

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

In the Matter of :
: INITIAL DECISION
RAHFCO MANAGEMENT GROUP, LLC : August 16, 2016

APPEARANCES: Polly Atkinson, Esq., for the Division of Enforcement,
Securities and Exchange Commission

Randal Hansen, partner, for RAHFCO Management Group, LLC

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision dismisses the follow-on proceeding against RAHFCO Management Group, LLC, a defunct unregistered investment adviser. RAHFCO was previously enjoined by default against violations of the antifraud and registration provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on January 13, 2016, pursuant to Sections 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and 203(e) of the Investment Advisers Act of 1940 (Advisers Act). The proceeding is a follow-on proceeding based on *SEC v. Hansen*, No. 1:13-cv-1403 (S.D.N.Y. Dec. 21, 2015), *appeal dismissed*, No. 16-74 (2d Cir. Mar. 16, 2016), in which Respondent RAHFCO Management Group, LLC, was enjoined against violations of the antifraud and registration provisions of the federal securities laws. In accordance with leave granted, the Division of Enforcement filed a motion for summary disposition, pursuant to 17 C.F.R. § 201.250(a) on April 28, 2016. In the absence of an opposition from RAHFCO, the

Division timely filed a reply on July 19, 2016.¹ Thereafter, filings were received from RAHFCO, followed by responsive filings from the Division.

This Initial Decision is based on the pleadings and RAHFCO's Answer to the OIP.² 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 RAHFCO was enjoined were decided in the civil case on which this proceeding is based and in the criminal case against its principal, Randal Hansen, himself, *United States v. Hansen*, No. 13-cr-40053 (D.S.D. June 10, 2014), *aff'd*, 791 F.3d 863 (8th Cir. 2015), *rehearing en banc denied*, 2015 U.S. App. LEXIS 13839 (Aug. 6, 2015), *cert. denied*, 136 S. Ct. 698 (2015). Any other facts in Respondent's pleadings 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 RAHFCO was enjoined against violations of the antifraud and registration provisions in *SEC v. Hansen*. The Division urges that it be barred from the securities industry. RAHFCO requests that the proceeding be dismissed. Thus, the Division has been on notice that the proceeding could be decided against it.

C. Procedural Issues

1. Official Notice

¹ In light of numerous letters from Randal Hansen, who appeared on behalf of RAHFCO, regarding the logistical difficulties he experienced as an inmate at Duluth Federal Prison Camp in reviewing the Division's investigative file, the due date for the opposition was extended from June 13 to July 15, 2016. *RAHFCO Mgmt. Grp., LLC*, Admin. Proc. Rulings Release Nos. 3744, 2016 SEC LEXIS 1232 (A.L.J. Mar. 29, 2016); 3903, 2016 SEC LEXIS 2033 (A.L.J. June 8, 2016). *See Byron S. Rainer*, Exchange Act Release No. 59040, 2008 SEC LEXIS 2840, at *4-7 (Dec. 2, 2008) (incarcerated respondent); *José P. Zollino*, Exchange Act Release No. 51632, 2005 SEC LEXIS 987, at *7-10 (Apr. 29, 2005) (incarcerated respondent). A respondent must have "a reasonable amount of time to review the investigative file before being required to file any pleadings." *Byron S. Rainer*, 2008 SEC LEXIS 2840, at *7; *José P. Zollino*, 2005 SEC LEXIS 987, at *10.

² RAHFCO's Answer, dated January 21, 2016, and mailed on January 22, 2016, from Duluth FPC, where Hansen is incarcerated, was received on February 9, 2016. A thirteen-page opposition filing dated July 25, 2016, which was mailed from Duluth FPC and received on August 1, 2016, advised that the contents were findings but that RAHFCO's actual "answer" [opposition] would be forthcoming after the guard who locked it up returned from vacation. Thereafter, a four-page opposition filing dated August 5, 2016, was received on August 15, 2016.

