INITIAL DECISION RELEASE NO. 418
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13887

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

In the Matter of	:	
	:	
DAVID W. BALDT	:	INITIAL DECISION
	:	April 21, 2011

APPEARANCES: Preethi Krishnamurthy and Alix Biel, for the Division of Enforcement, Securities and Exchange Commission.

David W. Baldt, pro se.

BEFORE: Robert G. Mahony, Administrative Law Judge.

I. INTRODUCTION

The Securities and Exchange Commission (SEC or Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on May 11, 2010, against David W. Baldt (Baldt), pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Section 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act).

The OIP alleges that Baldt, a portfolio manager for a municipal bond fund, engaged in insider trading by tipping his family members in September and October 2008[1] to redeem their shares in a fund he managed while he possessed adverse material nonpublic information about the fund. It alleges that Baldt knew, or was reckless in not knowing, that tipping his family members to sell their shares breached his fiduciary duties to the fund and his employer in that it entailed the misuse of confidential information. As a result, the OIP alleges that Baldt willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase and sale of securities. It further alleges that Baldt willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

[1] Unless otherwise noted, all dates referenced herein are to 2008.

A hearing was held in Philadelphia, Pennsylvania, from October 18 to October 21, 2010. The Division of Enforcement (Division) called ten witnesses, including Respondent. Baldt testified on his own behalf but did not call any additional witnesses. Numerous exhibits were admitted into evidence.[2] The Division filed Proposed Findings of Fact and Conclusions of Law and a Post-Hearing Memorandum of Law. Respondent filed a Reply to the Division's Proposed Findings of Fact and Conclusions of Law and a Post-Hearing Memorandum.

Baldt contends that he neither possessed nor divulged material nonpublic information specific to the fund in which his daughter and family members invested. (Resp. Br. 1-2.) Baldt denies that he based his counsel to his daughter on the misuse of confidential information, and instead argues that his advice was based on asset allocation and suitability, in light of the financial meltdown in the summer and fall of 2008. (Resp. Br. 1.)

II. FINDINGS OF FACT

The findings and conclusions herein are based on the hearing record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91 (1981). All arguments, proposed findings, and conclusions set forth by the parties were considered and only those consistent with this Initial Decision are accepted.

A. Relevant Persons

Baldt, sixty-one, is a graduate of the University of Delaware and a chartered financial analyst (CFA). (Tr. 777-78, 795.) He has worked in the securities industry, in particular fixed income, for thirty-seven years and, from 2003 until 2008 was the head portfolio manager of the Philadelphia office for Schroder Investment Management North America Inc. (Schroder). (Tr. 778-85; Div. Exs. 35 at 296, 90 at 132 of 429.)

Jamie Dorrien-Smith (Dorrien-Smith) has been the Chief Executive Officer of Schroder since September 2006. (Tr. 70.) Baldt reported to Dorrien-Smith, among others. (Tr. 786.)

Mark Hemenetz (Hemenetz) has been the Chief Operating Officer for Schroder and the president of its mutual funds since 2004. (Tr. 455.) He graduated from the University of Scranton, has an M.B.A. from Pace University, and is a CFA. (Tr. 456.) Prior to Schroder, Hemenetz was director of investment management for a subdivision of Bank of New York for approximately twenty years. (Tr. 457.)

[2] Citations to the transcript of the hearing are noted as "(Tr. __.)". Citations to exhibits offered by the Division and Respondent are noted as "(Div. Ex. __.)" and "(Resp. Ex. __.)", respectively. The Division's Post-Hearing Memorandum of Law will be cited as "(Div. Br. __.)". Respondent's Post-Hearing Memorandum will be cited as "(Resp. Br. __.)". Citations to the Division's Post-Hearing Reply Memorandum and Respondent's Reply to Division's Proposed Findings of Fact and Conclusions of Law are noted as "(Div. Reply Br. __.") and "(Resp. Reply Br. __.)", respectively.

Stephen DeTore (DeTore) has been the Chief Compliance Officer for Schroder and its mutual funds since 2005. (Tr. 532.) Prior to Schroder, he worked for another investment advisory firm and also spent approximately seventeen years at the SEC working in various divisions and offices, including the Office of General Counsel, Division of Enforcement, and Office of Compliance Inspections and Examinations. (Tr. 532-33.) He graduated from Northeastern University and holds a Juris Doctor degree from Suffolk University Law School. (Tr. 533.)

In 2008, Whitney Sweeney (Sweeney) was a client portfolio manager within the municipal bond group at Schroder and reported to Baldt. (Tr. 215, 220.) She has bachelor's and master's degrees in economics from the University of Delaware and holds Series 7 and 66 licenses to sell securities. (Tr. 215-16.)

Susan Beck (Beck) was Baldt's most senior portfolio manager on the fixed income team in 2008. She has reported to Baldt at various companies from 1989 until October 2003, when she left Deutsche Bank with Baldt to join Schroder. (Tr. 383-87.) Beck graduated from Rutgers University and holds Series 7 and 63 securities licenses. (Tr. 384.)

Emily Kingsbury (Kingsbury) is Baldt's former wife and mother of their two daughters, Julia Baldt (Julia) and Katherine Baldt (Kate). (Tr. 667-68.) She has a bachelor's degree in English and history from New York University and a master's degree from Hunter College. (Tr. 668-69.)

Julia Baldt, twenty-eight, holds a bachelor's degree in economics from the University of Delaware, as well as Series 7 and 63 securities licenses. (Tr. 590, 592.) After graduation, she went to work for Goldman Sachs in fixed income sales, first as an analyst, and then as an associate. (Tr. 591-93.)

Katherine Baldt, thirty, graduated from Princeton University and majored in operations research and financial engineering. (Tr. 721-22.) She holds Series 7 and 63 securities licenses. (Tr. 724.) By 2008, she had worked for Goldman Sachs for six years, including as an analyst and associate on the fixed income currencies and commodities desk, and later as a vice president on the emerging markets trading desk. (Tr. 723-24.)

Other relevant Baldt family members include Kingsbury's mother, Phyllis Kingsbury, also referred to as "Gongi" by members of the Baldt family, and Frederick (Rick) and Elizabeth (Beth) Baldt, Respondent's brother and sister-in-law. (Tr. 618, 721-22.)

Kenneth O'Connor (O'Connor) is an SEC Branch Chief and supervises examiners who conduct inspections and reviews of registered investment advisers and investment companies. (Tr. 361-62.) He graduated with a finance degree and minor in accounting from C.W. Post College at Long Island University, and through his employment has become familiar with mutual funds and the bond markets. (Tr. 362-63.) He created and/or supervised the creation of summary charts and supporting documentation admitted into evidence in this proceeding. (Div. Exs. 91-94; Tr. 363-64.) The charts involve analysis and comparison of the two municipal bond funds, including overlap of the funds' investors and holdings, and daily performance trends. (Tr.

364-71.) O'Connor calculated the actual and attempted losses avoided by certain members of Baldt's family. (Tr. 372-78.)

B. Relevant Entities

1. Schroder Investment Management North America Inc.

Schroder is an investment adviser registered with the SEC under the Advisers Act.[3] (Div. Ex. 36 at 8060.) In 2008, the global Schroder organization had more than $200 billion in assets under management (AUM) worldwide, including $40-50 billion in fixed income. (Tr. 70-71.) Over $5 billion in fixed income was in municipal bonds managed by Baldt, including approximately $750 million in two mutual funds: Schroder Municipal Bond Fund (Muni Fund) and Schroder Short-Term Municipal Bond Fund (Short-Term Fund) (collectively, the Bond Funds). (Tr. 71-73; 221-22; Div. Ex. 90.) In addition to managing the Bond Funds, Baldt also advised separately managed accounts for a broad range of clients. (Tr. 476.)

2. The Bond Funds

The Bond Funds were registered investment companies under the Investment Company Act until they were closed on October 14.[4] (Div. Ex. 11; Tr. 244, 369, 428, 477.) They shared a similar investment strategy: returning a high level of income exempt from regular federal income tax, consistent with the preservation of capital, by investing in a portfolio of investment grade municipal bonds.[5] (Div. Ex. 90 at 3 of 429.) The Bond Funds' clients were largely investment advisers, broker-dealers, and some individual investors. (Tr. 73-74, 225-26.) As of August 31, there was significant investor overlap in the Bond Funds. (Div. Exs. 91, 91A; Tr. 364-65.) Investors owning approximately twenty percent of the Muni Fund's assets also held over sixty percent of the Short-Term Fund's assets. (Id.)

In 2008, the Bond Funds also held similar investments to the extent that selected bonds fit duration and credit guidelines. (Tr. 75, 391-92.) As of September 30, almost one-third of the Short-Term Fund's portfolio market value was in holdings identical to those comprising approximately eleven percent of the Muni Fund's portfolio. (Div. Exs. 92, 92A; Tr. 365-69.) The Bond Funds were similar in the types of securities held, structure, and credit quality. (Tr. 526.) Liquidity concerns would typically affect the Muni Fund and Short-Term Fund equally. (Tr. 84-85.)

---

[3] Official notice has been taken of Schroder's Form ADV. See 17 C.F.R. § 201.323.

[4] Official notice has been taken of filings on the SEC's EDGAR database confirming the Muni Fund's and Short-Term Fund's status as registered investment companies. The decision to close the Bond Funds was made by the board of trustees, independent of Baldt's family trades. (Tr. 153-54.)

[5] Pitch books used by firm personnel for marketing purposes included both of the Bond Funds; their strategies were the same. (Tr. 228.)

The primary difference between the Bond Funds was the duration of their portfolios. (Div. Ex. 90 at 3 of 429; Tr. 223-24, 526-27.) In 2008, the Muni Fund's and Short-Term Fund's bond portfolios had average durations of approximately four years and eighteen months, respectively. (Tr. 388, 392.) The Muni Fund's longer duration meant that it should have a slightly larger volatility. (Tr. 74-75.) As of September 30, there was a significant difference in the size of the funds; the Muni Fund had approximately $480 million in AUM, while the Short-Term Fund had approximately $148 million in AUM. (Tr. 75; Div. Ex. 92, 92A.)

The Bond Funds performed very well, typically in the top quartile, from their inception in 2003 until late 2007. (Tr. 80, 232.) By the fourth quarter of 2007 and into 2008, the Bond Funds were underperforming their benchmarks. (Tr. 232-33.) During 2008, the Bond Funds' performance were materially different, but trended together. (Div. Exs. 93, 93A, 93B, 93C; Tr. 369-71, 439.)

C. 2008 Market Disruption

In March, Bear Stearns collapsed. (Tr. 84; 603.) On September 15, Lehman Brothers filed for bankruptcy. (Tr. 243-44.) On September 16, the Primary Reserve Fund (Reserve Fund), a money market fund, "broke the buck."[6] (Div. Ex. 5 at 2; Tr. 647-48, 771-72.) That same day, the U.S. government announced it would bail out and take control over insurance giant, American International Group, Inc. (AIG).[7] On September 29, Congress failed to pass the federal government's Troubled Assets Relief Program (TARP). (Tr. 772.)

Such events raised serious concern about the liquidity of the securities markets. (Tr. 84, 244.) Schroder management was concerned about the increasing risk of redemptions and people losing confidence in the Bond Funds and the asset class in general. (Tr. 86-87.) The entire portfolio management team was extremely stressed by mid-September; the Bond Funds' quarterly performance was poor and clients were questioning the Bond Funds' exposure to failed financial firms such as Lehman Brothers and AIG. (Tr. 259-61.)

D. The Muni Fund's Largest Investor Redeems

In May, Baldt and his portfolio management team learned that Wachovia intended to redeem a significant portion of its holdings from the Muni Fund. (Tr. 80-82, 234-35, 815.) Wachovia indicated that it would redeem its holdings over time, beginning in September and continuing through the fourth quarter of 2008. (Tr. 82.) At the end of August, Wachovia was the single largest holder in the Muni Fund; its investments comprised close to forty percent ($213 million) of the Muni Fund's portfolio. (Div. Ex. 91A.) By September 17, Baldt knew that Wachovia intended to redeem $31.6 million on September 22 and $12.7 million on September

[6] Official notice has been taken of the Commission's records indicating that the Primary Reserve Fund's Net Asset Value dropped below $1.00 per share on September 16.

[7] Official notice has been taken of public records disclosing on September 16 the U.S. government's extension of an $85 billion loan facility to AIG in return for approximately eighty percent equity ownership.

25. He also knew that Wachovia intended to redeem an additional $60 million in the fourth quarter of 2008. (Tr. 815.)

On or about September 17, Dorrien-Smith, Baldt, and Karl Dasher, head of product and a member of Schroder senior management in London, met to discuss Baldt's concern in meeting the upcoming Wachovia redemptions. (Tr. 89-91, 253, 815-17; Div. Ex. 40 at 6027.) Baldt emphasized that the market for his securities was frozen. (Div. Ex. 40 at 6027; Tr. 817.) He attributed this to general market dislocation, made worse by failed financial firms such as Lehman Brothers and AIG. (Div. Ex. 40 at 6027.) During this meeting, five options were discussed and ultimately dismissed: (i) asking Wachovia to delay the redemption; (ii) delivering the securities in specie to Wachovia; (iii) closing the fund; (iv) obtaining overdraft facilities;[8] and (v) utilizing the Schroder organization to provide temporary liquidity.[9] (Div. Ex. 40 at 6028; Tr. 92-102.)

On or about September 18, Baldt was asked to increase the Muni Fund's cash balance to $55 million immediately, even if at discounted prices, to meet Wachovia's pending redemptions and create a cash cushion for any ad hoc daily redemptions. (Div. Ex. 41.) Based on management's directive, Baldt put bonds out for bid, but even the most liquid securities received no bids or were lucky to receive one or two bids. (Tr. 818-20.) Sales at that time were typically a couple of percentage points below Schroder's assessment of fair market value. (Tr. 819.) Despite the directive to immediately raise large cash reserves, Schroder ultimately permitted Baldt to handle redemptions as he had done in the past. (Tr. 884.)

E. Significant Short-Term Fund Investor Indicates Intent to Redeem

On September 26, Sweeney received notification from Aequitas Investment Advisors (Aequitas) that it was considering redeeming its holdings in the Short-Term Fund. (Div. Ex. 46.) As of August 31, Aequitas held approximately $12 million, comprising over seven percent of the Short-Term Fund's assets. (Div. Ex. 91A.) Baldt was aware of Aequitas' large investment in the Short-Term Fund. (Tr. 826.)

Baldt was included on an e-mail chain discussing the potential Aequitas redemption on September 26. (Div. Ex. 46.) Aequitas was concerned about the credit quality of the Short-Term Fund's portfolio and offered Schroder the opportunity to provide input before making its

[8] Schroder management determined, and Baldt was aware, that obtaining a credit facility would be difficult in the current market environment and even if possible, would only postpone the problem and expose the fund to more liability and difficulty paying down that debt should the value of holdings decline. (Tr. 98-99.)

[9] Management determined that it was not appropriate for the Schroder organization to provide liquidity to help fund the Wachovia redemptions. (Tr. 100-02.) Schroder's parent company had a duty to its shareholders not to support one of its smaller funds and absorb unknown risk. (Tr. 102.) Schroder also felt that if it supported one investor, it would be required to support all investors. (Id.)

decision. (Id.) They were inclined to redeem, but willing to listen before doing so.[10] (Div. Ex. 46; Tr. 281.) Aequitas considered replacing its allocation to the Short-Term Fund with the Vanguard Short-Term Tax Exempt Fund (Vanguard Fund). (Div. Ex. 46.) According to Dan Scholl, the Vanguard Fund's credit quality would compare favorably to the Short-Term Fund.[11] (Id.) However, Sweeney identified Aequitas' risk of redemption as "high."[12] (Div. Ex. 91A; Tr. 240-42.)

Sweeney believed that given the market conditions and the Short-Term Fund's low cash levels, the potential Aequitas redemption was a significant concern, or "fire drill."[13] (Tr. 272-73.) In an e-mail to Sweeney and Baldt, dated September 29, Hemenetz inquired as to whether the Short-Term Fund could raise sufficient liquidity to meet the potential Aequitas redemption. (Div. Ex. 47.) Sweeney stated that they would face the same liquidity difficulties faced by the Muni Fund. (Id.) She distributed a schedule summarizing the outlook of a number of brokers on current trading in the municipal bond market (Broker Survey). (Div. Ex. 47; Tr. 278-80.) The Broker Survey demonstrated the market's current illiquidity.[14] (Id.) By September 29, Baldt recognized that raising cash was difficult for the Bond Funds and "absolutely" understood that the potential Aequitas redemption had prompted concern among Schroder senior management about the Short-Term Fund. (Tr. 833-34.) A redemption of this size would have required significant securities sales, which might have resulted in deterioration of the Short-Term Fund's liquidity tiers, to the disadvantage of remaining shareholders.[15] (Tr. 116.)

On September 29, Baldt was included on an e-mail discussing Aequitas' first redemption from the Short-Term Fund. (Div. Ex. 48.) The e-mail contained a screen print identifying Aequitas as the redeeming investor and the amount, $1.1 million. (Id.) In the same e-mail chain, Carter Sims, head of intermediary distribution, e-mailed a number of Schroder personnel, including Baldt, estimating the total amount of Aequitas redemptions to be $6-12 million,

[10] Sweeney stated that Aequitas had raised the same question about credit quality in the past and was very receptive to a discussion. (Div. Ex. 47.)

[11] Dan Scholl worked in Schroder distribution sales. (Tr. 350.)

[12] Evensky & Katz, LLC (Evensky), another client invested in the Bond Funds, was also noted as having a high risk of redemption; as of August 31, Evensky held approximately eight percent and three percent of the Short-Term Fund and Muni Fund, respectively. (Div. Ex. 91A.)

[13] Beck was also concerned about the potential redemption given the current market difficulties and the fact that the redemption was close to ten percent of the Short-Term Fund. (Tr. 395.)

[14] The Broker Survey was prepared by Beck, in consultation with Baldt, during the week of September 22, in order to demonstrate to Schroder management the activity level in the municipal market; it was not a portfolio-specific analysis. (Tr. 395-97.) It showed that trading desks were under capital constraints and could not bid on bonds for their own portfolios. (Tr. 398.) This was true with respect to both long-term and short-term bonds. (Tr. 401.) In fact, many brokers were discounting their own inventory of bonds just to generate bid interest. (Tr. 399-400.)

[15] The Bond Funds' holdings were in different liquidity tiers, or levels. (Tr. 82-83.) If a redemption was satisfied by selling off only the most liquid holdings and liquidity continued to deteriorate, less liquid securities would have to be sold at lower prices, prejudicing remaining shareholders. (Tr. 83.)

possibly in large chunks of $1 million or more, over a period of days. (Tr. 110; Div. Ex. 48.) Baldt stated that he did not normally review screen prints detailing the investors redeeming from the Bond Funds; he was more concerned with the daily cash requirements. (Tr. 829-32.) On October 3, at 4:13 p.m., Baldt was included in an e-mail advising certain Schroder personnel of upcoming redemptions in the Short-Term Fund. (Div. Ex. 58.) That e-mail similarly contained a screen print showing that Aequitas was redeeming approximately $800,000 more from the Short-Term Fund. (Id.) Regarding Aequitas' second redemption, Baldt could not recall if he opened the e-mail, given the "late hour." (Tr. 831-32.)

F. The Muni Fund and Short-Term Fund Face Significant Challenges

1. Redemption Pressure

An analysis of inflows and outflows for the Bond Funds during the period July through September showed net redemptions of approximately $97 million in the Muni Fund and $7 million in the Short-Term Fund.[16] (Resp. Ex. 16; Tr. 166-71.) Dorrien-Smith stated that evaluating the redemption stress faced by the Bond Funds should focus on the percentage of the funds being redeemed, rather than on absolute values. (Tr. 169.) He also noted that comparing total redemptions between the two funds was inaccurate because the $97 million in net Muni Fund redemptions included Wachovia redemptions for which Schroder received advance notice. (Tr. 170-71.) Beck stated that while the redemption pressure facing the Short-Term Fund during this period was relatively mild in comparison to the Muni Fund, it was still hard to sell in the current market environment. (Tr. 443-44.) Baldt believed that given the market trends and the Short-Term Fund's light redemption activity, investors would seek out municipal bonds, and in particular, bonds of shorter duration. (Tr. 881.)

2. Urgent Efforts to Increase Cash Levels in the Bond Funds

On September 29, Hemenetz sent an e-mail with the subject line "Re: Muni funds liquidity – Update" to Schroder management, including Baldt, in which he summarized various topics discussed that day.[17] (Div. Ex. 50; Tr. 281-82.) Sweeney understood the e-mail to be about both the Muni Fund and Short-Term Fund, despite the subject line. (Tr. 282.) Hemenetz emphasized that despite the difficult market conditions, the Bond Funds needed to (i) provide daily liquidity to shareholders and therefore put out for bid more of the Bond Funds' portfolio, and (ii) aggressively increase cash levels in light of the steady flow of small redemptions, as well as more significant redemptions, including a $13 million redemption notice from Evensky received that day.[18] (Div. Ex. 50.) In order to provide breathing room for the Evensky

[16] The Short-Term Fund had net inflows of $641,000 on October 1 and $10,000 on October 2. (Resp. Exs. 17-18.)

[17] Baldt was also included on a confidential e-mail chain dated September 30, in which Hemenetz and Alan Brown (Brown), group chief investment officer of Schroder, discussed the low cash levels in the Bond Funds and the need to aggressively increase cash in order to provide daily liquidity to shareholders. (Div. Ex. 51; Tr. 121-22.)

[18] Hemenetz testified that it was a difficult market in which to raise cash, and perhaps a little more difficult for the Bond Funds because of the specific and unique nature of their holdings.

redemption, Schroder postponed the trade's settlement date from "T+1" to "T+3."[19] (Id.) The Evensky redemption was from the Muni Fund. (Resp. Ex. 7.) As of September 29, Evensky did not intend to sell its position in the Short-Term Fund. (Id.) Hemenetz also suggested that the Bond Funds explore cross trading, which would allow other Schroder separate account clients to buy bonds held by the funds.[20] (Div. Ex. 50.)

By at least September 30, Baldt was aware of management's directive to build a cash cushion of ten to twelve percent in the Muni Fund and Short-Term Fund.[21] (Div. Ex. 54; Tr. 130-31.) To increase its cash levels, on October 1, Baldt's team put out for bid over the broker wire a broad list of its holdings in both the Muni Fund and Short-Term Fund.[22] (Tr. 405-06, 412.) By comparing a list of offered bonds with a list of holders of municipal bonds available on Bloomberg, a broker could make a "guesstimate" about the entity putting bonds out for sale. (Tr. 407-08.) Baldt was concerned that putting out large lists of bonds for bid would create a negative market perception and he did not want this information to become public knowledge with clients. (Tr. 845-46.) The Bond Funds received some bids that were executed but they did not sell into low bids. The Muni Fund and Short-Term Fund also received vulture bids, or very distressed bids.[23] (Tr. 410-11, 884.)

Sweeney did not inform investors in the Short-Term Fund that Schroder was receiving vulture bids in response to some of its bonds put out for sale, nor did she disclose the difficulty it was having raising cash in order to meet redemptions. (Tr. 307.) She did not tell investors in the Short-Term Fund that Schroder was trying to build a ten to twelve percent cash cushion in the Fund. (Tr. 306-07.) Sweeney believed such information would have a significant impact on the Fund's pricing. (Tr. 307-08.) In September, Sweeney sought permission from Schroder to

---

(Tr. 459-60.) Some of the Bond Funds' holdings were not general obligation bonds or "large cap" securities, making it more difficult to raise cash. (Id.)

[19] A settlement of "T+1" or "T+3" meant settlement one day or three days after the trade date.

[20] Registered investment companies, such as the Bond Funds, must meet certain requirements before engaging in cross trades, including documenting sufficient bona fide bids from independent dealers. (Div. Ex. 50; 17 C.F.R. § 270.17a-7.)

[21] Historically, Baldt sought to maintain one or two percent of the Bond Funds' assets in cash in order to maximize investor returns of tax-exempt income. (Tr. 391-92; 799.) Redemption requests did not typically exceed the Bond Funds' cash balances. (Tr. 799-800.)

[22] Baldt was putting out for bid approximately 50 and 20 bonds per day for the Muni Fund and Short-Term Fund, respectively. (Tr. 837.) This was in contrast to fewer than ten bonds put out for bid each day prior to that. (Id.) Between September 22 and October 14, Hemenetz, who was based in New York, worked out of the Philadelphia office one or two days a week, to provide support and expertise as Baldt's team worked through the difficult market conditions. (Tr. 477-78.)

[23] A vulture bid occurs when a party must engage in a forced sale, allowing the buyer to acquire assets at very cheap prices. (Tr. 483.) Bids received were compared against an "eval" or bond price determined by an independent third party. (Tr. 410.)

redeem a portion of her personal investment in the Short-Term Fund to pay a legal bill.[24] (Tr. 311-12; Div. Ex. 78.) Sweeney was not required to seek preclearance under the personal trading compliance rules; she did so because she "felt like there was too much stuff going on . . . like [she] knew too much." (Div. Ex. 36 at 8206; Tr. 311-12.) DeTore denied her request. (Tr. 312.) Schroder ultimately provided Sweeney with a loan to pay her legal bill. (Tr. 313.)

On October 2, seeing a number of bonds out for bid, a J.P. Morgan broker questioned whether Schroder was financially sound. (Tr. 412-13.) On Friday morning, October 3, Baldt informed Dorrien-Smith that the dealer community had identified Schroder's portfolio as having been put out for sale. (Div. Ex. 56; Tr. 132.) Baldt stated that at least one dealer asked specifically if "we are in trouble" and noted that the rumor would likely spread throughout the dealer community, possibly with damaging results. (Id.) Dorrien-Smith understood Baldt's concern to mean that dealers might take advantage of the situation and offer lower prices. (Tr. 133-34.) In response, Dorrien-Smith asked Baldt to correspond with Hemenetz and establish a clear response to the community. (Div. Ex. 56.)

Between September 15 and October 14, Baldt and his team were buying bonds at advantageous prices for its separately managed accounts; however, the need to raise cash in the Bond Funds precluded those funds from purchasing bonds in a buyer's market. (Tr. 414-15.) The failure to buy bonds for the Bond Funds was a significant departure from their "relative value" strategy. (Id.) As of October 3, the Short-Term Fund had approximately $1.8 million in cash, far short of even five percent of the Short-Term Fund's prior day's net assets. (Div. Ex. 60 at 2494-97.)

3. Schroder Discusses Closing the Bond Funds

On September 19, Hemenetz was told that a contingency plan for liquidating the Muni Fund was being put in place. (Resp. Ex. S.) Hemenetz stated that after early discussions about closing the Muni Fund, the consensus among the contingency planning committee was that if one of the funds was closed, the Bond Funds would both close.[25] (Tr. 118, 526.) This was in part, because the same shareholder advisers had investments in both of the Bond Funds—if one fund closed, the likelihood that an adviser would look to redeem from the other fund was extremely high. (Tr. 118.) Baldt was involved in at least some of the conversations about closing the Bond Funds together. (Id.) On September 29, Hemenetz sent an e-mail to Baldt, among others, discussing the possibility of closing the Bond Funds if redemptions could not be met.[26] (Div. Ex. 50.) Baldt knew that the future of the Bond Funds was in doubt; at some point

[24] Sweeney was asked to put her request in writing, which she did on October 9. At least one week passed between the time she made the request and the time she submitted it in writing. (Div. Ex. 78; Tr. 311-13.)

[25] A $30-40 million redemption in the Muni Fund triggered the decision to close the Bond Funds. (Tr. 151-52.)

[26] On September 30, Baldt was included on an e-mail chain in which Hemenetz and Brown confirmed that if redemptions could not be met, the only option was to close the Bond Funds. (Div. Ex. 51; Tr. 838-39.) However, Hemenetz also told Baldt that "[Schroder] could not close the funds." (Tr. 833.)

in September or October, Baldt told Sweeney that if Schroder continued its directive to raise cash in the Muni Fund by selling assets, both funds would be driven into the ground. (Tr. 310, 841-42.)

Baldt stated that overlap of clients between the Bond Funds did not mean that a client redeeming out of one fund would necessarily redeem from the other fund at the same time. (Tr. 882.) He also believed that large withdrawals in the Muni Fund would not lead to large redemptions in the Short-Term Fund. (Tr. 882-83.) Baldt based his belief on the history of diverging experience of redemptions and additions in the two funds. (Tr. 883.)

Baldt was aware that he had a fiduciary duty to the Bond Funds and to treat customers fairly. (Div. Ex. 36 at 8197; Tr. 806.) On September 30, Baldt advocated that given the market conditions, closing at least the Muni Fund would hurt shareholders less than immediately raising $55 million in cash. (Tr. 839.) Baldt's concern was that closing the fund would permit a shareholder that redeemed prior to a forced liquidation to fare better than a non-redeeming shareholder. (Tr. 840-42.)

There was an expectation that conversations about closing the Bond Funds would remain nonpublic and restricted to limited people within Schroder. (Tr. 119.) Public knowledge that Schroder was considering closing the Muni Fund and Short-Term Fund might persuade investors to redeem their holdings, rather than be denied access to their money until the Bond Funds' were liquidated. (Tr. 119-20.) If the Bond Funds closed, it could have taken one to two years before investors received any of their money back.[27] (Tr. 120.) Beck was surprised to learn that Schroder ultimately decided to close the Bond Funds. (Tr. 445.)

4. Schroder's and Baldt's Views Diverge

With respect to meeting mounting redemptions, Schroder's view was to try and balance the needs of both redeeming shareholders and long-term shareholders. (Tr. 122, 126-27.) Baldt was more focused on preserving share value for long-term shareholders. (Tr. 126, 472-74.) As long as there was sufficient market liquidity, Schroder believed it had a responsibility to try and meet redemptions by exposing more of the Bond Funds' portfolio to the market, even at discounted prices, while monitoring for market developments that might necessitate closing the Bond Funds.[28] (Tr. 122-23.) Schroder's approach was based, at least in part, on Baldt's prior success selling securities at moderate discounts.[29] (Tr. 123-24.)

[27] After the Bond Funds closed, it took approximately one year for investors to receive any of the their investment back. (Tr. 120.)

[28] The Bond Funds' prospectus required that Schroder permit redemptions upon request. (Tr. 123, 474-75.)

[29] On September 30, Baldt's team was congratulated for selling a bond for $17.8 million, approximately "2 pts off the eval." or two percent lower than its estimated market value. (Div. Ex. 54; Tr. 128-29.) The sale was made to cover the Evensky redemption. (Div. Ex. 54; Tr. 293-94.)

Baldt disagreed with Schroder's approach and was unhappy with the directive to sell more holdings and raise cash. (Div. Ex. 41, 53.) He believed he would have to sell assets at deep discounts, which would lower the Bond Funds' net asset values. (Tr. 819-20.) He believed that he was given a mandate to liquidate fund assets at any cost to meet redemptions and raise cash levels, to the detriment of long-term shareholders. (Div. Ex. 41, 53.) Baldt believed the more prudent approach would be to freeze fund assets and liquidate holdings in an orderly fashion. (Div. Ex. 53; Tr. 122.) Dorrien-Smith stated that there was no mandate to liquidate fund assets at any cost, and in response to Baldt's request for clarification, he told Baldt that it "was not intended to create a fast sale in terms of taking any price for the securities."[30] (Tr. 124; 183.)

5. Difficulties Facing the Short-Term Fund Were Material Nonpublic Information

By October 3, Beck was concerned, in part based on a steady flow of redemptions, about the ability of the Bond Funds to meet future liquidation needs. (Tr. 420-21.) Beck believed that the following nonpublic information regarding the Short-Term Fund would have been material to an investor's decisionmaking: (i) the potential Aequitas redemption; (ii) management's directive to build a ten to twelve percent cash cushion; (iii) the putting out large portions of its holdings for bid; (iv) the responses to its bids, ranging from reasonable bids, to low bids, to no bids; and (v) the fact that the Bond Funds were not purchasing bonds despite good opportunities. (Tr. 421-25.) Beck also testified that as of the end of September, the illiquidity of the markets was front page news. (Tr. 446.)

Hemenetz agreed with Beck's assessment that much of the information possessed by the portfolio team was material nonpublic information. (Tr. 484.) Hemenetz also believed that it was material nonpublic information that Schroder management discussed the possibility of closing the Bond Funds and sought a line of credit. (Tr. 485.) DeTore agreed with Beck's assessment of points (ii) and (iv), as well as the fact that Schroder discussed closing the Bond Funds. (Tr. 560-62.) Dorrien-Smith also agreed with Beck that such information was material and nonpublic. (Tr. 144-47.)

G. Baldt's Family Redeems Holdings in the Short-Term Fund

1. Julia Baldt

Julia received her initial shares in the Short-Term Fund as a gift from Baldt.[31] (Tr. 596.) Prior to the summer, Julia never discussed the Short-Term Fund with Baldt. (Tr. 596-97.) By

[30] Dorrien-Smith and others within Schroder management believed that at the time, there was some liquidity in the markets, though difficult to find. (Tr. 183.) Hemenetz was not aware of a mandate to liquidate fund assets at any cost. (Tr. 469-70.)

[31] Baldt similarly gifted Kate with her shares in the Short-Term Fund. (Tr. 810-11.) At that time, the shares gifted to Julia and Kate were each worth approximately $225,000. (Tr. 810-11.) Julia also invested additional funds in the Short-Term Fund. (Tr. 597.) She did not recall discussing these investments with Baldt, or telling him that she was investing additional funds. (Tr. 597-98.)

March, Julia's investment in the Short-Term Fund comprised at least ninety percent of her net worth. (Tr. 603.) In August, Julia began monitoring the Short-Term Fund, and by early September, was concerned about her investment. (Tr. 610-11.) For months, Julia had told her sister Kate of her inclination to sell her holdings in the Short-Term Fund. (Tr. 766-67.) She was concerned about a lack of diversity, numerous "bearish" municipals research articles generated from within Goldman Sachs, and the Reserve Fund's "breaking the buck." (Id.) On October 1, Kate and Baldt discussed Julia's anxiety. (Div. Ex. 19 at 8.)

Schroder policy was to record portfolio managers' and traders' phone lines to help resolve disputes should they arise. (Tr. 149, 534.) Baldt knew that his telephone line was recorded.[32] (Tr. 534.) Relevant portions of Baldt's conversations with Julia follow:

a. The September 17 Telephone Call

On September 17, Baldt called Julia at her office at Goldman Sachs. (Div. Ex. 5 at 2.) Julia asked Baldt what they were going to do about her life savings, noting that the Reserve Fund had recently "broken the buck." (Id.) In response to her concern, Baldt stated "But if you're worried, you can, you know, sell it and go to . . . [y]ou could take it and buy straight Treasuries." (Div. Ex. 5 at 3.) Baldt also suggested buying the Vanguard Ginnie Mae Fund, backed by the full faith and credit of the U.S. government. (Id.) In response to Julia's continued discussion about the current market disruption, Baldt told Julia that she "should own what you could live with and if owning a Treasury makes you sleep better at night, just temporarily take haven in Treasury Bills." (Div. Ex. 5 at 5.) Julia was also concerned about selling at a loss. (Id.) In response, Baldt told Julia "always ignore your cost . . . that will keep you from doing what you need to do." (Id.) With regard to selling her shares, Julia asked Baldt "But you don't think I need to; it's just if I want to sleep at all at night?" (Div. Ex. 5 at 6.) Baldt replied "Well it sounds like you need to." (Id.) Baldt then stated that he thought "[her] mother feels the same way too, so I think you probably should do it . . . both of you and Gongi, so that she doesn't worry about it either." (Id.)

Sweeney acknowledged that several of Baldt's talking points during the September 17 call were in the nature of suitability advice. (Tr. 325-33.) Hemenetz discussed with Baldt the difference between advice that may be given to a separately managed account client and a mutual fund client, such as Julia. (Tr. 480-81, 566.) A separate account holder may be advised as to its specific holdings because such actions would affect only that account. (Tr. 357, 565.) However, a fund shareholder, like Julia, may only receive broad investment advice because an investment adviser to a fund cannot provide information to one shareholder to the exclusion of others. (Tr. 357-58.)

[32] Schroder policy regarding telephone line recording was in the employee handbook and it was common for portfolio managers to be told this when they joined Schroder. (Tr. 535-36.) Prior to the fall of 2008, Baldt was aware that his telephone line was recorded because tape recordings involving Baldt were reviewed in connection with a dispute that involved a Pennsylvania auction rate security. (Tr. 536.)

b. The October 3 Telephone Call

On October 3, Julia called Baldt at his office around 5 p.m. (Div. Ex. 9 at 2; Tr. 851.) Julia asked Baldt about his views on Cornerstone Bank (Cornerstone), a community-based bank. (Div. Ex. 9 at 2-3.) Julia noted that the bank's financials did not look very good and that Goldman Sachs was very negative on regional banks. (Div. Ex. 9 at 3.) Baldt told Julia that Cornerstone was "dead money for the time being" and had no earnings because the bank was reinvesting it all on expensive branch offices. (Div. Ex. 9 at 4-5.) Baldt believed that Cornerstone was still a good investment, but told Julia "I certainly wouldn't hesitate to sell it, if you wanted to buy something that was distressed." (Div. Ex. 9 at 4-6.) Baldt then turned the conversation back to Julia's holdings in the Short-Term Fund:

> Baldt: And, you know, your holdings of municipals that you have, you really should, you know, consider your inclination to sell . . . never let taking a loss get into your consideration.
>
> Julia: Yeah. Well I have sold some of it now.
>
> Baldt: Well I'd go with the full route. And your mother . . . the way she worries, she ought to do it as well.[33]
>
> Julia: Yeah, well I told her that you had said that and . . . I think that she'd like to do something but I did want to at least like diversify a little bit right now.
>
> Baldt: Right.
>
> Julia: Because even though the bonds behind them are probably really still good, just in case, like there's a run on the fund.
>
> Baldt: Yeah. No. Do what you're – go with your original thought on it and –
>
> Julia: Yeah.
>
> Baldt: -- [T]ell her the same thing.

(Div. Ex. 9 at 7-8.) Later in the conversation, Baldt says to Julia "I can tell you the bonds I put out for bid, there was – it was all vulture bids. They know that people are forced to sell, so try to pick them off." (Div. Ex. 9 at 12.) In reply to Julia's question "Have regionals been the better bids right now?", Baldt tells her "The only – they've been the only bids." (Div. Ex. 9 at 13.)

[33] Julia understood Baldt to mean that she and her mother should liquidate all of their holdings in the Short-Term Fund. (Tr. 626.)

At the time Baldt told Julia to sell her entire position, he never asked her how much of her investment in the Short-Term Fund she had sold already. (Tr. 857.) Baldt's advice to Julia was based on her desire to preserve her remaining principal. (Tr. 664.) Julia did not seek Baldt's advice about whether her investment in the Short-Term Fund was suitable. (Tr. 625.) Based on the October 3 conversation, Julia had no idea which of Baldt's accounts were putting bonds out for bid, nor did she believe Baldt's reference to vulture bids was specific to the Short-Term Bond Fund. (Tr. 646.) She believed that Baldt's counsel on both phone calls was based on suitability, her altered risk tolerance, and anxiety over losing her job, among other things. (Tr. 649-50, 664.) The financial crisis and market disruption led to Julia's severe anxiety, inability to sleep and other medical problems. (Tr. 650.) Conversations with her colleagues at Goldman Sachs also contributed to Julia's anxiety. (651-52.)

Prior to any phone conversations with Baldt, Julia had discussed with her mother that she was considering selling her municipal holdings and that she should do the same. (Tr. 658.) Julia was aware of general market illiquidity at the time, including no-bids and low-bids on many securities. (Tr. 653.) She testified that she was never given information specific to redemptions in the Short-Term Fund. (Tr. 655-56.) Baldt stated that in all conversations with his family members he caveated that their investment decisions should be based on their own emotions and needs. (Tr. 884-85.)

c. Julia Attempts to Redeem Short-Term Fund Holdings

By the end of September, Julia had decided to redeem half of her position in the Short-Term Fund. (Tr. 619-20.) She redeemed $50,000 each day via telephone on September 24, 25, and 29.[34] (Div. Ex. 7, Tr. 620.) By the evening of October 3, Julia decided to sell her remaining shares in the Short-Term Fund. (Tr. 630.) She redeemed another $50,000 each day via telephone on October 6 and 7, and attempted to redeem the same amounts on October 8 and 9.[35] (Div. Ex. 7; Tr. 630-32.) Julia understood that redemptions would drive the price of shares downward and in hindsight would have preferred to redeem earlier because the shares were losing value. (Div. Ex. 10; Tr. 632-34.) Prior to redeeming shares in October, Julia could not recall Baldt expressing any limitations about the information he could provide regarding the Fund. (Tr. 640-41.)

[34] Schroder limited telephone redemption requests in the Bond Funds to $50,000 worth of shares daily. (Div. Ex. 90 at 144 of 429; Tr. 517.) Redemptions in excess of $50,000 required written notice and a bank guarantee stamp. (Id.)

[35] As a result of an internal investigation, Schroder management determined not to honor several Baldt family redemptions, including Julia's redemption requests on October 8 and 9. (Tr. 147-48, 493-94.)

2. Emily and Phyllis Kingsbury Attempt to Redeem Short-Term Fund Holdings

By 2008, the vast majority of Kingsbury's net worth was invested in the Short-Term Fund.[36] (Tr. 675.) By this time, she had stopped working and was supported by the money invested in the Short-Term Fund. (Tr. 675-76, 809.) Kingsbury also had investment discretion over two accounts invested in the Short-Term Fund that belonged to her mother, Phyllis Kingsbury. (Tr. 676-77.) In 2008, Julia and Kingsbury spoke almost every day. (Tr. 618-19.) As market conditions deteriorated, Kingsbury worried more about the safety of her life savings. (Tr. 716-18.) She was influenced by media coverage of the financial crisis, her conversations with Julia, and precipitous market declines that occurred on September 29, when Congress failed to pass TARP and then on October 3 when TARP passed. (Tr. 716-20, 762.) Julia discussed with Kingsbury the content of her September 17 and October 3 conversations with Baldt. (Tr. 618, 629-30.)

On October 3, Kingsbury decided to sell her holdings in the Short-Term Fund. (Tr. 690-91, 719.) That same day, Baldt called Kingsbury and she informed him that she was in the process of selling her holdings in the Short-Term Fund.[37] (Tr. 861.) She redeemed $50,000 via telephone on October 6. (Tr. 690.) On October 7, Kingsbury sent a written letter via overnight mail to Schroder requesting that her account in the Short-Term Fund be liquidated. (Div. Ex. 32.) On October 8, Kingsbury sent a similar letter to Schroder requesting that her mother's primary account be liquidated as well.[38] (Div. Ex. 33; Tr. 693-94.) About one week after she decided to redeem her holdings in the Short-Term Fund, Kingsbury spoke with Beth, her former sister-in-law. (Tr. 697-99.) She thought it was appropriate to inform Beth that she and Julia had decided to sell out of the fund. (Tr. 699-700, 710.) Kingsbury believed that Beth would view her and Julia's sale as something Baldt advised. (Tr. 710.) Beth and Rick sought to redeem their entire position in the Short-Term Fund on October 10. (Div. Exs. 94A, 94B at 24.)

3. Kate Baldt Redeems Short-Term Fund Holdings

Kate understood that both Kingsbury and Julia had been leaning towards selling their holdings. (Tr. 731-32.) She believed there was reluctance on both her and Julia's part to sell shares of a bond fund managed by their father and that there was a feeling they needed Baldt's approval before selling. (Tr. 770-71.) On the weekend of October 4, Kingsbury informed Kate that Julia had a conversation with Baldt during which Baldt suggested that if Julia could not stomach the risk, she could sell, and that since Kingsbury felt the same way, she too should sell. (Tr. 732.) Kingsbury told Kate that both she and Julia intended to redeem their holdings in the Short-Term Fund. (Id.) Kate was more optimistic than Julia and her mother about the potential for the market to rebound. (Tr. 729.) She never sought Baldt's advice about buying or selling

[36] Kingsbury's investments were always managed by Baldt; initially with Deutsche Asset Management, one of Baldt's prior employers, and then by Schroder when Baldt changed employers. (Tr. 673-74.)

[37] Baldt testified that he called Kingsbury on an unrelated matter. (Tr. 859-60.)

[38] Phyllis Kingsbury's other account with Schroder was a much smaller trust account. (Tr. 694.) Kingsbury attempted to redeem the trust account via telephone. (Tr. 695-96.)

shares in the Short-Term Fund.[39] (Tr. 736.) Based on conversations with Kingsbury, continuing market deterioration, and a sense of comradery with Julia and her mother, Kate decided to redeem a portion of her holdings as well. (Tr. 746-48, 765.) She redeemed $50,000 via telephone on October 6, and had planned to redeem more.[40] (Div. Ex. 15, 20; Tr. 746-49.)

H. Schroder's Internal Investigation

On October 7, Hemenetz was alerted to multiple trades put into the transfer agent by members of Baldt's family. (Tr. 479.) The trades, approximately $3 million in redemptions from the Short-Term Fund, were surprising because of known efforts to raise cash in the Short-Term Fund and the fact that the amount of redemptions would likely have exceeded the amount of cash available. (Tr. 480.) Around the same time, Dorrien-Smith learned of the Baldt family's trades. (Tr. 139-42.) Given the illiquidity of the markets, Dorrien-Smith believed these trades were significant to the Short-Term Fund. (Tr. 141-42.) Because of concern as to what prompted several members of Baldt's family to sell their shares, Schroder began an internal investigation. (Tr. 140-41, 147.)

1. Hemenetz's Initial Conversation With Baldt

On October 8, Hemenetz discussed the trades with Baldt and asked him if he knew Kingsbury and/or anything about her trades. (Tr. 481-82.) Baldt replied that Kingsbury was his former wife and that he knew nothing about the trades. (Tr. 482.) Baldt told Hemenetz that although he talked with his daughters, he was not managing their money and would not talk to them about selling shares. (Tr. 482.) Baldt offered more than once to take a lie detector test that he would not talk about this type of trading activity. (Tr. 485-86.)

2. October 8 Conference Call Between Baldt and Schroder Management

Also on October 8, a conference call (October 8 Conference Call) was held between Baldt, Hemenetz, DeTore, and Carin Muhlbaum (Muhlbaum), Schroder's general counsel. (Div. Ex. 84; Tr. 486-88.) Muhlbaum expressed concern over the appearance of impropriety of the Baldt family's trades in light of the fact that the redemptions began around the same time that Schroder management discussed closing the Bond Funds. (Div. Ex. 84 at 3-4.) During the call, Baldt stated:

> And I told Mark [Hemenetz] [that Julia] called me and said 'What should I do,' and my response was the credit quality in the portfolio was fine, and I really can't give you any advice on the fund. I'm not permitted to do that. (Div. Ex. 84 at 5.)

[39] Baldt viewed Kate as more confident and less risk averse than Julia. (Tr. 811-13.) Julia had seen her clients, including mortgage bankers and insurance companies, threatened by the destabilized markets, and feared she might lose her job. (Tr. 812-13.)

[40] Kate did not make any further redemption requests. (Tr. 756.)

> I know that each time I gave the caveat 'I can't advise you one way or the other.' I would never discuss with them the closing of the fund or anything like that. (Div. Ex. 84 at 7.)

Baldt admits that he was "mistaken" and never made these specific statements. (Tr. 866.) He believed he had told Julia this based on his efforts to "always make it [her] decision." (Id.) Baldt stated that his counsel to Julia was intended to ease her emotional stress, as well as that of her mother, who was also a "sky-is-falling" kind of person. (Div. Ex. 84, Part II, at 9.) Baldt thought he handled it cleanly when he said "I cannot advise you on buying or selling the fund. I can only tell you to – you know, that the credits are good and if you have to do it, you have to do it."[41] (Id.)

3. Schroder Cancels Baldt Family's Pending Redemptions

As a result of its investigation, Schroder determined not to honor several Baldt family redemptions.[42] (Tr. 147-48, 493-94.) Hemenetz found that certain of Baldt's statements during the October 8 Conference Call were inconsistent with his recollection of their prior conversation, including Baldt's statement that he had direct conversations with Kingsbury and had seen her "not two days ago Sunday." (Tr. 491-92.) Hemenetz's recollection from their October 7 meeting was that Baldt and Kingsbury did not communicate often or have regular contact. (Tr. 492.)

