INITIAL DECISION RELEASE NO. 799
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16335

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

In the Matter of DUANE HAMBLIN SLADE	INITIAL DECISION May 26, 2015

APPEARANCES: Melissia A. Buckhalter-Honore and Spencer E. Bendell for the Division of Enforcement, Securities and Exchange Commission

Duane Hamblin Slade, *pro se*

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition (Motion) against Respondent Duane Hamblin Slade (Slade), and permanently bars Slade from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, full associational bar).

Procedural Background

On January 13, 2015, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Slade, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on June 5, 2013, Slade pleaded guilty to conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1349, in *United States v. Slade*, No. 09-cr-1492 (D. Ariz.) (*Slade I*), and that Slade was sentenced to a prison term of one hundred eighty months, followed by three years of supervised release.

Slade was served with the OIP on January 21, 2015, in accordance with Commission Rule of Practice (Rule) 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i). Slade was given until February 20, 2015, to file an Answer. *Duane Hamblin Slade*, Admin. Proc. Rulings Release No. 2307, 2015 SEC LEXIS 507 (Feb. 11, 2015). On February 27, 2015, this Office received a letter dated February 15, 2015, from Slade in which he acknowledged his guilty plea in *Slade I*, but claimed that he pleaded guilty to the criminal charges only because he was being threatened with

a longer sentence if he did not. I construe Slade's letter to be his Answer. *See* 17 C.F.R. § 201.220.

At a prehearing conference on February 11, 2015, in which Slade participated, the Division was granted leave to file a motion for summary disposition, which it did on April 20, 2015. See *Duane Hamblin Slade*, 2015 SEC LEXIS 507. Slade did not file an opposition, due by May 1, 2015, and the Division filed a reply, noting that Respondent had failed to oppose the Motion. *Id.*

With its Motion, the Division submitted the Declaration of Melissia A. Buckhalter-Honore in support of the Motion, attaching: the letter the Division sent to Slade offering its investigative files for inspection and copying (Ex. 1); Slade's February 15, 2015, letter, which is construed as his Answer (Ex. 2); Slade's U4 Employment History report maintained in the Central Registration Depository (Ex. 3); Mathon Management Company, LLC's (Mathon), Investment Advisers Registration Depository report (Ex. 4); Mathon's Form ADV, filed February 6, 2004 (Ex. 5); Mathon's Form ADV, filed January 28, 2005 (Ex. 6); the Order Appointing Receiver in *Ariz. Corp. Comm. v. Mathon Mgmt. Co.*, No. CV 2005-5484 (Ariz. Apr. 5, 2005); the indictment in *Slade I* (Ex. 8); Slade's plea agreement in *Slade I* (Ex. 9); the indictment in *United States v. Slade*, No. 13-cr-460 (D. Ariz.) (*Slade II*) (Ex. 10); Slade's plea agreement in *Slade II* (Ex. 11); the judgment in *Slade I* (Ex. 12); the amended restitution judgment in *Slade* (Ex. 13); the judgment in *Slade II* (Ex. 14); the amended judgment in *Slade II* (Ex. 15); and the transcript of the sentencing hearing in *Slade I* (Ex. 16).

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 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).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See Gary M. Kornman*, Securities Exchange Act of 1934 (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 & n.21 (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.[1] *See* 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

Findings of Fact and Conclusions of Law

Advisers Act Section 203(f) authorizes the Commission to impose a full associational bar against Slade, if: (1) at the time of the alleged misconduct, he was associated with or seeking to become associated with an investment adviser; (2) he has been convicted of an offense that arises out of the conduct of the business of an investment adviser within ten years of the OIP; and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f), (e)(2). From February 2002 to 2005, during the course of conduct in *Slade I*, Slade was a managing director of Mathon, an investment adviser, which was registered with the Commission beginning in March 2, 2004, satisfying the first element. *See* Exs. 3, 4, 5, 6. On September 30, 2013, Slade was convicted of one count of conspiracy to commit mail and wire fraud, pursuant to 18 U.S.C. § 1349, in *Slade I*. Exs. 12, 13. This conviction stemmed from Slade's running of a Ponzi scheme through Mathon and making multiple misrepresentations to investors in two funds that Slade co-founded and managed, acts that arose out of the conduct of the business of an investment adviser, satisfying the second element. Ex. 9 at 6-9; Ex. 16 at 38, 87-91; *see Abrahamson v. Flescher*, 568 F.2d 862, 871 (2d Cir. 1977) (investment advisory business includes advising and exercising control over funds), *overruled on other grounds by Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979). Accordingly, Slade will be barred if it is in the public interest.

