INITIAL DECISION RELEASE NO. 1008
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16937

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

In the Matter of JAMES MICHAEL MURRAY	INITIAL DECISION May 10, 2016

APPEARANCES: Jason M. Habermeyer for the Division of Enforcement, Securities and Exchange Commission

James Michael Murray, pro se

BEFORE: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for summary disposition. Respondent James Michael Murray is permanently barred from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Procedural Background

The Commission initiated this proceeding in November 2015 by issuing an order instituting proceedings (OIP) under Section 203(f) of the Investment Advisers Act of 1940. OIP at 1; *see* 15 U.S.C. § 80b-3(f). This proceeding is a follow-on proceeding based on *United States v. Murray*, 12-cr-278 (N.D. Cal.).

The Division alleges the following in the OIP. From 2008 through 2012, Murray "was the sole member of and investment adviser to Market Neutral Trading, LLC ('MNT'), a pooled investment vehicle that purported to invest in securities." OIP at 1. Murray was responsible for all trading decisions for MNT and was compensated for his "services." *Id.* In 2012, the Commission filed a civil action against Murray in the Northern District of California, where he was also indicted on charges that he defrauded MNT investors and an investment bank. *Id.* at 2. The indictment alleged that Murray obtained nearly $2.5 million through his fraudulent actions. *Id.* In October 2015, a jury convicted Murray of sixteen counts of wire fraud, four counts of money laundering, two counts of aggravated identity theft, and one count of contempt of court. *Id.*

I held a telephonic prehearing conference on December 3, 2015, which was attended by counsel for the Division and Murray, who was unrepresented. *See James Michael Murray*, Admin. Proc. Rulings Release No. 3371, 2015 SEC LEXIS 4951, at *1 (ALJ Dec. 4, 2015). During the conference, I granted Murray thirty days to file an answer to the OIP and set a schedule for filing motions for summary disposition. *Id.* at *1-2.

Murray answered the OIP in early January 2016. In his answer, he admitted that the Commission had filed a civil action against him and that he had been indicted. Answer at 1. Murray denied the allegations in the OIP related to his involvement with MNT and denied the truth of the allegations in his indictment. *Id.* He admitted, however, that he had been convicted as alleged in the OIP. *Id.*

The Division subsequently filed a motion for summary disposition. The Division's motion is supported by twenty-six exhibits, designated as exhibits A through Z. These exhibits include transcripts from Murray's criminal trial (Exs. A – L), exhibits from his trial (Exs. N – V), the criminal complaint (Ex. W), the arrest warrant (Ex. X), a fourth superseding indictment (Ex. Y), and the verdict form from Murray's criminal case (Ex. Z). Murray filed an opposition with twenty-one exhibits in support, and the Division filed a reply.

I take official notice of the district court's docket, under Rule of Practice 323, 17 C.F.R. § 201.323. In particular, I have taken note of a March 27, 2012 order amending the conditions of Murray's bond (bond order), and the amended judgment the district court entered on April 15, 2016 (judgment).

Summary Disposition Standard

Motions for summary disposition are governed by Rule of Practice 250. *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). Summary disposition is generally appropriate in "follow-on" proceedings—administrative proceedings based on a conviction or an injunction—in circumstances where the only real issue involves determining the appropriate sanction. *Daniel Imperato*, Securities Exchange Act of 1934 Release No. 74596, 2015 WL 1389046, at *3 n.16 (Mar. 27, 2015), *recons. denied*, Exchange Act Release No. 74886, 2015 WL 2088435 (May 6, 2015). Summary disposition is appropriate here because the only issue is whether Murray's conduct warrants imposition of the bars the Division seeks.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule 323. I have "examin[ed] . . . the record" of Murray's criminal proceeding, "including the pleadings, the evidence submitted, [and] the instructions under which the jury arrived at its verdict." *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 569 (1951). I have applied preponderance of the evidence as the standard of proof. *See Rita J. McConville*, Advisers Act Release No. 2271, 2005 WL 1560276, at *14 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2007). I find the following facts.

1. MNT's rate of return plummets and Murray induces his wife's friend to invest her life savings.

From 2006 through at least 2011, Murray was the managing member and sole owner of MNT. Ex. M at 20-21, 23; Ex. N at 6, 45; Ex. O at 5. According to information he provided to investors, he made all trading decisions for MNT. Ex. C at 597-98. Murray was compensated with a two percent management fee and a twenty percent incentive fee. Ex. O at 4; Ex. P at 4-5, 9.

