Initial Decision Release No. 1227
Administrative Proceeding
File No. 3-17699

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

In the Matter of

Shervin Neman and
Neman Financial, Inc.

Initial Decision
November 20, 2017

Appearances: Amy Jane Longo for the Division of Enforcement, Securities and Exchange Commission

Shervin Neman, for Respondents

Before: Jason S. Patil, Administrative Law Judge

Shervin Neman, through his firm Neman Financial, Inc., operated a Ponzi scheme. Neman was convicted, imprisoned, and ordered to pay millions of dollars in restitution. In a civil case, a federal district court permanently enjoined Neman and his firm from violating the federal securities laws. This initial decision imposes the further sanction of industry bars against Neman and revokes Neman Financial's registration.

Procedural Background

On November 29, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondents, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940. The OIP alleges that on November 16, 2016, the district court in *SEC v. Neman*, No. 2:12-cv-03142 (C.D. Cal.), permanently enjoined Respondents from future violations of Section 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; Section 206(1), (2), and (4) of the Advisers Act; the books and records requirements of Section 204(a) of the Advisers Act and Rule 204-2 thereunder; and the registration requirements of Section 203A of the Advisers Act. OIP at 2.

On May 19, 2017, the Division of Enforcement filed a motion for summary disposition, seeking to permanently bar Neman from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, and nationally recognized statistical rating organization, and to revoke Neman Financial's registration with the Commission. Respondents' opposition was due July 3, 2017. *Shervin Neman*, Admin. Proc. Rulings Release No. 4755, 2017 SEC LEXIS 1164, at *1 (ALJ Apr. 19, 2017). Respondents did not submit a response by the deadline, but later requested a telephonic prehearing conference, which I held on August 24, 2017. Following the prehearing conference I extended Respondents' deadline to October 13, 2017. *Shervin Neman*, Admin. Proc. Rulings Release No. 5002, 2017 SEC LEXIS 2641, at *1 (ALJ Aug. 25, 2017). I directed Respondents to: (1) "identify in detail each factual statement in the Division's motion that they contend is inaccurate, describe how the statement is inaccurate, and provide or identify evidence supporting Respondents' position"; and (2) "address why the factors the . . . Commission considers in determining whether a sanction is in the public interest weigh against imposing" the sanctions requested by the Division. *Id.* at *1-2. Respondents submitted a letter on September 7, 2017, purporting to respond to the Division's motion, but it did not comply with my order. Therefore, I ordered that if Respondents intended to submit a compliant response, they had to make that intention known to me by September 22, 2017. *Shervin Neman*, Admin. Proc. Rulings Release No. 5037, 2017 SEC LEXIS 2778, at *1 (ALJ Sept. 8, 2017). Respondents did not do so, and they did not file another response.

Summary Disposition Standard

Summary disposition is appropriate where there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). A motion for summary disposition is generally proper in "follow-on" proceedings like this one, where the administrative proceeding is based on a civil injunction. *See, e.g.*, *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

The findings and conclusions in this initial decision are based on the record and on facts officially noticed pursuant to Rule 323, including the proceedings, docket sheet, and record in the federal cases, which Respondents are precluded from contesting. *See* 17 C.F.R. § 201.323; *Daniel Imperato*, Exchange Act Release No. 74596, 2015 WL 1389046, at *4 nn. 23-24, *5 (Mar. 27, 2015) (giving preclusive effect to a district court's factual findings and legal conclusions in the context of a litigated summary judgment motion),

vacated in part on other grounds, 693 F. App'x 870 (11th Cir. 2017). All filings and all documents and exhibits of record have been fully reviewed and carefully considered. All arguments and proposed findings and conclusions that are inconsistent with this initial decision have been considered and rejected.