Official notice pursuant to 17 C.F.R. § 201.323 is taken of: the docket report and the courts' orders in *SEC v. Hansen* and *United States v. Hansen*; the Commission's public official records contained in EDGAR concerning Respondent, RAHFCO Funds LP, RAHFCO Growth Fund LP, and RAHFCO Select LP; and of Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. for review denied*, 575 F. App'x 1 (D.C. Cir. 2014).

2. Collateral Estoppel

It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil or criminal proceeding. *See, e.g., Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003) (civil proceeding); *Ira William Scott*, Advisers Act Release No. 1752, 1998 SEC LEXIS 1957, at *8-9 (Sept. 15, 1998) (conviction).

The pendency of an appeal does not preclude the Commission from action based on an injunction or 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). Were RAHFCO to be successful in overturning its injunction, it could request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).³

3. Selective Prosecution

Respondent suggests that the government's prosecuting Hansen and not others involved in RAHFCO constitutes selective prosecution. "Selective prosecution," however, is a term of art. "To establish such a claim, a petitioner must demonstrate that he was unfairly singled out for prosecution based on improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right." *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *53 (Jan. 30, 2009); *accord Robert Radano*, Advisers Act Release No.

³ *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 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).

2750, 2008 SEC LEXIS 1504, at *34 n.74 (June 30, 2008). No such showing was made here. Rather, the decisions to seek civil sanctions against RAHFCO and to prosecute Hansen and not others were exercises of prosecutorial discretion. *Robert Radano*, 2008 SEC LEXIS 1504, at *34 n.74. (citing *Dolphin and Bradbury, Inc.*, Exchange Act Release No. 54143, 2006 SEC LEXIS 1592, at *47-48 (July 13, 2006), *aff'd*, 512 F.3d 634 (D.C. Cir. 2008)). The fact that individuals other than Hansen may have been involved in RAHFCO's misconduct does not relieve RAHFCO from responsibility for acts committed through Hansen (or through others). See *James J. Pasztor*, Exchange Act Release No. 42008, 1999 SEC LEXIS 2193, at *15-18, *25-29 (Oct. 14, 1999) (supervisor held liable for registered representative's execution of violative directed trades; supervisor had tried to stop the trading but was overruled by broker-dealer's owner who was friendly with the customer); *Charles K. Seavey*, Advisers Act Release No. 2119, 2003 SEC LEXIS 716, at *12-14, *19-20 (Mar. 27, 2003) (associated person found liable where investment adviser required him to sign materially misleading letter), *aff'd*, 111 F. App'x 911 (9th Cir. 2004).

Respondent also suggests that Hansen received ineffective assistance of counsel in *United States v. Hansen* and/or *SEC v. Hansen*. Any challenge to such issues in either of those cases should be brought before the court in which the case was heard. See *Harold F. Harris*, Exchange Act Release No. 53122 A, 2006 SEC LEXIS 68, at *23 (Jan. 13, 2006).

II. FINDINGS OF FACT

The Commission's March 1, 2013, complaint in *SEC v. Hansen* alleged that Hansen and RAHFCO violated Section 17(a) of the Securities Act of 1933 (Securities Act); Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder; and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; the violations were alleged to have been committed from at least April 2007 through May 2011 in the offer and sale of securities in two private hedge funds – RAHFCO Funds LP and RAHFCO Growth Fund LP – by Hansen, RAHFCO and others. *SEC v. Hansen*, ECF No. 1. Hansen, a non-attorney, attempted to appear on behalf of RAHFCO, but the court ruled that business entities cannot appear *pro se*, and that a default judgment may be entered against RAHFCO unless an attorney appears on its behalf. *SEC v. Hansen*, ECF No. 43.