In March 2008, Murray set up a virtual office for an entity known as Pareto Capital with Regus Management Group. Ex. A at 76-78. Murray would later describe Pareto Capital as "a statistical arbitrage hedge fund" that was his previous employer and "seed investor." Ex. C at 566-67, 577. Using the name Tim Palm, he instructed Regus to forward Pareto's mail to his home address, but told Regus that if anyone called asking for Jim Murray, they should say that he no longer works there. *Id.* at 81, 83-85; Ex. B at 343-44 (discussing Murray's home addresses). To pay for this virtual office, Murray used a credit card issued to a person named David Lowe. Ex. A at 87-89. Also using the Tim Palm alias, Murray set up a virtual office for a firm Murray created called Anderson and Associates. *Id.* at 49, 89-91. To pay for this virtual office, Murray used a credit card issued to Pareto Capital, with Lowe's name on it. *Id.* at 91-93.

MNT began 2009 with just under $2.1 million under management. Ex. R at 1. Despite the fact that clients invested over $1.8 million with MNT during 2009, it finished the year with only $172,460. *Id.* This was due to withdrawals in excess of $2.4 million and trading losses during the final four months of 2009. *Id.*; *see* Ex. C at 437-39 (explaining that withdrawals were a factor in the calculation of "net performance"). In the last four months of 2009, MNT's monthly rates of return were -44.03%, -44.50%, -80.75%, and -19.23%, respectively. Ex. R. at 1. Overall, MNT's rate of return for all of 2009 was -94.89%. *Id.*; *see* Ex. C at 450.

In 2009, Murray induced his wife's friend, Corinna Seibt, to invest by telling her that he would waive his $250,000 minimum investment requirement and allow her to invest the money she had in her IRA. Ex. A at 181, 183-84, 192-93. He explained his strategy and promised her that it did not involve "high risk." Ex. A at 183, 188, 194; Ex. B at 238. Before Seibt invested, Murray told her that MNT's net return since inception in 2006 was 36.75%. Ex. A at 192. He also told her that MNT had a third-party auditor named Jones, Moore & Associates. *Id.* at 193. He convinced her to allow him to make trades in her IRA account for her. *Id.* at 185; Ex. B at 242. Seibt eventually invested $162,000, comprised of money from her IRA and her "life savings." Ex. B at 240-44.

Between 2009 and early 2012, Murray sent Seibt false statements showing a positive balance in her IRA account. *See* Ex. B at 250-66. Seibt later discovered that her actual balance was zero. *Id.* at 266. Murray also kept Seibt's investment off his books such that MNT's then-accountant was unaware of her investment. Ex. C at 428, 434. After Murray failed to respond to phone calls and e-mails, Seibt contacted Murray's wife, Lisa Brigulio, and Murray agreed to meet with Seibt. Ex. B at 270-74. During the meeting, he told Seibt that her money was "frozen" because he was under investigation. *Id.* at 277-78. Seibt lost all the money she invested with Murray. *Id.* at 278-79.

2. Murray induces other investors to invest in MNT.

Paul Eckel is the president of Emerging Manager, a firm involved in "capital raising for hedge fund managers and futures managers." Ex. C at 493-94. Based on a recommendation, he contacted Murray in July 2010. *Id.* at 497; *see* Ex. Q at 1. He asked Murray to send him certain information about MNT. Ex. C at 498-99; Ex. Q at 1. Murray responded with three documents: a summary purporting to show MNT's performance since inception, his resume, and a presentation showing returns and describing Murray's approach to investing. Ex. C at 499; *see* Ex. Q at 1. In a later e-mail, Murray also sent a monthly performance update for July 2010. Ex. C at 500; *see* Ex. Q at 5. In the July 2010 update, Murray represented that since inception in 2006, MNT's net annual return was 29.53% and that its net returns over the previous twenty-four months and twelve months were 41.47% and 28.43%, respectively. Ex. Q at 5. Murray told Eckel that MNT's return for December 2009 was 5.43%. Ex. C at 505. He also represented that Jones Moore was MNT's auditor and a company called HF Administrators was its administrator. *Id.* at 505-06.

Murray told Eckel that from 2002 to 2006, he was chief investment officer of Pareto Capital and that he held the same position from 2000 to 2002 with a firm called Murray Partners. Ex. C at 507. Murray's resume reflected that he graduated cum laude from the University of Arizona with a degree in economics and finance and that he received a master's degree in economics, also from Arizona. *Id.* at 508-09. Murray's degrees were important to Eckel because "usually all the people [Eckel] work[s] with have . . . Ivy League or advanced degrees." *Id.* at 509; *see also id*. at 536; Ex. D at 730, 734; Ex. E at 828, 851-52.