Findings of Fact

On April 11, 2012, the Commission sued Neman and Neman Financial, alleging that Neman misappropriated more than $7.5 million raised from investors through Neman Financial, based on materially false and misleading representations about the use of investment proceeds. *See* Declaration of Amy Jane Longo ("Longo Decl.") Ex. 1.[1] Neman stipulated to a preliminary injunction imposing an emergency asset freeze. *See* Ex. 3. Notwithstanding the preliminary injunction, Neman proceeded to raise two million dollars from another investor, which Neman used to pay legal bills and repay earlier investors. *See* Ex. 5 at 675-77, 704; Ex. 16 at 12-26, 28; *see also* Ex. 4 at 3-4; Ex. 5 at 824-25.[2] Neman then produced letters to the Commission from earlier investors, stating that they had been repaid. *Id.* Based on this conduct, Neman was indicted for mail and wire fraud in *United States v. Neman*, No. 2:13-cr-289 (C.D. Cal.). Ex. 4.

On May 16, 2014, a jury convicted Neman of three counts of mail and wire fraud. *See* Ex. 5 at 824-25. To find Neman guilty, the jury was required to find: (1) Neman "knowingly devised or participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations or promises"; (2) the "statements [Neman] made or the facts [he] omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;" and (3) Neman "acted with the intent to defraud; that is, the intent to deceive or cheat." *Id.* at 756, 758. On February 23, 2015, the court sentenced Neman to 135 months in prison and ordered him to pay restitution of more than $3.25 million. *See* Ex. 6.

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[1] All citations to exhibits in this initial decision refer to the exhibits attached to the Longo Declaration.

[2] Citations to Exhibit 5, which is a compilation of transcripts from Neman's criminal trial, are to the consecutive transcript page numbers rather than the page numbers for each individual docket entry.

Subsequently, the court in the civil case found Neman and Neman Financial liable on all of the Commission's claims against them. First, on December 8, 2015, Neman was found liable, on the Commission's motion for summary judgment, for antifraud violations of Securities Act Section 17(a) and Advisers Act Sections 206(1) and 206(2), and for non-fraud violations of Advisers Act Section 204(a) and Rule 204-2 thereunder and Section 203A. *See* Ex. 7. Second, on July 15, 2016, the court found Neman Financial liable on a default judgment for all six claims against it in the Commission's complaint. *See* Ex. 9. Third, on November 7, 2016, the court found Neman liable on summary judgment for the two remaining claims in the Commission's complaint: antifraud violations of Exchange Act Section 10(b) and Rule 10b-5 and Advisers Act Section 206(4) and Rule 206(4)-8(a)(1). *See* Ex. 10. In granting summary judgment against Neman and default judgment against Neman Financial on the Commission's fraud claims, the district court found that the evidence established, among other elements, that: (1) that Neman "engaged in a device, scheme or plan to defraud"; (2) that he used material misrepresentations to fraudulently obtain money or property from his victims; (3) that he acted with scienter; (4) that he offered or sold securities; (5) that he purchased or sold securities; (6) that his fraud was directed to investors and prospective investors in a pooled investment vehicle; and, (7) that he and Neman Financial were investment advisers. *See* Ex. 7 at 13-16; Ex. 9 at 10-13; Ex. 10 at 6-10.

Neither Neman nor Neman Financial filed any appeal of the judgment in the Commission's civil action, and the deadline to file such an appeal has passed. The Ninth Circuit denied Neman's appeal of his criminal conviction on December 12, 2016, *United States v. Neman*, 673 F. App'x 649 (9th Cir. 2016), and the mandate issued December 30, 2016. Ex. 13. The Supreme Court denied Neman's petition for *certiorari* on June 19, 2017. *United States v. Neman*, 137 S. Ct. 2281 (2017).

Conclusions of Law

Advisers Act Section 203(f) authorizes the Commission to impose an associational bar against Neman, if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he has been enjoined from any action, conduct, or practice specified in Advisers Act Section 203(e)(4); and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). Advisers Act Section 203(e) empowers the Commission to revoke Neman Financial's registration if: (1) the sanction is in the public interest and (2) Neman Financial is permanently enjoined by any court of competent jurisdiction from "engaging in or continuing any conduct or practice in connection with

any [securities industry] activity, or in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4).