Accordingly, RAHFCO was enjoined, by default, on December 21, 2015, from committing violations of Securities Act Section 17(a); Exchange Act Sections 10(b) and 15(a) and Rule 10b-5; and Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-8; the court also ordered RAHFCO to pay disgorgement of \$1,193,315 plus prejudgment interest of \$166,231.36 and to pay a civil penalty of \$1,193,315. *SEC v. Hansen*, ECF No. 104. Hansen's attempt, as a non-attorney, to appeal this judgment failed. The court of appeals dismissed the appeal on March 16, 2016, ruling that a corporation, even a limited liability corporation, cannot appear in federal court except through licensed counsel; the court's mandate issued on May 26, 2016. *SEC v. Hansen*, No. 16-74 (2d Cir.), ECF Nos. 37, 39. RAHFCO has no funds that would have enabled it to hire an attorney to represent it in *SEC v. Hansen*. See, e.g., letter from Hansen dated January 21, 2016. In fact, the parties agree that RAHFCO is defunct. See March 29, 2016, prehearing conference Tr. 30-31; Division's July 19, 2016, Reply at 1 ("its charter . . . has been cancelled by the state of Delaware for failure to pay taxes").

A firm can act only through its agents and is accountable for the actions of its responsible officers, including, in the case of RAHFCO, Hansen. *See C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1435 (10th Cir. 1988); *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977). A corporation's scienter may be imputed from that of individuals controlling it. *See SEC v. Blinder, Robinson & Co.*, 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)). As such, facts established in *United States v. Hansen* will be considered in this proceeding. *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *14-17 (Jan. 14, 2011) (respondent's conviction considered in proceeding based on default injunction in evaluating whether sanctions should be imposed in the public interest in light of the *Steadman* factors).

Respondent was formed on January 4, 2007. Official notice of the public official records of the Delaware Secretary of State.⁴ Respondent was the general or managing partner of RAHFCO Funds LP and RAHFCO Growth Fund LP,⁵ and Hansen was Respondent's managing member. Official notice.⁶ Hansen's primary business is farming; he has been a farmer for fifty-two years. *See* letter from Hansen dated January 21, 2016. Neither Respondent nor Hansen was registered as, or associated with, a registered investment adviser or broker dealer. Official notice of Commission records and of FINRA records contained in BrokerCheck (showing no registration or association). Hansen was convicted in 2014 after a jury trial in *United States v. Hansen* of mail fraud, wire fraud, and conspiracy to commit wire fraud and mail fraud in violation of 18 U.S.C. §§ 1341, 1343, 1349. *United States v. Hansen*, ECF No. 77. In finding Hansen guilty of these crimes, the jury necessarily found that "Hansen voluntarily and intentionally devised, made up, or participated in a scheme to defraud investors out of money or property by means of material false representations or promises regarding fraudulent investment schemes involving RAHFCO Funds Limited Partnership, RAHFCO Growth Fund Limited Partnership, [and] RAHFCO Management Group LLC." *Id.*, ECF No. 50 at 7, 10 (jury instructions concerning counts 2-5 – wire fraud – and counts 6-13 and 17-29 – mail fraud); ECF No. 54 (verdict of guilty on those counts); ECF No. 77 (conviction on those counts); *see CSX Transp., Inc. v. Hensley*, 556 U.S. 838, 841 (2009) (juries are presumed to follow court's

⁴ RAHFCO's January 3, 2007, certificate of formation as a limited liability company under the provisions and subject to the requirements of the Delaware Limited Liability Company Act was executed by Hansen as its manager and is attached to the Division's motion for summary disposition as Exhibit 3.

⁵ PPMs for the two funds are attached to the Division's motion for summary disposition as Exhibits 5 and 6, and Respondent refers generally to the PPMs in his opposition dated July 25, 2016. The PPMs indicate that RAHFCO, as general partner, was to receive a management fee, payable monthly in arrears, amounting to approximately 1.5% of the limited partners' share of the funds' net asset value. *See* Ex. 5 at SFG 090064; Ex. 6 at RAHFCO 0000308.