Eckel contacted Murray again in August and asked for MNT's daily returns and a disclosure document questionnaire. Ex. C at 513; Ex. O at 1. Murray sent Eckel the requested items. Ex. C at 513-14. In a document titled "manager questionnaire," which Murray prepared, Ex. O at 24, Murray denied ever having been disciplined by any regulatory authority, Ex. C at 515-16; Ex. O at 6. Murray indicated that MNT's administrator was HF Administrators, its auditor was Jones Moore, and its legal advisor was Hornstein Law Offices. Ex. O at 7. He asserted that these "service providers [were] well-established organizations with 10 or more reputable years of experience in their field[s]." *Id.* at 19. He denied the existence of any conflicts of interest and asserted that MNT's fund administration was handled by a third-party administrator which "calculates the monthly NAV independently from the General Partner." *Id.* at 7, 17, 20; *see* Ex. C at 521-24. Murray asserted that MNT's "performance" was "audited by a third party," Ex. O at 17, which he identified separately as Jones Moore, *id.* at 20. Murray described himself as president and CIO of MNT. *Id.* at 10. He also again claimed to have graduated cum laude from Arizona with a degree in economics and finance and to have received a master's degree in economics. *Id.* at 10.

In response to an inquiry from Fariba Ronnasi, one of Eckel's investors, Murray sent Eckel and Ronnasi MNT's placement memorandum. Ex. C at 528-29; *see* Ex. N at 29-68. Ronnasi also asked for audited financial statements, a point of contact with MNT's administrator, a professional reference, and contact information for one of MNT's limited partners. Ex. N at 2. Murray responded by e-mail that (1) he had requested that audit records be sent; (2) Gary Anderson was a point of contact with HF Administrators; (3) Charles Roame, with

Tiburon Strategic Advisors, was a professional reference; and (4) Tim Palm, president of Pareto Capital, was a limited partner. *Id.* at 1; *see* Ex. C at 530-31. When another potential investor asked for two references, Murray again listed Roame and Palm. Ex. C at 594-95.

In the placement memorandum, Murray repeated his assertions about his education and lack of disciplinary history. Ex. C at 535-37; Ex. N at 45.

In investigating MNT in connection with his decision whether to introduce investors to Murray and MNT, Eckel asked for financial statements from Jones Moore. Ex. C at 544-45. He received what purported to be Jones Moore's "independent auditors' report[s]" for 2008 and 2009. *Id.* at 545-50. The 2009 report stated that the net return for MNT's investors in 2009 was 12.5%. *Id.* at 551. Murray also told Eckel that MNT's monthly returns for the last four months of 2009 were -1.59%, -0.59%, 3.91%, and 5.43%. *Id.* at 556-57. Later, Murray copied Eckel on what appeared to be an e-mail to Jones Moore, asking it to send its 2006 and 2007 audits of MNT to Eckel. *Id.* at 574-75. Eckel later received these from what appeared to be Jones Moore, located in Delaware. *Id.* at 575, 581-83.

Because they had not heard of MNT's service providers, some potential investors asked for information about them. *See* Ex. C at 575-76. Murray responded by e-mail that the auditor worked with Pareto Capital, which he described as his "previous firm and seed investor," and that the law firm and auditor were referred to him. *Id.* at 576-78. Murray also gave Eckel returns for 2010 and asserted that MNT had over $12 million in assets under management at one point in December 2009. *Id.* at 586-90. Murray asserted that the decline in assets from $12.8 million to less than $6 million was really based on investors switching their investments to separately managed accounts in which Murray would still trade. *Id.* at 591-92. He thus claimed that in 2010, $5.7 million was invested in MNT and $4.3 million was placed in separately managed accounts in which he traded. *Id.* at 596-97.

In November 2010, Murray repeated his assertions about MNT's service providers to another investor. *See* Ex. C at 596, 599-600. He also told this investor in writing that MNT was last audited in 2009 and that MNT's "worst expensed month" was January 2007, when it was down 2.98%. *Id.* at 601-03.

As a result of the information he gathered, Eckel entered into a marketing agreement with MNT in September 2010. Ex. C at 558. In the agreement, Eckel agreed to "introduce [his] investor contacts for potential investment into the Market Neutral Trading fund." *Id.* at 560. Based on information Murray gave him, Eckel created marketing materials as part of the effort to raise capital. *Id.* at 560, 565-70. Eckel sent the materials for Murray's review and Murray did not recommend substantive changes. *Id.* at 571-73.

Eckel used these materials, as well as the due diligence questionnaires and monthly reports, to solicit investors. *See* Ex. D at 727, 731-34, 771-79; Ex. E at 826-27. During subsequent conversations between Murray and investors, Murray did not reveal any losses. Ex. D at 730. Other investors received the audit reports. *See id.* at 747-48; Ex. E at 830-32. Contrary to Murray's present assertion, Opp. at 3, 20, some investors received the audit reports

directly from MNT and thus from Murray, Ex. D at 748. Murray told investors that as of December 31, 2009, MNT had $15.8 million in assets. *Id*. at 751.