Neman's misconduct occurred while he was associated with an investment adviser. In his answer to the Commission's complaint in the civil case, Neman admitted that he was the sole owner and CEO of Neman Financial, a then-registered financial adviser. *See* Ex. 1 ¶¶ 3, 7; Ex. 14 ¶¶ 1, 3, 7, 10. The term "associated with," as used in the Advisers Act, includes situations when a person is "directly . . . controlling or controlled by" an investment adviser. *See* 15 U.S.C. § 80b-2(a)(17).

On November 16, 2016, the district court entered an order against Respondents in the civil action, permanently enjoining them from violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule l0b-5 thereunder, and Advisers Act Sections 203A, 204(a), 206(1), 206(2), 206(4), and Rule 206(4)-8(a)(1) thereunder. *See* Ex. 11.

Sanctions

Whether an administrative sanction is in the public interest turns on 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, recognition of the wrongful conduct, and the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Lonny S. Bernath*, Initial Dec. Release No. 993 at 4, 2016 SEC LEXIS 1222, *10-11 (Apr. 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at *8 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003).

1. The egregious and recurrent nature of the misconduct

Neman's 135-month prison sentence, Ex. 6 at 1, and the order of more than $3.25 million in restitution, *id.* at 2, underscore the egregiousness of his misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *6 n.44 (Oct. 29, 2014). The Commission considers conduct involving fraud, like Neman's, to be particularly serious and subject to severe sanctions. *See, e.g.*, *Peter Siris*, Exchange Act Release No. 71068, 2013 WL

6528874, at *6 (Dec. 12, 2013) (the Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws" (internal quotation marks omitted)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

In their civil case, the federal district court underscored the egregiousness of Respondents' conduct in finding that "Neman operated a Ponzi scheme because Neman paid returns to older investors from funds received from newer investors rather than from profits Neman earned from the original investment" and he "concealed from investors that he was using their funds for personal use, to repay other victims, and that he was not operating a profitable business." Ex. 7 at 5 (citations omitted). Two of Neman's investors lost a total of more than $3.25 million. *Id.*; *see also* Ex. 5 at 459 (testimony that one of those victims, Turner, lost "substantially all of the cash [that he] had accumulated over his career" and "one-third of [his wife's] assets").

Respondents' fraud persisted for two years, and, as the Ninth Circuit found in affirming a sentencing enhancement, the district court did not err in finding that Neman returned, over eighteen months, to repeatedly take advantage of a vulnerable victim:

> At the sentencing hearing, the district court found that Neman reloaded Turner in furtherance of his investment fraud scheme. Indeed the court explained that for "a period of about 18 months [Turner] has been making investments with [Neman]," and "whether or not [Turner] was . . . getting any returns . . . [Neman was] able to go back to [Turner] repeatedly and get him to continue to make investments with [Neman]. Based on these facts, the district court did not clearly err in finding Turner was a vulnerable victim and that a sentencing enhancement was therefore warranted.

Neman, 673 F. App'x at 652 (alterations in original); *see also* Reporter's Transcript of Status Conference re: Sentencing, Monday, November 24, 2014, at 20 ("Nov. 24, 2014, Tr."), *Neman*, No. 2:13-cr-289 (C.D. Cal. Dec. 17, 2015), ECF No. 250 (Turner's testimony that Neman had exploited their "relationship which became . . . much like a father and a son"). In addition, it was only the tandem of criminal and civil actions that ultimately stopped Neman's misconduct after two years—he did not see the error of his ways on his own and reform his conduct.

2. Scienter

The jury's guilty verdict on mail and wire fraud counts establishes scienter—an intent to defraud. *See* Ex. 7 at 14; *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (scienter refers to "a mental state embracing intent to deceive, manipulate, or defraud" (citation omitted)). Neman's jury was instructed that criminal culpability required that Neman "acted with the intent to defraud; that is, the intent to deceive" or "cheat." Ex. 5 at 756, 758. His conviction for mail and wire fraud—like a conviction for violation of the antifraud provisions of the federal securities laws—accordingly shows that he acted with scienter. Ex. 7 at 14; *see United States v. Vilar*, 729 F.3d 62, 89 (2d Cir. 2013) (a criminal action under Section 10(b) requires, among other things, a showing of scienter).