Sanctions

The Division seeks a full associational bar against Slade. Motion at 13. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) 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). 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 has also considered 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.

[1] Pursuant to Rule 323, I take official notice of the proceedings, docket sheets, and records in *Slade I* and *Slade II*, as well as Exhibits 3, 4, 5, and 6. *See* 17 C.F.R. § 201.323.

See Schield Mgmt. Co., Exchange Act Release No. 53201, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003).

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," and that the 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." *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). After engaging in the analysis mandated by *Ross Mandell*, I have determined that it is appropriate and in the public interest to bar Slade from participation in the securities industry to the fullest extent possible.

A. Background of Slade's Misconduct

As part of his plea agreement in *Slade I*, Slade admitted that he and a co-founder started Mathon and Mathon Fund I (MFI) for the stated purpose of acting as the middle man in collecting funds from investors and then using that money to make loans to third-party borrowers. Ex. 9 at 6. MFI's investment contracts specified the investors would receive returns on their investments when underlying investments were paid. *Id.* at 7. Over time, a high percentage of the underlying loans defaulted. *Id.* Rather than informing investors of the defaults, and unbeknownst to new investors, MFI began using funds from new MFI investors to pay off previous MFI investors' loans. *Id.* In or around December 2003, Slade and two others founded a successor fund to MFI, the Mathon Fund (MF). *Id.* Slade and the MF co-founders used money raised for MF to pay off MFI investors, contrary to what they had represented to the MF investors. *Id.* In January 2004, Slade told one of the largest investors in MFI and MF that a repayment was delayed because it had merely "[taken] awhile to clear accounts." *Id.* at 9. In reality, the loans MFI and MF funded with the investor's money had defaulted, and MFI had not yet collected enough funds from new investments to repay this large investor. *Id.*

Slade made false statements to investors about himself and attributes of MFI and MF. Slade and a co-founder of MFI helped write and distribute marketing materials that misrepresented that Slade had "over ten years" of financial experience, and that he had previously developed "innovative financial instruments" and "high-yield investment funds." *Id.* at 8. Slade and others made false claims in MF private placement memoranda that investors' funds would be protected by a $5 million segregated reserve fund and a $20 million insurance policy. *Id.* MF, however, never created a segregated reserve fund and an insurance policy was never purchased. *Id.* In or around 2004, Slade and another individual falsely told MF investors that MF's auditors had given MF a "clean bill of health," when in fact the auditors had raised concerns to Slade that MF posed a risk of becoming a Ponzi scheme. *Id.* at 9.

In addition, Slade admitted to causing MF and MFI to engage in financial transactions with other entities controlled by Mathon insiders to conceal the source of money and make it appear the funds were liquid enough to pay returns to investors. *Id.* at 10. One series of transactions involved Slade's causing MFI to repeatedly loan money to an entity controlled by

Slade and another individual to cover up an unsuccessful loan, while not disclosing the true nature of the other entity and the transactions between MFI and the other entity. *Id.* at 10-11.

Mathon, MF, and MFI were eventually shut down by the Arizona Corporation Commission in April 2005. *Id.* at 8; Ex. 7. In the two-plus years that MFI and MF were in operation, Slade earned over $5 million in compensation, while investors lost tens of millions of dollars. Ex. 9 at 8; Ex. 7.

In *Slade II*, Slade pleaded guilty to one count of wire fraud, pursuant to 18 U.S.C. § 1343, for his role in procuring fraudulent loans using fictitious names and falsified documents in 2008. Ex. 11 at 1, 6-8.

B. An Industry-Wide Bar Is in the Public Interest

1. Slade's misconduct was egregious and recurrent

Slade's misconduct was recurrent. He admittedly engaged in the MF and MFI Ponzi scheme for at least two years, beginning in 2002 or 2003 and ending in 2005. Ex. 9 at 6-9. The conduct ceased only after Mathon and its related funds were placed into receivership following the Arizona Corporation Commission's intervention in 2005. Div. Ex. 9 at 8; *see* Ex. 7.

Slade's actions were also egregious. That he engaged in a Ponzi scheme and caused investors to lose millions of dollars alone make them egregious. The egregiousness of Slade's actions is further apparent from the *Slade I* court's imposition of nearly $33 million in restitution and a lengthy prison sentence. Ex. 13. The sentencing court in *Slade I* summed up the egregious and recurrent nature of Slade and his co-conspirators' activity as "not a garden variety fraud case," but rather as a "multiyear, multilayer *Ponzi* scheme case," and suggested that Slade had committed "an illegal act time and time and time again." Ex. 16 at 38, 86. It also noted that "[b]ut for this Plea Agreement [which capped Slade's sentence at fifteen years], Mr. Slade, I dare say my sentence would have probably been longer." *Id.* at 93.