Between January 2011 and February 2012, investors invested over $2.3 million in MNT. Ex. G at 1275-76. MNT's investors included: a pooled investment fund that invested $250,000, Ex. D at 724-26, 758-59; an eighty-three year old retiree who invested $189,000 from his IRA, Ex. D at 767, 779-80; a seventy-eight year old retiree and his brother who together invested $575,000, Ex. E at 822, 834, 839-41; and an individual who invested $100,000 from his IRA, *id.* at 849.

3. Murray uses MNT to engage in a substantial fraud.

Evidence presented during Murray's trial demonstrated that Murray orchestrated a massive fraud and that almost everything he said about himself and MNT was false.

Contrary to what he had claimed, Ex. C at 516; Ex. O at 6, Murray had been disciplined by a regulatory authority. He was disciplined by the New York Stock Exchange in 2002 for trading in customers' accounts without authorization. *See* Ex. I at 1457-59; Ex. J at 1635-39. Although Murray received a bachelor of arts degree from Arizona, that degree was not in finance and he did not graduate cum laude. Ex. C at 490-91; Resp. Ex. 1. He also did not receive a master's degree. Ex. C at 491; Ex. J at 1656.

Contrary to what Murray claimed, Hornstein Law Offices was never MNT's legal advisor. Ex. E at 807, 810, 813-15. Instead, the firm represented Murray in a suit he filed against Bank of America.[1] *Id.* at 804-05.

The other two service providers did not even exist—Murray invented Jones Moore and HF Administrators. He "set up" virtual offices for both entities and reserved their domain names. *See* Ex. J at 1607. Jones Moore's December 2008 application with its virtual office company listed Murray's then wife, Lisa Brigulio, as the applicant. Ex. A at 52-53, 55; Ex. B at 342. The application also included a copy of her driver's license. Ex. A at 58. Brigulio's credit card was used for automatic billing. *Id.* at 56. Evidence presented showed that Murray stole Brigulio's identity and that she had nothing to do with Jones Moore and never worked for it. Ex. B at 356; *see* Ex. Y at 13. She explained that she did not sign Jones Moore's virtual office application. Ex. B at 358-61. Instead, Murray forged her signature. *Id.* at 358-61. He also forged her signature on an authorization to charge her credit card.[2] *Id.* at 362-63. Murray's use of Brigulio's identity formed the basis for one of his identity theft convictions. *See* Ex. K at 1785; Ex. Y at 13.

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[1] Murray testified that he listed Hornstein as MNT's counsel because the firm had represented him in the past and if MNT needed counsel, Hornstein was the firm he would call. Ex. J at 1593-94.

[2] The billing account was later changed to David Lowe. Ex. A at 56-57.

Jones Moore's mail was forwarded to the Regus virtual office Murray created for Pareto Capital. Ex. A at 63; *see* Ex. J at 1655. At Murray's instruction, Regus sent all mail to Murray's home address. Ex. A at 83-85; Ex. B at 343-44. During a search of Murray's residence, law enforcement agents discovered Jones Moore's checkbook in a briefcase Murray maintained. *See* Ex. S at 1-2, 8, 15, 17, 19.[3] Agents also found multiple debit and credit cards issued to various individuals supposedly associated with Anderson & Associates—the firm whose virtual office Murray created using the Tim Palm alias—together with Anderson's checkbook. Ex. E at 894, 897; Ex. S at 4, 6, 18. Agents discovered a color copy of Lowe's passport and a checkbook for HF Administration bearing Lowe's name. Ex. E at 897-98, 904; Ex. S at 9-12. Agents found credit card terminals for Jones Moore, Chase Paymentech, and two other entities. Ex. E at 906-09; Ex. S at 21-22, 24, 27, 31, 34, 38. Agents further discovered envelopes addressed to a Richard Jones with Jones Moore and to Pareto Capital forwarded from the Regus virtual office. Ex. E at 911; Ex. S at 46.

In light of the evidence that he created Jones Moore, Murray testified that he was actually Jones Moore's CFO. Ex. J at 1658. But this necessarily meant that he lied in the manager questionnaire when he asserted there were no conflicts of interest between MNT and its service providers. Ex. O at 7. This led Murray to testify that there was not a conflict because he did not intend to give the audits to investors. Ex. J at 1681-83. But this explanation only begs the question of why Murray would have an auditor at all. And it is belied by evidence that he gave audits to investors, *see* Ex. D at 731, 747-48, or told them that Jones Moore was MNT's outside auditor, Ex. A at 193-95. It is also belied by evidence that Murray knew Eckel was using the audits to solicit investments in MNT. Ex. C at 530.

