INITIAL DECISION RELEASE NO. 1006
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16893

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

In the Matter of JAMES A. EVANS, JR.	INITIAL DECISION OF DEFAULT April 29, 2016

APPEARANCE: Robert F. Schroeder for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

Respondent James A. Evans, Jr., was enjoined in federal district court from violating the antifraud and registration provisions of the federal securities laws. At the time of his misconduct, Evans was acting as, and was associated with, an investment adviser. Because it is in the public interest to do so, I permanently bar him from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (associational bar).

PROCEDURAL BACKGROUND

On October 13, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Evans pursuant to Section 203(f) of the Investment Advisers Act of 1940. The OIP alleges that on September 30, 2015, a final judgment was entered in *SEC v. Evans*, No. 15-cv-01118 (N.D. Ga.), permanently enjoining Evans from future violations of Sections 5 and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. OIP at 2.

Evans was served with the OIP by October 17, 2015, and when he failed to timely file an answer, I ordered him to show cause by December 23, 2015, why this proceeding should not be determined against him due to his failure to file an answer or otherwise defend the proceeding. *James A. Evans, Jr.*, Admin. Proc. Rulings Release No. 3395, 2015 SEC LEXIS 5073 (ALJ Dec. 14, 2015). When Evans failed to respond to the show cause order, I found him in default and ordered the Division to file a motion for sanctions. *James A. Evans, Jr.*, Admin. Proc. Rulings Release No. 3434, 2015 SEC LEXIS 5301 (ALJ Dec. 28, 2015).

On February 12, 2016, the Division filed such a motion, with eleven exhibits in support (Exs. A-K). The Division requested that Evans "be permanently barred from participating in the securities industry in any manner whatsoever." Motion at 20. Because the Division's motion did not provide sufficient evidence to evaluate whether a permanent associational bar was in the public interest, I denied the motion without prejudice and scheduled a prehearing conference for March 22, 2016. *James A. Evans, Jr.*, Admin. Proc. Rulings Release No. 3717, 2016 SEC LEXIS 1010, at *9 (ALJ Mar. 16, 2016).

At the prehearing conference, I granted the Division's request to submit additional evidence in support of its motion, in lieu of holding a hearing. *James A. Evans, Jr.*, Admin. Proc. Rulings Release No. 3728, 2016 SEC LEXIS 1062 (ALJ Mar. 22, 2016). On April 11, 2016, the Division filed a supplemental motion, attaching the declaration of Matthew McNamara (Decl.) and twenty-three exhibits (Exs. 1-23). Evans did not file an opposition to either the Division's motion or its supplemental motion.

FACTUAL BACKGROUND

The findings and conclusions in this initial decision are based on facts officially noticed pursuant to Rule of Practice 323, and on the uncontested declaration of Matthew McNamara, which was made under penalty of perjury pursuant to 28 U.S.C. § 1746 and is therefore the equivalent of an affidavit. *See Allen v. Potter*, 152 F. App'x 379, 382 (5th Cir. 2005); 17 C.F.R. § 201.323. I have also considered Exhibits 11-13; the declaration of Matthew McNamara establishes that these are screenshots of a website controlled by Evans. *See* Decl. ¶¶ 8-12. Because Evans did not file an answer to the OIP or otherwise participate in this proceeding, I have also accepted as true the factual allegations in the OIP. *See* 17 C.F.R. § 201.155(a). Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981).

From at least January 2012 to April 2014, Evans owned and operated a website at the domain name "Cashflowbot.com," using the business name "DollarMonster." OIP at 1; Decl. ¶ 1. Beginning in or around January 2012, DollarMonster claimed to be a "successful group of experienced Internet Investors" whose mission was to "provide our investors with a great opportunity for their funds." Decl. ¶ 2. During this period, the Cashflowbot.com website described DollarMonster's investment program as:

> Whenever you invest, your funds are added to the Investment Pool. The Investment Pool goes to pay off the person <u>next in line to be paid</u> – giving them a return of 200%, and you are then put at the end of the line. Each time more investments come in, more people get paid and the line moves forward.

Ex. 11 at 2 (emphasis in original). The website also specifically represented that DollarMonster paid out investment returns in excess of what investors had contributed, indicating that the program was somehow generating investment profits and not just paying investors through the receipt of new investor funds. Decl. ¶ 9; Ex. 11 at 2 (representing DollarMonster paid out returns of approximately $528,000 compared to approximately $471,000 of funds received).

Lastly, DollarMonster professed to invest its own profits into the program in order to keep the system going. Ex. 11 at 3.

To invest through DollarMonster, the website instructed investors to open accounts with SolidTrustPay.com (Solid Trust), a third-party payment processor that provides email-based fund transfer services. Decl. ¶ 3. Investors could transfer funds from their credit or debit cards to their Solid Trust accounts, to then purchase purported DollarMonster investments. Decl. ¶ 3. Investors could also withdraw their supposed investment returns through DollarMonster. *See* Ex. 12 at 7 ("Click the WITHDRAW MONEY button found in the Main Menu at the top of the page in your Account Overview. Fill out the form and your money will be sent to your SolidTrustPay account."). As of January 10, 2012, Evans established and controlled the Solid Trust account he used to receive funds from investors in the DollarMonster program. Decl. ¶ 4. Evans also authorized Solid Trust to transfer funds to his bank accounts. Decl. ¶¶ 5, 6.

In 2013, the Cashflowbot.com website was revised to portray DollarMonster as an investment adviser. Decl. ¶ 11. In November 2013, the website represented that DollarMonster was an "asset manager" with "120+ Investment Teams, 7,000+ Portfolios Managed, [and] $38,000,000.00+ in Assets Under Management" and a "responsible investor with $225 billion in mandates." Decl. ¶ 11. The website also said, "We manage the investments so that our users don't have to." *Id*. Additionally, the website was revised to suggest that funds invested through DollarMonster would be used to invest in securities. Decl. ¶ 12; Ex. 12 at 4 ("DollarMonster is essentially a Hedge Fund. All of our investors invest their money with us. We take those funds and place them into a Common Fund. We then use that Common Fund to purchase Stocks for both short term and long term positions."). In February 2014, the website described DollarMonster as a "private Holding Company" that invested in securities and commodities, including gold, silver, real estate, stocks, and bonds, and "share[d] the profits and income with [its] investors/shareholders through dividend payments." Decl. ¶ 12; Ex. 13 at 1. After the Division began its investigation and provided a Wells notice to Evans, he took the Cashflowbot.com website offline. Decl. ¶ 19. In April 2015, Evans purchased another domain, "investorexchange.com," where he sought "serious investors" for a new business venture. *Id.* ¶¶ 19, 22.

Division staff performed an analysis of the funds raised by DollarMonster and the use of those funds. Decl. ¶ 15. The analysis determined that between January 2012 and March 2014, there were approximately 3,444 investors in Evans' DollarMonster program, who invested a total of almost $1.15 million. Decl. ¶ 16. The analysis of the funds indicated that no funds received from investors were used to invest in stocks, foreign exchange, commodities, or other investments, because the total amount received ($1.146 million) equaled the amount that was credited back to investors ($1.06 million), plus $30,376.29 in fees collected by Evans and $52,199.75 in transaction fees deducted by Solid Trust. Decl. ¶¶ 16, 18. Evans' bank accounts reflect deposits of funds remitted by Solid Trust. Decl. ¶ 17.

On September 30, 2015, the district court for the Northern District of Georgia entered a default judgment in *SEC v. Evans*, enjoining Evans from violating Sections 5 and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Ex. J. The district court also ordered

Evans to pay $1,263,250.09 in disgorgement and prejudgment interest, and a civil penalty of $60,000. *Id*. at 17.

DISCUSSION

Under Advisers Act Section 203(f), an associational bar is authorized in this proceeding if: (1) Evans was associated with an investment advisor, whether registered or unregistered, at the time of the misconduct; (2) he was enjoined from engaging in any conduct or practice in connection with acting as an investment adviser or in connection with the purchase or sale of any security; (3) and the sanction is in the public interest. 15 U.S.C. § 80b-3(e)(4), (f); *see Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding").

A. Evans was an investment adviser

Though unregistered, Evans was acting as an investment adviser and, as a representative of DollarMonster, was associated with an investment adviser at the time of his misconduct. OIP at 2; *see Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (affirming Commission's authority to bar persons from association with investment advisers, whether registered or unregistered). An investment adviser is defined as "any person who, for compensation, . . . advis[es] others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11). Evans and DollarMonster both fit this definition. DollarMonster represented on its website that it was a financial adviser with more than 120 management teams and $38 million in assets under management. OIP at 2. Additionally, the Cashflowbot.com website claimed that DollarMonster managed a hedge fund that purchased stocks on behalf of investors in the fund, Evans purported to provide advice related to securities through DollarMonster, and Evans paid himself with portions of investor funds as compensation. *Id.*; *Alexander V. Stein*, 52 S.E.C. 296, 299-300 & n.13 (1995) (diversion of investor funds for personal use qualifies as "compensation").

