Initial Decision Release No. 1149
Administrative Proceeding
File Nos. 3-17818 and 3-17819

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

In the Matters of

GL Capital Partners, LLC and
GL Investment Services, LLC

Initial Decision of Default
June 20, 2017

Appearances: Kathleen B. Shields and Marc J. Jones
for the Division of Enforcement,
Securities and Exchange Commission

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for entry of default. Respondents' registrations as investment advisers are revoked.

Procedural Background

This is a consolidated follow-on proceeding which the Securities and Exchange Commission instituted after the United States District Court for the District of Massachusetts enjoined Respondents from violating various securities statutes. In January 2017, the Commission separately issued to each Respondent an order instituting proceedings (OIP) under Section 203(e) of the Investment Advisers Act of 1940. *See* 15 U.S.C. § 80b-3(e). Those OIPs alleged the fact of the injunctions and further alleged that Respondents are investment advisers controlled, directly or indirectly, by Daniel Thibeault. After the Commission issued the OIPs, the Commission's chief administrative law judge consolidated the cases against Respondents. *GL Capital Partners, LLC*, Admin. Proc. Rulings Release No. 4609, 2017 SEC LEXIS 496 (ALJ Feb. 17, 2017).

Respondents GL Capital Partners, LLC, (GL Partners) and GL Investment Services, LLC, (GL Services) were each served with an OIP in March 2017. *GL Capital Partners, LLC*, Admin. Proc. Rulings Release No. 4690, 2017 SEC LEXIS 797 (ALJ March 16, 2017). During a telephonic prehearing conference held in March, which Respondents did not attend, I set a schedule for filing dispositive motions. *GL Capital Partners, LLC*, Admin. Proc. Rulings Release No. 4719, 2017 SEC LEXIS 990 (ALJ March 30, 2017). After Respondents failed to answer their OIPs, I issued an order memorializing the motions schedule and ordering Respondents to show cause by April 10, 2017, why they should not be found in default for failing to answer their OIPs. *Id.* Neither Respondent responded to the order to show cause.

The Division filed a timely motion for default supported by exhibits A through Q (cited herein as "Ex. _").

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts of which I have taken official notice under Rule of Practice 323, 17 C.F.R. § 201.323. Because Respondents failed to answer to the OIPs, they are in default. *See* 17 C.F.R. § 201.220(f). Consistent with Commission precedent and Rule of Practice 155(a), I will deem as true the allegations in the OIPs and will rely on those allegations in conjunction with other evidence in the record.[1] In making the findings below, I have applied preponderance of the evidence as the standard of proof.[2]

Respondents were investment advisers registered with the Commission. *See* GL Partners' OIP at 1; GL Services' OIP at 1; *see also* Exs. D, E. Each was part of a fraud perpetrated by Daniel Thibeault. Thibeault was the president, CEO, and majority owner of Graduate Leverage, LLC. Ex. H; Ex. J at 35; *see* Ex. D at 34-35. Graduate Leverage owned and operated the GL Beyond Income Fund (the Fund). Ex. H; Ex. J at 35. Graduate Leverage also owned GL Partners, which was the Fund's investment adviser. Ex. D at 32–33; Ex. F at 10; Ex. H. Thibeault was the chair of the Fund's board of

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1 *See* 17 C.F.R. § 201.155(a); *David E. Lynch*, Securities Exchange Act of 1934 Release No. 46439, 2002 WL 1997953, at *1 & n.12 (Aug. 30, 2002).

2 *See John Francis D'Acquisto*, Investment Advisers Act of 1940 Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998) ("preponderance of the evidence … is the standard of proof in [Commission] administrative proceedings").

trustees. Ex. O at 56. He was also listed in a Fund prospectus as GL Partners' managing director and the Fund's "co-portfolio manager." Ex. F at 11. As the Fund's investment adviser, GL Partners was in charge of all of the Fund's investment decisions; it "carr[ied] out the investment and reinvestment of" the Fund's assets. *Id.* at 1, 11.

According to the prospectus, the Fund invested in consumer loans to individuals, either purchased on the secondary market or originated by the Fund. Ex. F at 1, 6, 11, 33; Ex. J at 35. GL Partners was responsible for selecting the loans in question and for judging the "credit quality" of the borrowers. Ex. F. at 1, 6. The prospectus explained that the Fund's adviser sought to lower default risk by focusing on borrowers such as doctors, lawyers, dentists, and other professionals who are "less susceptible to economic downturns." Ex. F at 1; *see* Ex. J at 35. Interest collected on those loans would purportedly be used to pay dividends to Fund investors. Ex. J at 35. Thibeault caused Graduate Leverage to funnel some of its advisory clients' investments into the Fund. *Id.* at 36. He also promoted the Fund to the friends and family of Graduate Leverage employees. *Id.*

