INITIAL DECISION RELEASE NO. 805
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16336

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

In the Matter of GUY ANDREW WILLIAMS	INITIAL DECISION OF DEFAULT June 3, 2015

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

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision of Default grants the motion for sanctions filed by the Division of Enforcement against Guy Andrew Williams, and permanently bars Williams from associating with an investment adviser, broker, dealer, 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 issued an Order Instituting Administrative Proceedings (OIP) against Williams, pursuant to Section 203(f) of the Investment Advisers Act of 1940. The OIP alleges that in June 2013, a federal jury found Williams guilty of conspiracy to commit mail and wire fraud, as well as the substantive offenses of mail fraud, wire fraud, and transactional money laundering, in violation of 18 U.S.C. §§ 1349, 1341, 1343, and 1957(a); and in September 2013, the district court sentenced Williams to a 150-month prison term, followed by three years of supervised release. OIP at 1 (citing *United States v. Guy Andrew Williams*, No. 09-cr-1492-2 (D. Ariz.)).

I notified the parties that a telephonic prehearing conference would be held on February 11, 2015. *Guy Andrew Williams*, Admin. Proc. Rulings Release No. 2272, 2015 SEC LEXIS 374 (Feb. 2, 2015). Williams failed to appear at the prehearing conference; as the Division represented at the conference, Williams did not respond to the Division's attempts to reach him, and did not express any interest in participating in the proceeding. Prehr'g Conf. Tr. 3-4. Williams also failed to file an Answer, which was due by February 20, 2015. *Guy Andrew Williams*, Admin. Proc. Rulings Release No. 2305, 2015 SEC LEXIS 505 (Feb. 11, 2015).

I warned Williams that if he failed to file an Answer within the time provided, he would be deemed in default and the proceeding may be determined against him. *Id.*

On February 24, 2015, I ordered Williams to show cause by March 6, 2015, why this proceeding should not be determined against him, and warned him that if he failed to respond, he would be deemed in default and the proceeding would be determined against him. *Guy Andrew Williams*, Admin. Proc. Rulings Release No. 2345, 2015 SEC LEXIS 661. Williams did not respond to the order to show cause. Thereafter, the Division filed its motion for sanctions, with a declaration and eleven exhibits in support (Exs. 1-11). Pursuant to my directive, the Division also filed a supplemental brief, with seven exhibits in support (Suppl. Exs. 1-7). Williams did not respond to the Division's motion or supplemental submission.

Findings of Fact and Conclusions of Law

Williams is in default for failing to file an Answer, appear at the prehearing conference, or otherwise defend this proceeding. *See* 17 C.F.R. §§ 201.155(a), .220(f), .221(f). Thus, I deem the OIP's allegations to be true and determine this proceeding upon consideration of the record. *See* 17 C.F.R. § 201.155(a).

The Division seeks a full associational bar against Williams. Motion at 1, 7. Advisers Act Section 203(f) authorizes the Commission to impose a full associational bar against Williams, if: 1) he was convicted of any offense specified in Section 203(e)(2) within ten years of the commencement of this proceeding; 2) at the time of the alleged misconduct, he was associated with an investment adviser; and 3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). The first element is satisfied in multiple ways: in 2013, Williams was convicted of, among other crimes, mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343; his mail fraud, wire fraud, and transactional money laundering offenses arose out of the business of an investment adviser; and his offenses involved misappropriation of funds. *See* 15 U.S.C. § 80b-3(e)(2)(B)-(D); OIP at 1-2; Exs. 7-9; Tr. 165-68, 184-85, 314-15, 994-95.[1] The second element is satisfied because Williams' misconduct that formed the basis of the jury's verdict was committed from December 2004 to April 2005, when he was also associated with Mathon Management Company, LLC, an investment adviser. *See* Ex. 7; *see also* Ex. 1 at 5; Ex. 2 at 3-4; Ex. 3 at 24; Ex. 4 at 18-19; Tr. 168, 1121. Accordingly, a sanction will be imposed if it is in the public interest.

Sanctions

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 of 1934 Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet.*

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[1] Citations to the transcript of Williams' criminal trial are drawn from Suppl. Ex. 1.

denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission's 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 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. *See Schield Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003).

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 such analysis, I have determined that it is appropriate and in the public interest to bar Williams from participation in the securities industry to the fullest extent possible.

A. Background of Williams' Misconduct

In early 2002, Williams co-founded the investment adviser entity Mathon Management Company, LLC (Mathon), as well as Mathon Fund I (the old fund), which was owned by Mathon. Tr. 165-68, 1121. Mathon was indirectly owned by Williams and one of his codefendants, Duane Slade (Slade). Tr. 166-67. Its business model was to solicit money from investors and use that money to purportedly make short-term high-interest rate loans – hard money loans – to third-party borrowers. Tr. 168-74. In late 2003, Williams and his codefendants began the Mathon Fund (the new fund), which was also owned by Mathon and also engaged in high-interest hard money loans. Tr. 184-85; Suppl. Ex. 3 at LTSC_38036, 38047, 38050-51. Williams and Slade managed both the old fund and the new fund. Tr. 195.

The Mathon Fund operated from December 2003 to April 2005, when it was shut down by Arizona state regulators and placed into conservatorship. Tr. 184, 840; *see In re W.S.F.-World Sports Fans, LLC*, 367 B.R. 786, 790 n.4 (Bankr. D. N.M. 2007) (noting the action commenced by the Arizona Corporation Commission against the old fund, Mathon Fund, Williams, Slade, and related entities); 17 C.F.R. § 201.323 (official notice); *cf.* Ex. 5. It was a Ponzi scheme: from its inception through July 2004, Williams and his codefendants raised $29 million in new investor money but did not fund any loans; all they did was take new investor money to buy the investor positions in the old fund, which largely consisted of defaulted loans. Tr. 303-04, 1197. Further, during the Mathon Fund's entire period of operation, it accepted $55 million in new investor money, but made less than half a dozen new loans totaling approximately $5 million, and used the remaining $50 million to repay old investors and to make payments to affiliated companies. Tr. 314-15, 995, 1007-08.

New investor money was used to pay off old investors on a daily basis. Tr. 316-17. Using new investor money to pay off old investors was contrary to the disclosures contained in private placement memoranda, which required a multistep, transparent process for one investor to buy out another. Tr. 724-25, 779-80, 1605-09.

Williams was directly involved in the improper use of investor money. For example, on one occasion, Williams used an investor's money to immediately give a partial payment to an individual who gave a loan to Mathon. Tr. 840, 1261, 1774-76; Suppl. Ex. 4. On another occasion, Williams personally delivered a $990,000 check to an investor, which the investor apparently sought in connection with an earlier investment. Tr. 542-43. To pay the investor, Williams used, in part, a $500,000 deposit that the same investor made in connection with a recent subscription agreement. Tr. 543, 1947-51. Meanwhile, Williams told the investor that the money came from Williams' and Slade's personal funds. Tr. 543.

Williams also made false disclosures to investors. As represented in the PPM and as Williams personally represented to investors, the new fund would have a reserve fund of at least $5 million or five percent of the aggregate capital accounts, to provide liquidity in case of defaults. Tr. 188, 1187; Suppl. Ex. 3 at LTSC_38057-58; *see, e.g.*, Tr. 534-35, 1543-44, 1866-67. In reality, the reserve fund did not exist, and Williams knew this to be the case. Tr. 191-92, 747, 778, 1003-04. In early 2005, Mathon's newly hired in-house attorney informed Williams that the disclosures regarding the reserve fund were misleading, but Williams and his colleagues declined to adopt the attorney's suggestion to change them. Tr. 1594-99. Another primary selling point of Mathon Fund was the existence of a $20 million insurance policy, designed to protect against defaults of the underlying loans. Tr. 185, 1187; Suppl. Ex. 3 at LTSC_38058. However, as with the reserve fund, Williams and his codefendants failed to actually obtain insurance. Tr. 194, 1190-92, 2139.

Lastly, Williams engaged in blatant self-dealing. Williams and other Mathon insiders pooled $400,000 of their personal funds to purportedly fund an extension of a defaulted loan at a 50% monthly interest rate. Tr. 229-30, 232-36. Less than a month later, they used new investor money to cash out $800,000 from their purported investment in the defaulted loan – doubling their money. Tr. 240-42, 1209-13.