Evidence showed that Murray also invented the audits allegedly prepared by Jones Moore. A forensic examination showed that Murray created the audits for 2006 through 2009 on his own computer in March 2010. Ex. J at 1714-29. Murray thus lied under oath when he testified that in 2009 Jones Moore prepared an audit for MNT for 2006, Ex. J at 1608-09, and that he provided Jones Moore with materials for audits for 2006 through 2008. *Id.* at 1609. He also lied to investors when he (1) said MNT's "service providers [were] well-established organizations with 10 or more reputable years of experience in their field[s]," Ex. O at 19; (2) denied the existence of any conflicts of interest with service providers, *id.* at 7; (3) asserted that MNT's fund administration was handled by a third party administrator which "calculates the monthly NAV independently from the General Partner;" *id.* at 17; and (4) asserted that MNT's "performance" was "audited by" Jones Moore, which he said was a third party," *id.* at 17, 20.

When asked to explain his use of Lowe's identity information, Murray testified that Lowe "electronically" sent him Lowe's passport in 2010 so that Murray could open a brokerage account in which Murray would trade. Ex. J at 1611, 1702-03. According to Murray, Lowe signed a $3 million subscription agreement in 2010. *Id.* at 1612-15. Murray asserted that Lowe failed to provide the $3 million, but asked Murray to open brokerage accounts for HF Administrators, Jones Moore, and Anderson & Associates. *Id.* at 1615-16.

[3] Citations to page numbers in this exhibit are to the numbers after the prefix "EXH 102-," excluding any leading zeroes.

Lowe, however, testified that he never gave his passport to any company or person in the United States for the purpose of opening any account and never allowed anyone in the United States to use it. Ex. T at 20-21. Lowe never authorized Murray to use his passport. *Id.* at 20. Lowe had never heard of Jones Moore and had never seen its virtual office agreement. *Id.* at 21, 23. He denied having a credit card for Jones Moore which was used for payments under the virtual office agreement. *Id.* at 22. Lowe also denied that the address, phone number, and signature found on the account were his. *Id.* at 22-23.

4. Murray uses Jones Moore's merchant account to obtain over $500,000.

Murray admitted that in 2010, he set up a merchant account for Jones Moore with Chase Paymentech. Ex. J at 1616. He asserted that he did so at Lowe's direction "so that they could start accepting credit card payments." *Id.* at 1616-17. Murray admitted that he used the Jones Moore merchant and credit accounts "for [his] own purposes" after realizing that Lowe's companies and investors were not going to invest with MNT. *Id.* at 1618.

Indeed, the evidence showed that in 2010, Murray used Lowe's identity to create an account for Jones Moore with Chase Paymentech. Ex. A at 115-25. This account allowed Murray, through Jones Moore, to process credit card transactions. *Id.* Between January 27 and March 30, 2011, Murray processed $650,000 in credit card sales through a point of sale terminal using Jones Moore's account. *Id.* at 133-36; *see id.* at 161-63; Ex. S at 31. The credit cards Murray used were issued to Lowe, Murray's Tim Palm alias, and Lisa Murray, purportedly as employees of either Pareto Capital or MNT. Ex. A at 142.

During a brief 100-minute window in late March 2011, Murray processed credit card refunds through the point of sale terminal every 45 to 90 seconds. Ex. A at 136-38. When he was finished he had processed $349,895 in refunds. *Id.* at 138. Murray transferred most of these funds to an Anderson and Associates trading account with Merrill Lynch that Murray controlled. *See* Ex. G at 1263-64, 1267-70. Although Chase Paymentech released those funds to the banks that issued the credit cards, when it attempted to obtain the same funds from Jones Moore, it learned there was no money in Jones Moore's account. Ex. A at 148. It was unable to recoup these funds. *Id.*

In April, Murray attempted to process another $257,000 in refunds, but Paymentech did not release payment. Ex. A at 139-40, 149. Over the next several months, however, Murray initiated "chargebacks," which are essentially the reversal of charges that might occur after a disputed sale. *Id.* at 149-58. The chargebacks netted Murray in excess of $200,000. *Id.* at 149-58.

Murray admitted that he issued the refunds. Ex. J at 1620-21. He testified that he issued the refunds because he was told that Lowe had wired him $608,000. Ex. J at 1620-21. He converted the credit lines to cash, purportedly with the intent to invest in MNT. *Id.* at 1620.

In January 2012, Murray transferred over $2.6 million from MNT's trading account to and through various other domestic and off-shore accounts. Ex. G at 1278-79.

5. Murray opens a brokerage account with Oppenheimer and executes a free riding short sale.

Murray opened a brokerage account for MNT with Oppenheimer in February 2012. *See* Ex. F at 967-71. In the account application, Murray represented that MNT had $5 million available to invest. *Id.* at 971, 1048; Ex. I at 1490. According to Murray, this representation was based on his "understanding of" the "wealth" of his alleged trading partner, Gianluca de Francisci. Ex. I at 1494. Murray testified that he met de Francisci in December 2011. Ex. J at 1656-57. Murray asserted that, after he discussed the fact that he was under investigation by the Commission, he and de Francisci reached a verbal agreement under which they would enter into a joint investing venture in which Murray would manage investments, they would split profits, and de Francisci would cover all losses. Ex. I at 1489-94; Ex. J at 1657. Murray did not explain why anyone would consent to such a one-sided agreement with someone the person had just met and who was under investigation. The fact that MNT never had the claimed $5 million shows this testimony was false.

