

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 63726 / January 14, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14193**

**In the Matter of**

**CARY R. KAHN,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
PROCEEDINGS PURSUANT TO SECTION  
15(b) OF THE SECURITIES EXCHANGE  
ACT OF 1934 AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Cary R. Kahn (“Kahn” or “Respondent”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A.     RESPONDENT**

1.       From September 2002 through January 2009, Respondent was the manager and general partner of the Double Eagle Fund, an unregistered investment company. For a portion of the time in which he engaged in the conduct underlying the information described below, Respondent was associated with broker-dealers registered with the Commission. Respondent, 57 years old, was a resident of Boulder, Colorado, when he operated the Double Eagle Fund.

2.       On July 20, 2004, the Commission entered an Order Making Findings and Imposing Remedial Sanctions by Default, Admin. Proc. File No. 3-11468, in which Kahn was

ordered to cease-and-desist from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. He was also ordered to disgorge \$12,186.21, plus \$1,217.54 in prejudgment interest. Kahn failed to comply with the disgorgement order and the Commission filed a complaint in U. S. District Court for the District of Colorado, Civil Action No. 04-Z-2692 (BNB). The U.S. District Court entered the default judgment in favor of the Commission on March 11, 2005. Kahn has not paid the ordered disgorgement or interest.

B. RESPONDENT'S CRIMINAL CONVICTION

3. On March 24, 2010, Kahn pled guilty to the felony of mail fraud in violation of Title 18 United States Code, Section 1341 before the United States District Court for the District of Colorado, in United States v. Cary Richard Kahn, Crim. Case No. 10-CR-00116-WYD. On June 28, 2010, a judgment in the criminal case was entered against Kahn. He was sentenced to a prison term of sixty (60) months, and five (5) years of supervision upon his release from prison, and ordered to make restitution in the amount of \$1,812,559.11.

4. The criminal information to which Kahn pled guilty alleged, among other things, that between September 3, 2002 and January 22, 2009, Kahn defrauded investors and obtained money and property by means of materially false and misleading statements in connection with the purchase and sale of securities and in connection with the sale of "flex options" or "option conversions." The information alleged that, as part of the scheme, Kahn represented himself as an experienced and successful securities trader in order to obtain approximately \$2,121,098.70 from investors. The information further alleged that Kahn misrepresented to the investors in his Double Eagle Fund that he would use their money to buy and sell securities and that they could expect profits of fourteen to eighteen percent per year. In addition, the information alleged that Kahn sold some investors "flex options" and "option conversions," with guaranteed returns of between fifteen and nineteen percent within either six months or one year. The information also alleged that Kahn failed to use most of the investor money to trade securities, converted most of the money to his own use and benefit, used a portion of the money to make payments to other investors, and sent investors account statements misrepresenting profits earned as a result of his trading.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

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