2. Slade acted with a high degree of scienter

Slade's misconduct evinced scienter, which is an "intent to deceive, manipulate, or defraud." *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (internal quotation marks omitted). Slade admitted in his plea agreement in *Slade I* that he "had direct knowledge that new investor money was being used to pay earlier investors, that MFI's and MF's default rate were very high, and that misrepresentations were being made to investors about these (and other) topics" Ex. 9 at 7. Also, in pleading to an 18 U.S.C. § 1349 violation, Slade admitted that he knowingly and voluntarily joined a conspiracy. *Id.* at 6.

3. Lack of assurances against future violations and recognition of the wrongful nature of his conduct

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.'" *See 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). Slade's having previously engaged in securities-related misconduct raises an inference that he will again. Slade has made no assurances against future misconduct. Although, he pleaded guilty in *Slade I* and *Slade II*, which might ordinarily be credited as some recognition of misconduct, he states now that he pleaded guilty only because he "was being threatened with 30 years to life and if [he] took the plea bargain the maximum sentence was 15 years." Ex. 2.

In addition, Slade's misconduct did not end with the Mathon-related fraud. In *Slade II*, Slade intentionally solicited fraudulent loans for himself using fictitious persons and documents. Ex. 11 at 6-8; *see also* Exs. 14, 15. The conduct underlying Slade's plea in *Slade II* occurred in 2008—well after Slade's Mathon-related Ponzi scheme had been shut down. Ex. 11 at 6. That Slade engaged in fraudulent wrongdoing in two separate contexts shows that he is a particular risk of recidivism and fails to appreciate the wrongfulness of his actions.

4. Opportunities for future violations

The final *Steadman* factor is the "likelihood that the [respondent]'s occupation will present opportunities for future violations." *Steadman*, 603 F.2d at 1140; *see also Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *13; *Johnny Clifton*, Securities Act Release No. 9417, 2013 SEC LEXIS 2022, at *53 (July 12, 2013); *Alfred Clay Ludlum, III*, Investment Advisers Act of 1940 (Advisers Act) Release No. 3628, 2013 SEC LEXIS 2024, at *16-17 (July 11, 2013). Slade worked in the securities field for several years, as a registered representative, as an investment adviser representative, and as a founding and controlling member of an investment adviser and multiple investment funds. Exs. 3, 4, 5, 6. While Slade will be in prison for many years, absent a bar preventing from continuing to work in the securities industry, upon his release his past occupation and securities-industry experience would present opportunities for future wrongdoing.

5. Other considerations

Industry 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). A full associational bar will act as a strong deterrent against Slade's engaging in future misconduct and be a general deterrent against others in the industry from engaging in the sort of conduct that Slade did. In addition, I have considered Slade's current competence and the degree of risk he poses to public investors and the securities markets in each of the industry segments covered by a full associational bar. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *9 & n.54 (Mar. 7, 2014) (citing *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *7 n.34 (Dec. 13, 2012)). Slade's failure to demonstrate in this proceeding that he recognizes the wrongful nature of his misconduct, notwithstanding his guilty plea in the criminal case, indicates a risk of future misconduct, if given the opportunity to commit it. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *6 (Oct. 29, 2014). The egregiousness of Slade's misconduct also indicates a significant risk of future misconduct. A full associational bar, as opposed to a more

limited direct bar, "will prevent [Slade] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford and Co.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *20 (May 2, 2014). This is because

> [t]he proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors . . . . We have long held that a history of egregious fraudulent conduct demonstrates unfitness for future participation in the securities industry even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. The industry relies on the fairness and integrity of all persons associated with each of the professions covered by the [associational] bar to forgo opportunities to defraud and abuse other market participants.

John W. Lawton, 2012 WL 6208750, at *11.

On balance, the public interest factors clearly weigh in favor of a permanent and full associational bar against Slade.

Order

It is ORDERED that the Division of Enforcement's Motion for Summary Disposition against Respondent Duane Hamblin Slade is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Duane Hamblin Slade is permanently BARRED from associating with an investment adviser, broker, dealer, 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. *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 a 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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Cameron Elliot
Administrative Law Judge