Graduate Leverage also owned GL Services. Ex. H. According to its website, GL Services was "an independent advisory firm that provide[d] customized wealth management and investment management services to clients throughout the United States." GL Services' OIP at 1; Ex. G at PDF p. 38. Promotional materials for GL Services made repeated references to its "Optimal Market Portfolio," which purportedly "provide[d] the most downside protection and deliver[ed] the highest risk adjusted returns over time." Ex. G at PDF p. 4, 10. Those materials stated that Thibeault led GL Services' investment committee. *Id.* at PDF p. 44. In that role, Thibeault caused GL Services to place a portion of its Optimal Market Portfolio, and thus its investors' capital, into the Fund. Ex. M at 10.

The Fund identified each loan in its portfolio with an alphanumeric combination of thirteen numbers and letters, such as 000177433FP01. *See* Ex. O at 3–36. As in the example, each loan designation started with nine numbers. *Id.* These nine numbers were always followed by two letters and then two more numbers. *Id.* Before 2013, the Fund's portfolio rarely included loans in excess of $31,000, and often included loans under $10,000. *Id.*

Things changed in February 2013, when the Fund began originating loans designated with the letters TA. These TA loans were for significantly more money than previous loans. *See* Ex. L; Ex. M at 4. On February 27, 2013, the Fund originated three loans for $426,039, $418,394, and $382,847, respectively. Ex. M at 4. The Fund's custodian wired the proceeds of these loans to an account at Bank of America in the name of Taft Financial

Services. Ex. J at 36; *see* Ex. N at 1. Although the Taft account appeared to be controlled by a third party, it was actually controlled by Thibeault. Ex. J at 36.

The next day, Taft wired $780,000 of the money it received from the Fund to Graduate Leverage's principal operating account. Ex. M at 5. Graduate Leverage then wired $760,000 to GL Advisor Solutions, Inc., an entity located in the Philippines. *Id.*; Ex. H. GL Advisor Solutions was owned by Graduate Leverage and was therefore controlled by Thibeault. Ex. H.

From February 2013 through the end of 2014, the Fund originated thirty-six additional TA loans totaling about $14.7 million. Ex. L; Ex. M at 5–6. As was later discovered, the people whose names were listed on the promissory notes for the TA loans never applied for the loans, did not execute the loans' promissory notes, were unaware the loans had been issued in their names, and did not receive the loans' proceeds. Ex. J at 37. Instead, the purported loan proceeds were routed through Taft to Graduate Leverage's operating account. *Id.* From there, Thibeault caused $8.5 million to be transferred to the Advisor Solutions account in the Philippines. Ex. M at 8–9. He used the remaining funds transferred to Graduate Leverage's account to pay operating expenses of Graduate Leverage and its related entities, Thibeault's personal expenses, and interest on loans the Fund had issued in the past. Ex. J at 37; *see* Ex. M at 6–9. Additionally, Thibeault transferred some of the money to his personal bank account. Ex. J at 37. By the end of 2014, the TA loans accounted for approximately forty percent of the total assets ostensibly held by the Fund. *Id.*

The Commission began investigating the Fund and entities connected to it in December 2014. Ex. J at 37–38. During the investigation, Thibeault and GL Partners were initially unable to produce promissory notes for TA loans issued after January 2014. Ex. M at 2. Thibeault eventually produced five promissory notes for loans issued after January 2014. *Id.* On reviewing the promissory notes Thibeault supplied for those five loans and for previous loans, Commission staff discovered that most borrowers' birth dates listed on the notes were incorrect. *Id.* at 3–4.

On being questioned about the loans in the Fund's portfolio, Thibeault lied to Commission staff. Ex. J at 38; Ex. M at 10. He falsely asserted that (1) all loans were issued to consumers; (2) all loan proceeds were sent to the borrower listed on each promissory note or to the borrower's previous lender to satisfy prior debts; (3) no loan proceeds were distributed to anyone but borrowers or prior lenders; and (4) neither he nor Graduate Leverage made any principal or interest payments on loans in the Fund's portfolio. Ex. M at 10; *see* Ex. J at 38–39.

Within a few days of his investigative testimony, Thibeault was charged in the District of Massachusetts with various criminal offenses.[3] In January 2015, the Commission filed a civil complaint against Thibeault, GL Partners, GL Services, Graduate Leverage, and Taft. Ex. C.

The government indicted Thibeault in February 2015. *See supra* note 3. Thibeault signed a plea agreement in March 2016 and pleaded guilty to two charges the next day. Exs. I, J. Based on his plea, the district court found Thibeault guilty of securities fraud, in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and obstruction of justice, in violation of 18 U.S.C. § 1512(c). Ex. J at 44; Ex. K at 1. In June 2016, the district court sentenced Thibeault to 108 months' imprisonment and ordered him to pay restitution in the amount of $15.3 million. Ex. K at 2, 6.

In July 2016, Thibeault settled a Commission administrative proceeding against him and agreed to the imposition of an industry bar. *Daniel Thibeault*, Advisers Act Release No. 4419, 2016 WL 3213029, at *1–2 (June 10, 2016).

In December 2016, the district court entered separate final judgments by default against GL Partners and GL Services on the Commission's civil complaint. Exs. A, B. The court enjoined both entities from violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, and Section 206(1) and (2) of the Advisers Act. Ex A at 2–4; Ex. B at 2–4. The court's judgment as to GL Partners ordered that it was jointly and severally liable with the other defendants, including GL Services, for disgorgement of over $16 million plus over $1.1 million in interest. Ex. A at 5. The court's judgment as to GL Services omitted language regarding disgorgement.[4]

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[3] I take official notice that, according to the docket of United States District Court for the District of Massachusetts, the government filed a sealed complaint against Thibeault on December 11, 2014. *See United States v. Thibeault*, No. 1:15-cr-10031 (D. Mass.). The complaint was unsealed the following day. *Id.*

[4] According to the court's docket, it entered a final judgement as to Thibealt in September 2016, enjoining him from violating the antifraud provisions and ordering him to pay disgorgement and interest totaling over $15.8 million. It entered final judgments as to Graduate Leverage and Taft in December 2016, enjoining them and ordering them to pay disgorgement and interest in excess of $17 million.

Conclusions of Law

The Advisers Act gives the Commission authority to revoke an investment adviser's registration if, as is relevant here, (1) the adviser has been permanently enjoined from any activity "in connection with" conduct as an investment adviser or the purchase or sale of any security; and (2) revoking the adviser's registration is in the public interest.[5]

The district court's final judgments permanently enjoining GL Partners and GL Services satisfy the first requirement. The injunctions were in connection with Respondents' conduct as investment advisers and in connection with the purchase of securities.

Determining whether revocation would be in the public interest requires consideration of the public interest 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).[6] The public interest factors include:

> the egregiousness of a 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 or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[7]

The Commission also considers the deterrent effect of administrative sanctions.[8] The public interest inquiry is "flexible" and "no one factor is dispositive."[9] The decision whether to revoke an adviser's registration is thus

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5 15 U.S.C. § 80b-3(e)(4); *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at *6 (Jan. 31, 2006).

6 *Schield Mgmt. Co.*, 2006 WL 231642, at *8 & n.45.

7 *Id.* at *8.

8 *Peter Siris*, Advisers Act Release No. 3736, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Although general deterrence is not determinative in weighing the public interest, it is a relevant factor. *See id.*; *see also PAZ Secs., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

9 *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).

fact-dependent, requiring consideration of the specific circumstances at issue.[10]

In assessing the public interest, certain general principles are relevant. First, "in most" cases involving fraud, the public-interest analysis will weigh in favor of a "severe sanction."[11] Second, because "[t]he securities industry presents continual opportunities for dishonesty and abuse," it "depends heavily on the integrity of its participants and on investors' confidence."[12] Third, this dependence on the integrity of industry participants is particularly the case for investment advisers. Investors necessarily "place a high degree of trust and confidence in … investment" advisers.[13] In turn, advisers owe their clients "an 'affirmative [fiduciary] duty of utmost good faith.'"[14] The Commission therefore looks with particular disfavor on advisers who commit fraud.[15]

Considering these principles and the public interest factors, it is apparent that revocation is warranted.

Respondents' conduct was egregious. Together, they operated as part of Thibeault's fraudulent scheme. As described above, beginning in February 2013, Thibeault looted the Fund by issuing fake TA loans from its assets, and after transferring the money through several entities, ultimately used some of it for personal expenses. As the Fund's investment adviser, GL Partners owed it a fiduciary duty. GL Partners abused its position of trust by

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10 *Schield Mgmt. Co.*, 2006 WL 231642, at *8; *see Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (discussing the public interest in relation to determining whether to impose a collateral bar on an individual), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

11 *Peter Siris*, 2013 WL 6528874, at *11 n.71.

12 *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) (internal quotation marks and citation omitted).

13 *Montford & Co.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *18 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

14 *Timbervest, LLC*, Advisers Act Release No. 4197, 2015 WL 5472520, at *5 (Sept. 17, 2015) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963)).