⁶ These facts are in the Forms D, contained in EDGAR, of RAHFCO Funds LP, CIK # 1391871, filed February 27, 2007, July 16, 2007, and April 1, 2008, and of RAHFCO Growth Fund LP, CIK # 1427755, filed February 15, 2008.

instructions). The dates when the offenses charged in each individual count ended ranged from July 2007 to May 2011. *United States v. Hansen*, ECF No. 77. Hansen was sentenced to 108 months of imprisonment followed by three years of supervised release and ordered to pay \$17,514,258.89 in restitution to 75 victims. *Id.*, ECF No. 77 at 3, 6-8. Hansen was then barred from the securities industry in a follow-on proceeding. *Randal Kent Hansen*, Initial Decision Release No. 754, 2015 SEC LEXIS 1001 (A.L.J. Mar. 18, 2015), *finality order*, Exchange Act Release No. 74844, 2015 SEC LEXIS 1637 (Apr. 29, 2015).

Others, including Vincent Puma and Anthony Johnson, were involved in RAHFCO and actually defrauded Hansen such that he and his family lost a great deal of money. Opposition dated July 25, 2016, *passim*.

III. CONCLUSIONS OF LAW

RAHFCO has been enjoined “from engaging in or continuing any conduct or practice in connection with . . . the purchase or sale of any security” within the meaning of Section 203(e)(4) of the Advisers Act and Section 15(b) of the Exchange Act.

As found above, Respondent was the general partner of two hedge funds, RAHFCO Funds LP and RAHFCO Growth Fund LP. Thus, it was an investment adviser. *See Goldstein v. SEC*, 451 F.3d 873, 876 (D.C. Cir. 2006) (holding that the general partner of a hedge fund is an investment adviser within the meaning of the Advisers Act). The Commission has authority to sanction registered or unregistered investment advisers under Section 203 of the Advisers Act. *Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999).⁷

IV. SANCTION

The Division requests a collateral bar,⁸ while RAHFCO asks that the proceeding be dismissed. For the reasons discussed below, the proceeding will be dismissed.

A. Sanction Considerations

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

⁷ While this proceeding was authorized pursuant to Section 15(b) of the Exchange Act as well as Section 203(e) of the Advisers Act, the facts to which conclusive effect must be given that were established in *United States v. Hansen* do not support the Division’s argument that Respondent was an [unregistered] broker. This does not affect the sanctions analysis *infra*.

⁸ Such associational bars are authorized by Section 15(b) of the Exchange Act, but are not authorized by Section 203(e) of the Advisers Act. *Compare* Advisers Act Section 203(e) *with* Advisers Act Section 203(f).

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 *4-5.

B. Public Interest Analysis

As described in the Findings of Fact, RAHFCO's conduct, assuming that all of Hansen's conduct is attributed to RAHFCO, was egregious and recurrent, over a period of several years, and involved scienter. The violations are neither recent nor distant in time. Numerous investors were affected, leading to substantial restitution. Consistent with a vigorous defense of the charges against it, RAHFCO has not recognized the wrongful nature of its conduct.

Nonetheless, in the circumstances of the instant case, the likelihood of future violations approaches zero – RAHFCO is defunct, as the parties agree. The injunction on which this proceeding is based was entered by default because RAHFCO had no funds to pay an attorney. RAHFCO's charter has even been cancelled. Hansen himself, after fifty-two years as a farmer, will be under court supervision for the foreseeable future – 108 months of imprisonment followed by three years of supervised release. Respondent's filings cite these considerations in urging the undersigned to deny the relief sought by the Division and to dismiss the proceeding with prejudice.⁹

V. ORDER

IT IS ORDERED that this administrative proceeding IS DISMISSED.

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

⁹ See, e.g., Opposition dated August 5, 2016, at 2: "As the SEC has several times stated . . . RAHFCO is defunct . . . and Randal Hansen, is presently incarcerated and will be for yet several years. However, the SEC simply likes harassing and wasting taxpayer money on frivolous matters and issues [such as] obtaining an injunction against a defunct company."

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.

Carol Fox Foelak
Administrative Law Judge