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

1. Williams' misconduct was egregious and recurrent

Williams was convicted of mail and wire fraud, and conspiracy to commit such offenses. The Commission considers conduct involving fraud and dishonesty to be particularly serious and subject to severe sanctions, even if the underlying conviction is not, per se, a securities law violation. *See, e.g.*, *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); *Gary M. Kornman*, 2009 SEC LEXIS 367, at *23 ("The securities industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants. Indeed, the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business." (internal quotation marks and footnote omitted)); *Ahmed Mohamed Soliman*, 52 S.E.C. 227, 231 (1995) (criminal conviction for tax law violations involving "fraud and deceit" is a "serious" offense which "shows a lack of honesty and judgement [sic] and indicates that [the respondent was] unsuited to function in the securities industry"); *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)).

As discussed in summarizing the background of Williams' misconduct, he operated a Ponzi scheme, was directly involved in the improper use of investor money, made false disclosures to investors, and engaged in self-dealing at the expense of investors. The Mathon Fund operated from December 2003 to April 2005, and new investor money was used to pay off old investors on a daily basis. As reflected by the jury verdict, Williams knowingly participated in a scheme or plan to defraud, or to obtain money or property by means of false or fraudulent pretenses, representation, or promises, and the statements made or facts omitted as part of the scheme were material. *See* Suppl. Ex. 6 at 16, 18-20; Ex. 7 at 2-16. His mail fraud offenses involved mailing a private placement memorandum and subscription agreement to an investor in February 2005, and mailing a statement of account balances to another investor in March 2005. Ex. 7 at 2-3. His wire fraud offenses involved thirteen wires, in amounts ranging from a low of $50,000 to a high of $1.5 million, from December 2004 to April 2005. *Id.* at 4-16. And his transactional money laundering offenses, committed during this same time period, consisted of using over $2.8 million in victim investor funds to pay other investors, for business operations, to pay salesmen, to pay insiders, and for other illicit uses. *Id.* at 17-38. As such, Williams' conduct was both egregious and recurrent.

The egregious and recurrent nature of Williams' misconduct is underscored by the fact that he was sentenced to a 150-month prison term and ordered to pay more than $32 million in restitution. OIP at 1; Exs. 8-9; *see Robert Bruce Lohmann*, 56 S.E.C. 573, 583 n.20 (2003) (matters not charged in the OIP may nevertheless be considered in assessing sanctions). In ruling on objections to the probation officer's proposed U.S. Sentencing Guidelines calculations, the district court determined that Williams' misconduct warranted multiple sentencing enhancements as a result of: 1) a total loss to investors of between $37.7 million and $47.7 million; 2) the large number of victims, exceeding fifty; 3) his causing Mathon to violate a prior administrative order issued by the state of Utah, reflecting "an aggravated criminal intent"; and 4) the use of sophisticated means in perpetrating his offenses. Suppl. Ex. 7. As to the last enhancement, the district court adopted the probation officer's finding that "Mathon had layers of deception to elicit funds from its investors, which most investors never received back," and further found that there were successive entities created to continue to hide the failed enterprise and "essentially steal money from investors." *Id.* at 4. The district court also adopted the government's summary that:

> [T]his case involved one of the largest most sophisticated fraud schemes in Arizona history. The defendants bilked hundreds of investors into investing over $160 million into their Ponzi scheme over a period of several years, utilized a multi-state network of sales representatives to keep the spigot of money flowing, preyed on the religious bonds they shared with many of their investors, enlisted lawyers and other professionals to draft seemingly legitimate offering materials, siphoned millions of dollars in compensation out of Mathon through . . . a complicated web of side deals involving companies that they secretly owned

> and/or controlled, and lulled investors into a false sense of security through fraudulent promotional materials and misleading account statements.

Id. (alteration in original).[2] Finally, at the sentencing hearing, the district court stated that Williams perpetrated a "significant fraud" and did so "repeatedly." Ex. 10 at 75. The court termed his conduct a "serious crime" that harmed investors over a long period of time and caused them significant pain. *Id.* at 76, 78, 80.