Indeed, Neman's misconduct evinced a high degree of scienter. Among other things, he solicited an additional two million dollars from an investor less than a month after entry of a preliminary injunction freezing his assets, and then used that money to further the Ponzi scheme by paying back earlier investors and his own legal defense costs. *See* Ex. 3; Ex. 16 at 12-26, 28. In the civil case, the court observed that this continuing wrongful conduct—even after an injunction *to which he stipulated*—"in particular, demonstrated Neman's scienter underlying his fraudulent conduct." Ex. 7 at 20; *see* Ex. 3 at 2 (acknowledging stipulation). I agree.

3. Lack of assurances against future violations and recognition of the wrongful nature of the conduct

"If [a respondent] doesn't know right from wrong in this industry, how can he avoid wrongdoing in the future?" *Gann v. SEC*, 361 F. App'x 556, 560 (5th Cir. 2010). "[A]s the Supreme Court has recognized, the 'degree of intentional wrongdoing evident in a defendant's past conduct' is an important indication of the defendant's propensity to subject the trading public to future harm." *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012) (quoting *Aaron*, 446 U.S. at 701), *called into question on other grounds by Koch v. SEC*, 793 F.3d 147 (D.C. Cir. 2015). Thus, although "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*, 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)) (alteration in internal quotation omitted).

Neman does not acknowledge that he did anything wrong. Instead, Neman maintains that all of the allegations against him and Neman Financial are false. He has exhibited "an exaggerated sense of victimization"

throughout the proceedings against him. Nov. 24, 2014, Tr. at 21, ECF No. 250 (testimony of one of Neman's actual victims); *see, e.g.*, *id.* at 31 (Neman asking criminal court "what's the difference between here and Iran?"). In his answer, Neman contends that:

> 1) . . . the SEC & FBI/DOJ tampered with my witnesses, 2) one of the jury members fell asleep during the IMPORTANT testimony of the FBI agent to the point that . . . jurors had to elbow him to wake him up, 3) . . . THERE WAS ABSOLUTELY NO DEFENSE FOR MY CRIMINAL TRIAL WHEN I HAVE PROOF THE PUBLIC DEFENDER PROMISED ME TO PUT ON DEFENSE & LIED TO ME . . .

Resp. Letter of Mar. 15, 2017, at 2-3 (capitalization in original). In April 2017, Neman reiterated the preceding position, adding that "the Public Defender worked with the prosecutor to put [him] in jail." Resp. Letter of Apr. 3, 2017, at 2.

In May 2017, Neman made similar allegations, adding the allegation that all lawyers and witnesses lied:

> [T]he SEC attorney SIMPLY LIED with no consequence . . . I feel that the process is rigged . . . the FBI agent lied on the stand . . . the lawyer/public defender lied to me . . . [and] the witnesses lied on the stand & to be clear ALL THE WITNESSES LIED . . . ALL MY CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED[.]

Resp. Letter of May 15, 2017, at 1-2; *see also, e.g.*, Nov. 24, 2014, Tr. at 32-33, ECF No. 250 ("[T]he situation that has occurred with the prosecution and my public defender, I believe that they worked together to put me in jail."). Respondents' last letter, received September 8, 2017, does not acknowledge the wrongful nature of Neman's conduct, nor does it provide any assurances against future violations. This is similar to his civil case, where the court observed that "Neman has provided no assurances against future violations. On the contrary, he committed the above-mentioned act of fraud after . . . a preliminary injunction to prevent such conduct." Ex. 7 at 20.

