INITIAL DECISION RELEASE NO. 859
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16337

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

In the Matter of	:	
	:	INITIAL DECISION
BRENT F. WILLIAMS	:	August 17, 2015

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

Brent F. Williams, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Brent F. Williams (Williams) from the securities industry. He was previously convicted of mail and wire fraud, conspiracy to commit mail and wire fraud, and money laundering.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act), with an Order Instituting Proceedings (OIP) on January 13, 2015. The proceeding is a follow-on proceeding based on *United States v. Slade*, No. 2:09-cr-01492 (D. Ariz. June 28, 2013), *appeal docketed sub. nom. United States v. Williams*, No. 13-10529 (9th Cir. Oct. 11, 2013) (*United States v. Williams*) in which Williams was convicted of mail fraud, wire fraud, conspiracy to commit mail and wire fraud, and money laundering, in violation of 18 U.S.C. §§ 1341, 1343, 1349, and 1957(a). The Division of Enforcement (Division) filed a motion for summary disposition on April 28, 2015, pursuant to 17 C.F.R. § 201.250(a), in accordance with leave granted. *Brent F. Williams*, Admin. Proc. Release No. 2480, 2015 SEC LEXIS 1183 (A.L.J. Apr. 1, 2015). To date, Williams has not filed an opposition, due on July 14, 2015. *See Brent F. Williams*, Admin. Proc. Release No. 2533, 2015 SEC LEXIS 1354 (A.L.J. Apr. 13, 2015).[1]

[1] The Division timely filed a "reply" pleading on July 24, 2015. *See id.*

This Initial Decision is based on the pleadings and Williams's Answer to the OIP. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which he was convicted were decided against him in the criminal case on which this proceeding is based. Any other facts in his filing have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Williams was convicted of mail and wire fraud, conspiracy to commit mail and wire fraud, and money laundering in *United States v. Williams*. The Division urges that he be barred from the securities industry. Williams opposes this, denying that he engaged in wrongdoing and noting that the appeal of his conviction is pending before the U.S. Court of Appeals for the Ninth Circuit.

C. Procedural Issues

1. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of the docket report and the court's orders in *United States v. Williams*.

2. Collateral Estoppel

It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. *See Ira William Scott*, Advisers Act Release No. 1752, 1998 SEC LEXIS 1957, at *8-9 (Sept. 15, 1998); *William F. Lincoln*, Securities Exchange Act of 1934 (Exchange Act) Release No. 39629, 1998 SEC LEXIS 193, at *7-8 (Feb. 12, 1998).[2] Nor does the pendency of an appeal does preclude the Commission from action based on a conviction. *See Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992). If Williams is successful in

[2] Nor does the Commission permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by consent, by summary judgment, or after a trial. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *10-11 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *1-2 & n.1, *7 (Jan. 21, 1998) (injunction entered by summary judgment); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997); *see also Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003).

overturning his conviction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).[3]

II. FINDINGS OF FACT

Williams was convicted of mail fraud, wire fraud, conspiracy to commit mail and wire fraud, and money laundering, in violation of 18 U.S.C. §§ 1341, 1343, 1349, and 1957(a); he was sentenced to ninety months of incarceration and a three-year term of post-release supervision and ordered to pay $15,658,454.05 in restitution. *United States v. Williams*, ECF Nos. 1454, 1547, 1553.

Williams was associated with Mathon Management Company, LLC (Mathon) during 2004 and 2005. Answer; *United States v. Williams*, ECF No. 1336. Mathon was an investment adviser registered with the Commission from March 2004 to February 2011, according to the Commission's public official records, of which official notice is taken pursuant to 17 C.F.R. § 201.323. In the conduct underlying his conviction, during at least 2004 and 2005, Williams and others operating through Mathon-related entities, falsely promised investors that Mathon could earn high-yield rates of return for investors by making short-term, high-interest hard money loans to borrowers, and using repayment of principal and interest on those loans to pay investor returns, when Williams knew that the loans were in default or non-performing. *United States v. Williams*, ECF No. 3 at 5-8, ECF No. 1336. Williams and others concealed from the investors that the loans were in default, non-performing and/or otherwise incapable of generating high rates of returns on the purported "investments" as represented. *Id*. Williams and others also repaid earlier investors with funds from later investors and unlawfully enriched themselves through various means. *Id*. Williams grudgingly took responsibility for his conduct when he spoke at his sentencing hearing. *United States v. Williams*, ECF No. 1530 at 53-61.

III. CONCLUSIONS OF LAW

Williams has been convicted within ten years of the commencement of this proceeding of a felony that "arises out of the conduct of the business of a[n] . . . investment adviser" and

[3] *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 (Securities Act) Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded district court's judgment that was basis for OIP); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for OIP); *Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending before Commission, reversed certain convictions and vacated and remanded other convictions, all of which were basis for OIP); *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012) (vacating bar issued in follow-on administrative proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).

"involves the violation of section . . . 1341 [and] 1343 . . . of title 18, United States Code" within the meaning of Sections 203(e)(2)(B), (D) and 203(f) of the Advisers Act.

IV. SANCTION

As the Division requests, Williams will be barred from association with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent.[4]

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 80b-3(f). The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

As described in detail in the Findings of Fact, Williams's conduct was egregious and recurrent, and involved a high degree of scienter, as shown by his conviction for multiple counts of fraud. His previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could re-enter the securities industry. The violations are recent. There is an absence of recognition by Williams of the wrongful nature of his conduct. There is a reasonable foreseeable risk that, if he were allowed to resume his former business activities, he would engage in similar criminal conduct. The degree of direct financial harm to investors is quantified in the $15,658,454.05 in restitution he was ordered to pay, and, as the Commission has often emphasized, the public interest determination extends beyond

[4] In its reply pleading, the Division withdrew its initial request that Williams also be barred from association with a municipal advisor or nationally recognized statistical rating organization in light of *Koch v. SEC*, __ F.3d __, 2015 WL 426988 (D.C. Cir. 2015).

consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). A conviction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), BRENT F. WILLIAMS IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 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 of the Commission's Rules of Practice, 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 a 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 occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge