

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

INVESTMENT ADVISERS ACT OF 1940
Release No. 3142/January 19, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14165

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
DANIEL SPITZER	:	IMPOSING SANCTION BY DEFAULT

SUMMARY

This Order bars Daniel Spitzer (Spitzer) from association with any investment adviser. Spitzer was previously enjoined from violating the antifraud provisions of the securities laws, based on his involvement in a fraudulent “Ponzi” scheme.

I. BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Spitzer on December 17, 2010, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that he was enjoined in 2010 from violating the antifraud provisions of the federal securities laws, based on his involvement in a fraudulent “Ponzi” scheme. Spitzer was served with the OIP on December 23, 2010. He failed to file an Answer, due twenty days after service of the OIP. See 17 C.F.R. § 201.220(b); OIP at 3. A respondent who fails to file an Answer to the OIP may be deemed to be in default, and the administrative law judge may determine the proceeding against him.¹ See 17 C.F.R. §§ 201.155(a), .220(f); OIP at 3. Thus, Spitzer is in default, and the undersigned finds the following allegations in the OIP are true.

II. FINDINGS OF FACT

Spitzer, of North Barrington, Illinois, is permanently enjoined from violating the antifraud provisions 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, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. SEC v. Spitzer, No. 1:10-cv-03758 (N.D. Ill. Dec. 6, 2010). He was also ordered to pay \$33,988,102 in disgorgement plus \$10,093,866 in prejudgment interest and a civil penalty of \$150,000.

¹ Spitzer was advised that if he failed to file an Answer to the OIP within the time provided by law, the undersigned would enter an order barring him from association with any investment adviser. See Daniel Spitzer, Admin. Proc. No. 3-14165 (A.L.J. Jan. 6, 2011) (unpublished).

The wrongdoing that underlies Spitzer's injunction occurred from at least 2004 to June 2010. Spitzer, personally and through eighteen entities he controlled, orchestrated a fraudulent scheme in which he raised \$105,875,029 from approximately 400 investors. Spitzer, individually and through his entities and various sales agents, represented to these investors that their money would be invested in investment funds that would be invested primarily in foreign currency trading and had profitable historical returns. In reality, Spitzer used \$71,886,926 of the investor proceeds to make Ponzi payments to other investors to keep his scheme afloat. As part of his scheme, Spitzer regularly collectively transferred and commingled investor funds in an elaborate web of domestic and offshore entity accounts. To cover up his scheme and in furtherance of it, Spitzer issued to his investors false periodic statements and false Schedule K-1s, which provided investors with inflated returns leading them to believe that their investments with Spitzer were profitable. However, in light of the Ponzi payments, investment losses, and payments for purported expenses, these statements were all false and misleading because Spitzer's touted returns were not achievable. During the time in which he engaged in this conduct, Spitzer acted as an investment adviser by compensating himself for purportedly providing investment advice to his investors.

III. CONCLUSIONS OF LAW

Spitzer is permanently enjoined "from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security" within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTION

Spitzer will be barred from association with any investment adviser.² This sanction will serve the public interest and the protection of investors, pursuant to Section 203(f) of the Advisers Act. It accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Spitzer's unlawful conduct was egregious and recurrent, occurring repeatedly over a period of six years and involving millions of dollars and hundreds of investors. There are no mitigating circumstances.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, DANIEL SPITZER IS BARRED from association with any investment adviser.

Carol Fox Foelak
Administrative Law Judge

² The Commission has authority to bar persons from association with registered or unregistered investment advisers (or otherwise sanction them) under Section 203 of the Advisers Act. See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999).