15 *See Alfred Clay Ludlum, III*, Advisers Act Release No. 3628, 2013 WL 3479060, at *4 (July 11, 2013).

participating in the looting of the Fund. Indeed, through his control of GL Partners, which was in charge of all of the Fund's investment decisions, Thibeault was able to originate the TA loans. *See* Ex. F at 1, 11. GL Services similarly owed a fiduciary duty to its investment clients. Instead of honoring that duty, it acted as a willing participant in Thibeault's scheme and funneled a portion of its clients' investments to the Fund. Ex. M at 10. Respondents' abuse of their fiduciary duties marks their conduct as egregious.[16] The magnitude of the fraud—involving more than $15 million—lends additional support to the determination that Respondents' conduct was egregious.[17]

Respondents' conduct was not isolated. Respondents were integral parts of Thibeault's scheme which involved forty fake loans originated over a two-year period and lasted until the Fund was investigated by the Commission.

Directly or indirectly, Respondents were controlled by Thibeault. As a result, their scienter and state of mind is imputed from Thibeault's scienter and state of mind.[18] And Thibeault's conviction establishes that he acted with the intent to defraud and used Respondents to further his fraud. *See* Ex. J at 35–38; Ex. M at 10. By setting up fake loans, with fake promissory notes, and then causing the proceeds of the loans to be issued to a Taft account he controlled so that the proceeds could be routed back to a Graduate Leverage account he also controlled, Thibeault evidenced a high degree of scienter. Because that high degree of scienter is imputed to Respondents, they also acted with a high degree of scienter in participating in the fraud.

Thibeault's guilty plea arguably reflects his acceptance of responsibility which could potentially be attributed to Respondents. Respondents, however, defaulted before the district court and have not participated in this

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16 *See James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty … as egregious.").

17 *See David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *5 (Mar. 21, 2016) (considering the magnitude of investor losses in determining that a fiduciary breach was egregious); *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (same).

18 *See Bernerd E. Young*, Exchange Act Release No. 774421, 2016 WL 1168564, at *19 n.81 (Mar. 24, 2016); *Clarke T. Blizzard*, Advisers Act Release No. 2253, 2004 WL 1416184, at *5 (June 23, 2004).

proceeding. They have therefore neither made assurances against future misconduct nor demonstrated an understanding or recognition of the wrongfulness of their conduct.

The fact of Respondents' past misconduct "raises an inference that" the misconduct will be repeated.[19] That inference is supported by my determination that Respondents' conduct was egregious.[20] Issuing any sanction less than revocation would leave open the door to future opportunities for further misconduct and would potentially put the investing public at risk.

Two other factors weigh in favor of revoking Respondents' registrations. First, the record establishes the Thibeault lied to Commission staff during its investigation when he made various false statements about the Funds' loans and loan proceeds. *See* Ex. J at 38; Ex. M at 10. Thibeault's willingness to lie to Commission staff is an aggravating factor warranting a "strong sanction."[21] Thibeault's actions are imputed to Respondents.[22] Second, revoking Respondents' registrations will serve the Commission's interest in deterring others from engaging in similar misconduct.[23]

In light of the factors discussed above, I find that it is in the public interest to revoke Respondents' registrations as investment advisers.[24]

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19 *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)).

20 *John A. Carley*, Securities Act Release No. 8888, 2008 WL 268598, at *22 (Jan. 31, 2008) (determining whether to impose a cease-and-desist order and holding that "[o]ur finding that a violation is egregious 'raises an inference that [the misconduct] will'" recur), *remanded on other grounds sub nom. Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).

21 *Schield Mgmt. Co.*, 2006 WL 231642, at *9; *see Peter J. Kisch*, Exchange Act Release No. 19005, 1982 WL 529109, at *6 n.23 (Aug. 24, 1982) ("deception practiced on regulatory authorities … is clearly an aggravating factor to be considered in assessing appropriate sanctions").

22 *See Bernerd E. Young*, 2016 WL 1168564, at *19 n.81.

23 *Schield Mgmt.*, 2006 WL 231642, at *11.

24 Given this disposition, I decline to address whether the evidence supports the Division's assertion that Respondents overstated their assets under management in reports filed with the Commission. *See* Mot. at 12.

Order

The Division of Enforcement's motion for entry of default is GRANTED.

Under Section 203(e) of the Investment Advisers Act of 1940, the registration as an investment adviser of Respondent GL Capital Partners, LLC, is REVOKED.

Under Section 203(e) of the Investment Advisers Act of 1940, the registration as an investment adviser of Respondent GL Investment Services, LLC, is REVOKED.

This initial decision will 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.

Either Respondent may move the Commission under Rule of Practice 155(b), 17 C.F.R. § 201.155(b), to set aside the determination that it is in default. On a showing of good cause, Rule 155(b) permits the Commission to set aside a default in order to prevent injustice and on such conditions as may be appropriate. 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.* Because I may only set aside a default "prior to the filing of the initial decision," if either Respondent files a motion to set aside a default, that motion should be directed to the Commission.

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James E. Grimes
Administrative Law Judge