Murray was arrested in March 2012 after being charged with wire fraud.[4] Ex. F. at 1039; *see* Exs. W, X. He was released on bond on the condition that he wire funds held overseas to an MNT account held at Interactive Brokers. *See* Bond Order at 1. The district court prohibited Murray from withdrawing the funds without court permission. *Id.* In May 2012, the district court issued a warrant seizing over $1.7 million held in MNT's accounts at Interactive Brokers. Ex. F at 1039.

Murray did not inform Oppenheimer of his indictment or arrest or the seizure of MNT's funds. Ex. F at 999-1000. In July 2012, Murray executed a $3.6 million short sale in MNT's brokerage account with Oppenheimer. *Id.* at 981-82, 986-87. The transaction resulted in a profit in excess of $400,000. *Id.* at 996; Ex. V. Because Murray was trading on margin, MNT needed to have at 50% of the total amount of the short sale—roughly $1.8 million—in its brokerage account within three days in order for the transaction to settle. Ex. F at 990-91; *see* 12 C.F.R. § 220.12(a). As it turned out, however, MNT did not actually have $1.8 million, let alone $5 million, and thus did not have the funds needed to settle the trade. Ex. F at 991-95, 1083-84. After Murray provided several excuses, which Oppenheimer credited, Oppenheimer resolved to give Murray the profits from the transaction and close MNT's accounts.[5] *Id.* at 992-98. Had Oppenheimer known that MNT's assets were the subject of the district court's seizure and that Murray had been indicted, it never would have cleared the short sale Murray executed. *Id.* at 988, 999-1000, 1076-80.

After MNT's accounts at Interactive Brokers were frozen, Murray's name was placed on the broker's "red flag list." *See* Ex. G at 1191-92. Murray thus devised a scheme to get around

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[4] Murray was later indicted. He was tried on charges in a fourth superseding indictment. *See* Exs. Y, Z.

[5] Murray engaged in "free riding," which "involves purchasing stocks without sufficient capital and using the proceeds of the sale of the same stock to cover the purchase price." *SEC v. Hansen*, 726 F. Supp. 74, 76 n.8 (S.D.N.Y. 1989).

being on the red flag list. On July 25, 2012, Murray used the identity of Giovanni de Francisci—Gianluca de Francisci's son—to create a brokerage account under the name Event Trading. *Id.* at 1192-98; Ex. I at 1494, 1548-50. Murray admitted that in order to create this account, he took his own bank statement and substituted Giovanni de Francisci's name for his own. Ex. I at 1551-52; Ex. J at 1663. He then impersonated Giovanni de Francisci in order to access the account. Ex. J at 1665-68. These actions formed the basis for one of Murray's wire fraud convictions and one of his identity theft convictions. *See* Ex. Y at 11, 13.

In August 2012, Oppenheimer followed Murray's instructions and wired $260,000 of the profits from the short sale to the Event Trading brokerage account. Ex. F at 999, 1046, 1084-86; Ex. G at 1116-18, 1280-82; Ex. V. Oppenheimer also wired $150,000 to Murray's then-counsel in his criminal case. Ex. F at 1085-86; Ex. G at 1282; Ex. V. Counsel transferred $100,000 to Murray's father, who transferred $50,000 to the Event Trading account and $15,000 to an account Murray held at Discover Bank. Ex. G at 1282-83; Ex. V. These transfers formed the basis for Murray's money laundering convictions and four of his wire fraud convictions. *See* Ex. K at 1780-81, 1783, 1812; Ex. Y at 10-12.

6. Murray is convicted.

Murray was indicted on twenty-three counts related to the foregoing events. *See* Ex. Y. In October 2015, a jury convicted Murray of all twenty-three counts alleged against him, finding him guilty of sixteen counts of wire fraud, in violation of 18 U.S.C. § 1343; four counts of money laundering, in violation of 18 U.S.C. § 1957; two counts of aggravated identity theft, in violation of 18 U.S.C. § 1028A; and one count of contempt of court, in violation of 18 U.S.C. § 401. Ex. Z.

