says that because he will be imprisoned until at least 2021, he is unlikely to engage in similar conduct in the future. Mem. of L. to Opposition to Summary Disposition at 3. There are three flaws with this argument. First, the simple fact that Hansen will be imprisoned for a term of years does not demonstrate that he will not engage in similar conduct when he is released. Second, a "criminal sentence [is not] mitigative of the appropriate sanction to be imposed in the public interest in [an] administrative proceeding." *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *27 (Jan. 14, 2011). Third, even if

[6] Hansen says that he and his family were also victims who "lost everything." Mem. of L. to Opposition to Renewed Summary Disposition at 2. Even assuming this is so, the fact remains that he was convicted of conspiracy, four counts of wire fraud, and twenty-one counts of mail fraud, Ex. 2 at 1473, 1497-98, and that the district court held that *his* fraudulent misconduct caused losses to his victims in excess of $17 million, *id*. at 1502.

Hansen's imprisonment lessens the likelihood that he will reoffend, this fact is not "dispositive" of whether to impose a permanent bar. *Conrad P. Seghers*, 2007 SEC LEXIS 2238, at *13.

As a final matter, I find that a full collateral bar will serve as a general and specific deterrent. It will deter Hansen 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, direct and collateral bar against Hansen.

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 Renewed 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 1940, Randal Kent Hansen 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, 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, 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
Administrative Law Judge