But that is not all. After his criminal conviction but before sentencing, Neman gave his defense attorneys a forged bank statement and handwritten letter that purported to show that he had millions of dollars in an account with Goldman Sachs & Co. *See* Declaration and Exhibits in Support of Government's Opposition to Defendant's Motion for New Trial ¶¶ 8-9 ("Opp.

to New Trial Decl."), *United States v. Neman*, No. 2:13-cr-289 (C.D. Cal. June 6, 2014), ECF No. 121; *id.* Exs. 4-5, ECF Nos. 121-31–32; Reporter's Transcript of Motion for a New Trial, Monday, July 14, 2014, at 4-7, 11 ("July 14, 2014, Tr."), *Neman*, No. 2:13-cr-289 (C.D. Cal. July 21, 2014), ECF No. 125. The Goldman Sachs employee who supposedly wrote the letter has stated that Neman does not "have any funds invested at Goldman Sachs"; the bank statement is not a type of document that he has seen; the account number on the bank statement is not a Goldman Sachs number for "accounts originating in Los Angeles"; "the writing on [the letter] is not his writing"; and "the signature is not his." Opp. to New Trial Decl. Ex. 5 at 2, ECF No. 121-32. Despite this evidence, Neman insisted that he had over three million dollars in the account and was willing to repay his victims. *See* Nov. 24, 2014, Tr. at 23-24, ECF No. 250. He did not do so. *See id.* at 24, 26. The criminal court ordered a competency evaluation before sentencing because it could not "believe that a rational person would hold these positions." Nov. 24, 2014, Tr. at 44-46, 48, ECF No. 250.

In short, Neman is either deliberately misrepresenting his past actions or is sincerely holding beliefs that are belied by the evidence. I find that, on this record, there is no recognition of wrongful conduct nor meaningful assurance against future violations.

4. Opportunities for future violations

Neman is a relatively young man, and his sentence—though justifiably heavy—is only a little over eleven years. *See* Ex. 6 at 1; Ex. 9 at 16. Once Neman is released from prison, if he were to reenter the securities industry, his occupation would present considerable opportunities for future violations. *See Tzemach David Netzer Korem,* 2013 WL 3864511, at *6 n.50. Concern over opportunities for future violations is heightened when one considers that even after Neman was expressly ordered by a federal district court to stop raising money from investors, he solicited another two million dollars that was never repaid. Ex. 7 at 20. And that concern is made insurmountable when one further considers that Neman provided his counsel with a forged bank account statement even after he was convicted of mail and wire fraud. *See* Opp. to New Trial Decl. Exs. 4-5, ECF Nos. 121-31–32; July 14, 2014, Tr. at 4-7, 11, ECF No. 125.

5. Other considerations

Other than denying that they committed any misconduct, Respondents appear to argue that their misconduct is not as dangerous to the public interest as others' worse misconduct. They state, "the big banks . . .Wells Fargo, or individuals like John Corzine, Leon Cooperman who paid $5+

million & admitted to no wrong-doing, are no threat to [the] public but I am the biggest threat?" Resp. Letter of Sept. 8, 2017, at 2. However, the public interest analysis is not a test graded on a curve. Instead, the analysis assesses whether, on the specific facts and circumstances, it is in the public interest to bar a specific individual or entity from the industry. Here, where all the foregoing factors militate against Respondents, pointing to others' alleged misconduct does not mitigate Respondents' own bad acts.

Industry bars have long been considered effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 WL 4731397, at *19 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). An industry bar, as opposed to a more limited bar, will prevent Neman "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 WL 1744130, at *20 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). This is because:

> The proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors . . . .
>
> We have long held that a history of egregious fraudulent conduct demonstrates unfitness for future participation in the securities industry even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. The industry relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants.

John W. Lawton, 2012 WL 6208750, at *11 (internal footnote omitted).

Furthermore, "absent extraordinary mitigating circumstances" not presented here, a person like Neman, "who has been convicted of securities fraud[,] cannot be permitted to remain in the securities industry." *Charles Trento*, Securities Act Release No. 8391, 2004 WL 329040, at *3 (Feb. 23, 2004).

For all these reasons, the public interest factors justify an industry bar against Neman and the revocation of Neman Financial's registration as an investment adviser.

Order

It is ORDERED that the Division's motion for summary disposition is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Shervin Neman is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 203(e) of the Investment Advisers Act of 1940, the registration of Neman Financial, Inc., as an investment adviser is hereby revoked.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 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. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed, 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. 17 C.F.R. § 201.360(d). 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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Jason S. Patil
Administrative Law Judge