In April 2016, the district court sentenced Murray to 180 months' imprisonment. Min. Entry (Apr. 6, 2016), ECF No. 348; Judgment at 2. The district court also determined that Murray caused losses in the amount of $3,480,479.90 and ordered him to pay restitution in that amount. Judgment at 5. This figure was comprised of losses to Chase Paymentech in the amount of $543,987.66, and losses to investors in the amount of $2,936,492.24. *Id.*

Conclusions of Law

Section 203(f) of the Advisers Act gives the Commission authority to impose a collateral bar[6] against Murray if, among other things, (1) he was associated or seeking to become associated with an investment adviser at the time of his misconduct; (2) he was convicted within the last ten years of violating 18 U.S.C. § 1343 (wire fraud); and (3) imposing a bar is in the public interest. 15 U.S.C. § 80b-3(e)(2)(D), (f).

The first factor is met in this case because Murray acted as 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). Murray argues that he was not an investment adviser because "as the sole member of [MNT] by definition [he] could not have been providing investment advice to others." Opp. at 5. Murray also states that he did not provide investment advice to individual investors nor receive any compensation. *Id.* at 5-10. Murray's arguments fail. Because he exercised sole control of MNT's activities and investments, Murray falls within the ambit of the definition of an investment adviser. *See Goldstein v. SEC*, 451 F.3d 873, 876 (D.C. Cir. 2006); *Abrahamson v. Fleschner*, 568 F.2d 862, 869-71 (2d Cir. 1977), *overruled in part on other grounds by Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *4 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). And, Murray's current assertion notwithstanding, he was compensated with a two percent management fee and a twenty percent incentive fee. Ex. O at 4; *see also* Ex. P at 4-5, 9.

By definition, any one of Murray's sixteen wire fraud convictions is sufficient to meet the second requirement.[7] *See* 15 U.S.C. § 80b-3(e)(2)(D), (f).

Determining whether imposition of a collateral bar would be in the public interest requires consideration of the 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*, 2014 WL 5493265, at *5. The public interest factors include:

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[6] A collateral bar is one that prevents an individual from participating in the securities industry in capacities beyond those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014).

[7] The jury's guilty verdict constitutes a conviction. *See* 15 U.S.C. § 80b-2(a)(6); *Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *8 (Mar. 7, 2014).

> 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.

David R. Wulf, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016). Other relevant factors include the degree of harm resulting from the violation[8] and the deterrent effect of administrative sanctions.[9] The public interest inquiry is "flexible" and "no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

Before imposing an industry-wide bar, an administrative law judge must determine, based on the evidence presented, "whether such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014). I must therefore "'review [Murray's] case on its own facts' to make findings regarding [his] fitness to participate in the industry in the barred capacities." *Id.* at *8 (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). A 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); *see John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *34-35 (Dec. 13, 2012), *called into question on other grounds by Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015).

"[B]ecause '[f]idelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud,' in most fraud cases the *Steadman* factors, such as egregiousness, scienter, and opportunity for future misconduct, will weigh in favor of a bar." *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 n.71 (Dec. 12, 2013) (internal citations omitted and second alteration in original) (quoting *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *7 (Feb. 4, 2008), *pet. denied*, 561 F.3d 548 (6th Cir. 2009)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

Considering the specific facts of this case and relevant Commission precedent, Murray's conduct easily warrants imposition of the bars the Division seeks. Murray lied to every investor he encountered. He started out by lying to Siebt about MNT's returns and its auditor. Murray then took the lying to another level by creating virtual offices for a fake administrator and fake auditor. He added to these falsehoods by fabricating audits, historical returns, and his educational background. Either acting on his own or through his unwitting marketer, Eckel, Murray used his web of deceit to attract innocent investors.

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[8] *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).

[9] *David R. Wulf*, 2016 WL 1085661, at *4.

The Commission has explained that "conduct that violates the antifraud provisions of the federal securities laws is 'subject to the severest of sanctions.'" *Daniel Imperato*, 2015 WL 1389046, at *5 (quoting *Chris G. Gunderson, Esq.*, Exchange Act Release No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009)). In the circumstances of this case and given his state of mind, Murray's lies to investors and invention of a fictitious auditor and administrator in order to induce investors qualify as "conduct that violates the antifraud provisions."

Murray did not stop there, however. He also lied by omission when he executed a free riding short sale without telling Oppenheimer that (1) he had been indicted for wire fraud; (2) MNT's assets had been seized; and (3) he did not have the money to settle the transaction. And once he convinced Oppenheimer to give him the profits, he laundered them.

By any measure, Murray's conduct was egregious. He executed a premediated, wide-ranging scheme to defraud investors. Investors thought they were investing with a successful, reputable fund manager whose firm had been audited. Instead, they invested in a charlatan who succeeded only in losing their investments.

By creating fake offices and e-mail addresses for his fake vendors, Murray prevented duly diligent investors from discovering his deception. He thus duped investors into believing MNT was legitimate and that he could be trusted with their money. The need to "protect investors and markets," *Ross Mandell*, 2014 SEC LEXIS 849, at *7, therefore weighs heavily against allowing Murray to remain in the securities industry.