2. Scienter

In committing mail and wire fraud, Williams acted with a high level of scienter – intent to defraud. *See Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (scienter refers to "a mental state embracing intent to deceive, manipulate, or defraud" (citation omitted)); *United States v. Sullivan*, 522 F.3d 967, 974 (9th Cir. 2008) (elements of mail and wire fraud include "specific intent to defraud"); Ex. 7 (guilty verdict); Suppl. Ex. 6 at 16, 20 (jury instructed that it could find Williams guilty of mail and wire fraud only if he acted with intent to defraud).

His misconduct reflects that he knew what he was doing and acted in a methodical manner to further the scheme. The conclusion that Williams acted with scienter is further supported by the district court's findings at sentencing. The court emphasized that Williams committed his crimes intentionally and the scheme he perpetrated was "not something you do once and then forget about it, [he] had to work at it." Ex. 10 at 75-76. The court found that Williams knew his conduct was wrong and yet continued to do it. *Id.* at 77.

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

Although "[c]ourts have held 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). In this proceeding, Williams has not appeared and thus has offered nothing to rebut that inference. Nor has he appeared to assure against future violations or demonstrate that he understands the wrongful nature of his conduct.

At his criminal sentencing, Williams stated: "I'm sorry that everyone's here on my behalf," "I'm sorry that my decisions . . . at the time . . . had the ultimate results that they've had," and "I have no desire to minimize that at all." Ex. 10 at 65-66. On the other hand, Williams disclaimed that he acted intentionally and asserted that he "never believed that it [i.e.,

[2] To the extent Williams marketed the Mathon investments to members of the same religious congregation, this suggests affinity fraud. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *57 (Mar. 7, 2014) (describing affinity fraud). The Commission recognizes affinity fraud as an "exacerbating factor" in evaluating sanctions. *Id.* Indeed, involvement in affinity fraud, which by definition exploits the trust of investors, is "more than sufficient to demonstrate . . . unfitness to act as a fiduciary." *Id.* at *58.

the Mathon program] wasn't viable," but, recognizing that "there were problems in every step of the way," he "hoped to improve the business and the system and the processes." *Id.* at 65-66. To the extent Williams has shown contrition, it appears primarily directed at how things turned out, and he offered no sincere assurance against future violations.

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 Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *13; *Johnny Clifton*, Exchange Act Release No. 69982, 2013 SEC LEXIS 2022, at *53 (July 12, 2013); *Alfred Clay Ludlum*, Advisers Act Release No. 3628, 2013 SEC LEXIS 2024, at *16-17 (July 11, 2013). Williams is a securities professional, who has been associated with a number of securities and investment-related firms. Ex. 1 at 5-7. He has provided no assurance that he will never return to work in the securities industry. If he were to reenter the securities industry, his occupation would present opportunities for future violations.

Although Williams is presently serving a prison term, this does not demonstrate that he will not engage in similar conduct when he is released. The Commission "do[es] not view [a] criminal sentence as mitigative of the appropriate sanction to be imposed in the public interest . . . ." *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *27 (Jan. 14, 2011).

5. Other considerations

The degree of harm to investors and the marketplace – as measured by the number of victims and the proceeds involved in, and lost as a result of, the Ponzi scheme – was massive. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *28 n.44 (Oct. 29, 2014). Also, industry 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).

In addition, I have considered Williams' 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*, 2014 SEC LEXIS 841, at *34 (citing *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *28 n.34 (Dec. 13, 2012)). The egregiousness of Williams' misconduct indicates a significant risk of future misconduct, given his involvement in perpetrating a Ponzi scheme and that he created a web of lies in furtherance of such scheme.

In these circumstances, a full associational bar, as opposed to a more limited direct bar, "will prevent [Williams] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (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 SEC LEXIS 3855, at *42-43 (internal footnote omitted).

In conclusion, the *Steadman* factors and other considerations weigh in favor of a permanent and full associational bar against Williams.

Order

It is ORDERED that the Division of Enforcement's Motion for Sanctions against Respondent Guy Andrew Williams is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Guy Andrew Williams 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 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 of Practice 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.

Williams may move to set aside the default in this case. Rule of Practice 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.*

Cameron Elliot
Administrative Law Judge