Schroder found that Baldt breached its code of ethics by disclosing nonpublic information and lying to management during its investigation. (Tr. 149, 494.) DeTore testified that the recorded conversations between Baldt and Julia were not portrayed accurately by Baldt during Schroder's internal investigation. (Tr. 568-70.) On the October 8 Conference Call, Baldt stated that each time he gave the caveat "I can't advise you one way or the other," but DeTore found no such references in the recorded phone conversations of September 17 or October 3. (Tr. 568-69.) Baldt was terminated as head portfolio manager on October 14, but remained as a consultant through May 2009.[43] (Tr. 148-50.)

I. Baldt's Compliance Issues

Schroder employees, including Baldt, were required to adhere to the firm's compliance manual, code of ethics, and employee handbook. (Tr. 77, 542-43.) Schroder's code of ethics prohibited employees from discussing with or disclosing to anyone outside of Schroder, information concerning its business—it was part of each employee's fiduciary duty. (Tr. 545-

[41] Baldt did not repeat his offer to take a lie detector test during the October 8 Conference Call. (Tr. 493.)

[42] Schroder cancelled Julia's redemption requests from October 8 and 9, Kingsbury's request from October 7, Phyllis Kingsbury's request from October 8, and Beth and Rick Baldt's request from October 10. (Div. Exs. 94A, 94B at 18.)

[43] Beck took over as lead manager of the Bond Funds, with oversight from Hemenetz. (Tr. 150.)

46.) Baldt knew that it was unlawful to recommend trades while he was in possession of material nonpublic information.[44]

Baldt was a frequent personal trader and had difficulties complying with requirements imposed on his personal trading, including trading in unapproved amounts or times. (Tr. 77-79; 550-51.) In sum, there were eight such instances between 2006 and the time Baldt ceased serving as a consultant to Schroder. (Tr. 551.) On one occasion, Baldt was fined $5,000 for violating Schroder's personal trading policies and asked to pay the fine to charity. (Div. Ex. 88 at 15628; Tr. 79.) The errors were largely seen by Schroder as carelessness and without malice. (Id.) Baldt contends that his trading errors represented less than one percent of his trade requests over five years with Schroder and involved only stocks, an asset class outside of Baldt's portfolio management responsibilities. (Resp. Reply Br. 1.) No clients of Schroder were harmed by Baldt's compliance violations.[45] (Div. Ex. 88 at 15628; Tr. 553.)

III. CONCLUSIONS OF LAW

The OIP alleges that Baldt willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[46] These provisions prohibit fraud or deceptive conduct in the offer, purchase, or sale of securities. The OIP also alleges that Baldt willfully violated Sections 206(1) and (2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

In relevant part, Section 10(b) of the Exchange Act provides that it shall be unlawful for any person:

> To use or employ, in connection with the purchase or sale of any security . . . , any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Pursuant to its rulemaking power under Section 10(b), the Commission promulgated Exchange Act Rule 10b-5, which provides that it is unlawful in connection with the purchase or sale of any security for any person:

> (a) To employ any device, scheme, or artifice to defraud,
> (b) To make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, or

[44] Schroder's Insider Trading Policy prohibited such conduct. (Div. Ex. 36 at 8201.) Baldt read and agreed to comply with the Insider Trading Policy. (Div. Ex. 87.)

[45] Baldt was runner-up out of all North America employees for a Schroder employee integrity award. (Tr. 884.)

[46] Willfulness is shown where a person intends to commit an act that constitutes a violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000). There is no requirement that the actor also be aware that he is violating any statutes or regulations. Id.

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Sections 17(a)(1)-(3) of the Securities Act and Sections 206(1), (2) of the Advisers Act prohibit the same conduct as covered in Rule 10b-5 of the Exchange Act. See e.g., SEC v. Rana Research, Inc., 8 F.3d 1358, 1363 n.4 (9th Cir. 1993) ("Section 206 [of the Advisers Act] parallels [S]ection 10(b) of the Exchange Act."). The Supreme Court has made clear that to establish a violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, Section 17(a)(1) of the Securities Act, and Section 206(1) of the Advisers Act, the SEC must prove scienter—an "intent to deceive, manipulate, or defraud." See SEC v. Steadman, 967 F.2d 636, 641 (D.C. Cir. 1992) (citing Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 n.12 (1976); Aaron v. SEC, 446 U.S. 680, 686 n.5 (1980)).

Insider trading is one of the "deceptive devices" prohibited by Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and is a practice that can also violate Section 17(a) of the Securities Act. See SEC v. Lyon, 529 F. Supp. 2d 444, 449 (S.D.N.Y. 2008). There are two primary theories of insider trading. Under the "misappropriation" theory of insider trading,

> [a] person is liable under Section 10(b) and Rule 10b-5 when he obtains (a) material, (b) nonpublic information intended to be used solely for a proper purpose and then (c) misappropriates or otherwise misuses that information (d) with scienter, (e) in breach of a fiduciary duty, or other duty arising out of a relationship of trust and confidence, to make "secret profits."

SEC v. Gonzalez de Castilla, 145 F. Supp. 2d 402, 412-13 (S.D.N.Y. 2001) (citing Dirks v. SEC, 463 U.S. 646, 654 (1983)). See also United States v. O'Hagan, 521 U.S. 642, 643 (1997) (holding that under the misappropriation theory a person violates Section 10(b) and Rule 10b-5 by "misappropriat[ing] confidential information for securities trading purposes, in breach of a fiduciary duty owed to the source of the information, rather than to the persons with whom he trades.") Under the "classical" theory of insider trading, "one who fails to disclose material information prior to the consummation of a transaction commits fraud only when he is under a duty to do so" and that duty to disclose "arises when one party has information 'that the other [party] is entitled to know because of a fiduciary or other similar relation of trust and confidence between them.'" Chiarella v. United Sates, 445 U.S. 222, 228 (1980).

A. Baldt Possessed Material Information

A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision and if disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976). It is not sufficient to allege that the investor might have considered the information important, nor is it necessary to assert that the investor would have acted differently had the disclosure been made. Ganino v. Citizens Utils. Co., 228 F.3d 154, 162 (2d Cir. 2000).

By October 3, Baldt was aware of the following information regarding the Short-Term Fund, which was material to investors: (i) the potential $12 million Aequitas redemption; (ii) management's directive to raise cash levels to ten to twelve percent by, among other things, putting out a large portion of the fund's portfolio for bid;[47] and (iii) discussions about closing the Bond Funds together, if redemptions could not be met. Beck, Dorrien-Smith, Hemenetz, and DeTore all testified that in their opinion, these facts would have been material to investors.

Baldt argues that the Aequitas redemption was far from certain.[48] (Resp. Br. 19-21.) He cites e-mails from Sweeney that indicated Aequitas had raised similar concerns in the past and that Schroder had the opportunity to discuss the merits of the Short-Term Fund before Aequitas made a decision. (Id.) However, Aequitas' concerns raised during the market distress of 2008 must be given greater weight than concerns Aequitas may have raised previously. Moreover, Sweeney rated Aequitas' risk of redemption as "high."

In addition, Baldt knew by October 3 that Aequitas actually began redeeming its holdings. Baldt received two e-mails which included screen prints showing that Aequitas was the investor redeeming approximately $1.1 million on September 29 and $800,000 on October 3. Baldt stated that he was not aware of these redemptions. He stated that with respect to the September 29 e-mail, he did not typically review the screen prints; and with respect to the October 3 e-mail, sent at 4:13 p.m., he could not recall if he opened it due to the "late hour." His testimony that he was unaware of the redemptions or whether he opened the October 3 e-mail is self-serving and I do not credit it.

With regard to management's directive to raise cash levels, Baldt contends that after observing his portfolio team's decision-making process, Schroder did not enforce implementation of its directive to raise ten to twelve percent cash reserves, and therefore it was immaterial. (Resp. Br. 18.) However, management's directive remained intact. As a result, the Short-Term Fund did not purchase any bonds from at least September 15 through October 14, despite good buying opportunities. Moreover, management's directive caused Baldt's team to put out for bid a large portion of the Short-Term Fund's portfolio, which exposed potentially adverse information to the marketplace that Baldt wanted to keep private. Baldt was concerned that putting out large portions of the portfolio for bid might be traced to Schroder, which if learned by investors, would be damaging to the funds. Management's directive was therefore material to investors.