Murray's violations were recurrent and were not isolated. He deceived multiple investors over a period of years.

Murray acted with scienter. In order to convict him of wire fraud, the jury necessarily had to find that he "acted with intent to defraud." Ex. K at 1778-79. Indeed, Murray invented everything he told investors. He knew his auditor and administrator were fictitious; he intentionally invented them using other people's identities. He knew he did not have a master's degree. He knew MNT had not beaten the market in 2009; it had lost over 90% of its value. Murray intentionally induced people to give him money based on lies. Given the premeditation that went into Murray's scheme, it is plain that he acted with a high degree of scienter. The fact that Murray worked so diligently to create his repeated lies to investors over a period of years, shows that he cannot be allowed to remain in the securities industry.

Murray has made no assurances against future violations or shown that he recognizes the wrongfulness of his actions. To the contrary, he does not think he has done anything wrong. Worse, his behavior after he was indicted shows that if given the chance, Murray will engage in future violations at the earliest opportunity. After he was indicted, Murray used Giovanni de Francisci's identity to open a new brokerage account in order to evade the district court's order seizing MNT's assets. He then executed a free riding transaction and committed money laundering. Later, he violated the terms of his bond by smuggling a computer tablet into his counsel's offices so that he could access the internet. Ex. J at 1675-77. While doing that, he investigated which countries have no extradition treaties with the United States. *See id.* at 1679. Murray also repeatedly lied during his testimony. And his opposition to the Division's motion

for summary disposition reads as if the jury did not find him guilty or was duped by the government.

Murray's occupation, if he is allowed to resume it after he serves his prison sentence, will present opportunities for future violations. The Commission has held that "the existence of a violation raises an inference that" the acts in question will recur. *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (internal quotation marks and alteration omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). Murray's occupation would plainly "present[] opportunities for future illegal conduct in the securities industry." *John W. Lawton*, 2012 SEC LEXIS 3855, at *43. In combination with Murray's failure to recognize the harm he caused and the wrongfulness of his actions, this factor shows that the Commission's interest in protecting the investing public weighs heavily in favor of a collateral bar.[10]

Finally, imposing a full collateral bar will serve as a general and specific deterrent.[11] It will deter Murray and will further the Commission's interest in deterring others from engaging in similar misconduct.

Murray has opposed the Division's motion, but his opposition amounts to an invitation to ignore the jury's verdict and the evidence that supports it. It is true that Murray provided testimony contrary to the testimony of other witnesses. But, by finding him guilty of all charges, the jury plainly rejected Murray's version of events. In light of the jury's verdict, Murray's contrary testimony is not sufficient to defeat summary disposition.

Invariably, when Murray argues that no evidence exists to support an assertion made by the Division, he simply ignores the supporting evidence. Likewise, when he asserts that evidence exists to support his version of events, the evidence on which he relies is his own discredited testimony. Murray's opposition shows that he cannot or will not accept responsibility for his actions and reinforces the determination that the public interest weighs in favor of barring him from the securities industry.

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[10] *See Eric S. Butler*, Exchange Act Release No. 65204, 2011 WL 3792730, at *4 & n.26 (Aug. 26, 2011) ("Butler's unwillingness to acknowledge the wrongfulness of the actions he took to mislead his customers raises serious concerns about the likelihood that he will engage in similar misconduct if presented with the opportunity"); *cf. Charles Trento*, Securities Act of 1933 Release No. 8391, 2004 SEC LEXIS 389, at *12 (Feb. 23, 2004) ("There can be little doubt that Trento's egregious misconduct over a more than three-year period carries with it the risk that it may be repeated after he completes his sentence.").

[11] While general deterrence is not determinative of whether the public interest weighs in favor of imposing an industry bar, it is a relevant consideration. *See Peter Siris*, 2013 WL 6528874, at *11 n.72; *see also PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007); *Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, *19 & n.107 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

Given the foregoing, I find that it is in the public interest to impose a full collateral bar against Murray.[12]

Order

Under Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's motion for summary disposition is GRANTED.

Under Section 203(f) of the Investment Advisers Act of 1940 James Michael Murray 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. 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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James E. Grimes
Administrative Law Judge

[12] Most of the misconduct for which Murray was convicted occurred after July 22, 2010, the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* Ex. Y; Pub. L. No. 111-203, §§ 4, 925(b), 124 Stat. 1376, 1390, 1850-51 (2010). As a result, imposing a full collateral bar is not impermissibly retroactive. *Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015) (holding that the Commission cannot apply Dodd-Frank to bar a respondent from associating with municipal advisors and rating organizations based on conduct predating Dodd-Frank, because such an application is impermissibly retroactive), *cert. denied*, U.S.L.W. 3543 (U.S. Mar. 28, 2016) (No. 15-781).