B. Evans was enjoined for violations of antifraud and other securities provisions

The second prerequisite is met because, in connection with acting as an unregistered investment adviser and an associated person of an unregistered investment adviser, Evans was enjoined from violating Sections 5 and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. He was therefore enjoined from "any conduct or practice in connection with . . . activity" as an investment adviser, or "in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4), (f). Therefore, I will impose a sanction if it is in the public interest.

C. The public interest warrants a permanent associational bar

The Division seeks a permanent associational bar against Evans. Supp. Motion at 7. 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. 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 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). 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.

Egregious and recurrence

From no later than late 2013 through 2014, Evans represented on Cashflowbot.com that DollarMonster was an asset manager, operated as a hedge fund, and was a private holding company that was investing client funds in various assets, including gold, real estate, stocks, and bonds. Exs. 12, 13. In fact, Evans was not investing funds in anything; he was simply taking investor money and paying it out to other investors while collecting fees and depositing them into his personal bank account. The Division's analysis of the investors in the DollarMonster program indicates that no funds were invested – the money paid by investors totaled the money credited back to them plus fees paid to Evans and Solid Trust. Decl. ¶¶ 16, 18; Ex. 15.

Evans also claimed that DollarMonster was "the world's largest investor," with "millions of clients of all sizes," "$225 billion in mandates," and $38 million in assets under management. Ex. 12 at 2. In reality, its assets were a little over $1 million and it only had 3,444 investors. Decl. ¶ 16; Ex. 15. The egregious nature of Evans' misconduct is underscored by the district court's judgment ordering $1 million in disgorgement and prejudgment interest plus a $60,000 civil penalty. Ex. J at 11-17; *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (for a *Steadman* analysis, an antifraud injunction is considered especially serious and subject to the severest of sanctions), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Moreover, 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).

Evans' conduct was also recurrent and not isolated. His misconduct occurred over at least a two-year period and involved over 3,000 investors. OIP at 1; Decl. ¶ 16.

Scienter

Evans acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980). Despite Evans' assertions to investors

that DollarMonster was an asset manager, a hedge fund, and a holding company, he knew, as its owner and operator, that it was not making any actual investments on behalf of investors. Moreover, he grossly misrepresented the number of clients and the size of DollarMonster's assets under management. In addition, Evans was enjoined for violations of Section 10(b) and Rule 10b-5 of the Exchange Act and Section 17(a)(1) of the Securities Act, all of which require proof of scienter. Ex. J; *Aaron*, 446 U.S. at 691, 697.

Assurances against future violations, recognition of wrongful conduct, and likelihood of future violations

Because Evans has defaulted in this matter and the underlying civil proceeding, he has not offered assurances against future violations or recognized 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.'" *Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *23 n.50 (alteration in internal quotation omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). Evans has not appeared in this proceeding and thus has offered nothing to rebut that inference.

Furthermore, allowing Evans to remain in the securities industry will present opportunities for future violations. Throughout the relevant time period, Evans changed his pitch for the DollarMonster program to continue to induce investments. *See, e.g.*, Exs. 6, 11-13. In addition, Evans reacted to receipt of the notice of the Division's investigation by promptly starting another website soliciting investors. Ex. 22. Such conduct demonstrates that, absent a bar, he would be able and willing to participate in the securities industry, which presents a high risk of future violative conduct.

Other considerations

In addition to each *Steadman* factor, all weighing in favor of a permanent associational bar, Evans' violations were fairly recent, occurring through 2014, and his misconduct caused harm to at least a portion of his thousands of investors and to the marketplace. Additionally, a permanent associational bar "will prevent [Evans] 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), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

The public interest factors therefore all weigh in favor of a permanent associational bar against Evans. The securities 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*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *43 (Dec. 13, 2012). Evans' misconduct demonstrates that he is incapable of such fairness and integrity, he presents a significant risk to the securities market, and he is not currently competent to participate in it in any capacity.

ORDER

It is ORDERED that the Division of Enforcement's motion for sanctions against Respondent James A. Evans, Jr., is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, James A. Evans, Jr., 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. Under 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(h). 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.

Respondent may move to set aside the default. 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