Regarding closing the Bond Funds together, Baldt states that he was not a member of the fund contingency committee and therefore was never informed that if one fund closed, the Bond Funds would both be closed. (Resp. Br. 17.) Baldt also testified that Hemenetz told him "that

[47] Management's directive to raise cash levels significantly meant that the Short-Term Fund could not buy bonds, despite Baldt's belief that it was a "great buying opportunity." It was also a departure from the portfolio team's goal of keeping one to two percent of the fund's assets in cash in order to maximize tax-exempt income. Investors would have considered such information important in making an investment decision.

[48] Baldt also argues that a possible redemption by one adviser in a mutual fund during the 2008 market's "flight to safety" by investors was not material. (Resp. Br. 12.)

[Schroder] could not close the funds." However, Dorrien-Smith's uncontroverted testimony was that Baldt was involved in some of the conversations about closing the Bond Funds together. I find the weight of the evidence supports an inference that Baldt was aware that the Bond Funds might close. Baldt's testimony and his inclusion on at least one e-mail discussing the alternative to closing the Bond Funds supports such a finding. In fact, at some point in September or October, Baldt told Sweeney that if the portfolio team continued management's directive to raise cash by selling assets in the Muni Fund, both funds would be driven into the ground. Few matters would carry more significance for an investor than the possibility of the Bond Funds' closure. If the Short-Term Fund closed, investors would be unable to redeem their investments and be forced to wait until the fund made an orderly liquidation, which could take one or more years.[49] This would be particularly important for investors during a period of unprecedented market disruption.

B. Baldt Possessed Nonpublic Information

Information becomes public when disclosed "to achieve a broad dissemination to the investing public generally and without favoring any special person or group" or when, although known only by a few persons, their trading on it "has caused the information to be fully impounded into the price of the particular [security]." SEC v. Mayhew, 121 F.3d 44, 50 (2d Cir. 1997) (quoting Dirks, 463 U.S. at 653 n.12 (1983); United States v. Libera, 989 F.2d 596, 601 (2d Cir. 1993)). Moreover, "[t]o constitute non-public information under the [Exchange Act], information must be specific and more private than general rumor." United States v. Mylett, 97 F.3d 663, 666 (2d Cir. 1996) (citing SEC v. Monarch Fund, 608 F.2d 938, 942-43 (2d Cir. 1979)).

Beck, Hemenetz, and Dorrien-Smith testified that the Aequitas redemption, the directive to increase cash levels, and putting out large portions of the Short-Term Fund's portfolio for bid were all nonpublic information. Hemenetz and DeTore stated that discussions about closing the Bond Funds were also confidential. Regarding the Aequitas redemption, Baldt contends that this information was public because all mutual funds, other than U.S. Treasury bond funds, were dealing with the prospects of possible redemptions during the summer and fall of 2008. (Resp. Br. 11.) However, Baldt knew that Aequitas was considering redeeming its holdings in an illiquid market and its investment comprised over seven percent of the Short-Term Fund's assets. This information was clearly "more specific and more private than general rumor."

C. Baldt Misused Material Nonpublic Information by Tipping Julia

A person "in possession of material inside information must either disclose it to the investing public, or . . . abstain from trading in or recommending the securities concerned while such inside information remains undisclosed."[50] SEC v. Texas Gulf Sulfur Co., 401 F.2d 833,

[49] Ordinarily, open-end mutual funds, such as the Short-Term Fund, are required to redeem securities upon demand. See United States v. NASD, Inc., 422 U.S. 694, 698 (1975).

[50] The Division contends that Baldt conveyed material nonpublic information to Julia on the October 3 call when he told her that the fund was experiencing redemptions, putting bonds out for bid, and receiving back only vulture bids. (Div. Br. 25-26.) Baldt contends that the SEC did

848 (2d Cir. 1968). On October 3, Julia told Baldt that she had sold some of her holdings in the Short-Term Fund. In response, Baldt replied "Well, I'd go with the full route. And your mother . . . the way she worries, she ought to do it as well."[51] Baldt therefore misused material nonpublic information in his possession, when he recommended that Julia and Kingsbury liquidate all of their holdings in the Short-Term Fund.

D. Baldt Acted with Scienter

Scienter is defined as "a mental state embracing intent to deceive, manipulate, or defraud." Hochfelder, 425 U.S. at 193 n.12. Scienter is a "wrongful state of mind." Dura Pharm. v. Broudo, 544 U.S. 336, 341 (2005). "It is not enough that an insider's conduct results in harm to investors; rather, a violation may be found only where there is 'intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities.'" See Dirks, 463 U.S. at 664, n.23. (rejecting the dissenting opinion and finding that motivation is relevant to the issue of scienter). Circumstantial evidence is more than sufficient to prove scienter. See Herman & MacLean v. Huddleston, 459 U.S. 375, 390 n.30 (1983).

Scienter may be established by a showing of extreme recklessness. See Dolphin and Bradbury, Inc. v. SEC, 512 F.3d 634, 639 (D.C. Cir. 2008) (citing Steadman, 967 F.2d at 641); Huddleston, 459 U.S. at 379, n.4 (noting that while the Supreme Court has not explicitly addressed the issue, it is the prevailing view of the appellate courts that reckless behavior may satisfy the scienter requirement). Extreme recklessness is a lesser form of intent; it does not involve a "should have known" standard, nor is it "merely a heightened form of ordinary negligence." Bradbury, 512 F.3d at 639 (citing Steadman, 967 F.2d at 641-42). Rather, recklessness satisfies the scienter requirement where it is an "extreme departure from the standards of ordinary care . . . implying the danger was so obvious that the actor was aware of it and consciously disregarded it." Bradbury, 512 F.3d at 639.

Baldt understood the laws prohibiting insider trading. He agreed specifically to comply with Schroder's Insider Trading Policy. The first sentence of Schroder's Insider Trading Policy states: "It is a violation of United States federal law . . . for any employee to trade in, or recommend trading in, the securities of a company . . . while in possession of material, nonpublic information." (Div. Ex. 36 at 8201.) It is also well established that Baldt's statement "go with the full route" was meant to instruct Julia and Kingsbury to liquidate their positions in the Short-Term Fund. Moreover, the evidence overwhelmingly supports a finding that at the time Baldt

---

not identify any statements made by him on either telephone call with Julia or any other correspondence with his daughter that divulged adverse material nonpublic information specific to the Short-Term Fund. (Resp. Br. 1.) Assuming, *arguendo*, that Baldt did not convey material nonpublic information to Julia, mere possession of such information is sufficient to establish an insider trading violation. Texas Gulf Sulfur, 401 F.2d at 848.

[51] On the September 17 call, Baldt, in response to Julia asking him if he thought she needed to sell her holdings, also told Julia "I think you probably should do it . . . both of you and Gongi, so that she doesn't worry about it either."

recommended to Julia that she sell her remaining holdings, Baldt was in possession of material nonpublic information.

Baldt did not respond truthfully when questioned by Hemenetz and Schroder management about his family's trades. Despite being told by Kingsbury on October 3 that she was in the process of selling her holdings, Baldt told Hemenetz he knew nothing about Kingsbury's trades.[52] Baldt also told Hemenetz that although he talked to his daughters, he would not talk to them about selling shares. The evidence establishes otherwise. Moreover, on the October 8 Conference Call, Baldt stated that he told Julia "I really can't give you any advice on the fund. I'm not permitted to do that." Notwithstanding the fact that the evidence establishes that Baldt never told this to Julia, his contention that he did shows that the danger of doing so was obvious to Baldt.[53] I find Baldt's false exculpatory statements show consciousness of guilt. See SEC v. Musella, 748 F. Supp. 1028, 1040 (S.D.N.Y. 1989).

Further supporting an extreme departure from ordinary care, Baldt failed to seek advice from Schroder's legal or compliance department prior to advising his family to sell their holdings. In contrast, on or before October 2, Sweeney sought the advice of DeTore before selling her own Short-Term Fund shares. Although not required to preclear the trade under Schroder's code of ethics, Sweeney sought approval because she felt like "she knew too much." At a minimum, Baldt was privy to the same information that concerned Sweeney. DeTore denied Sweeney's request. Sweeney recognized the danger of trading while in possession of material nonpublic information; Baldt similarly recognized the danger, but more concerned with alleviating his daughter's stress, he consciously disregarded it.

Baldt argues that he did not act with scienter, but rather based his counsel to Julia on suitability and her altered risk tolerance resulting from severe market disruption in the fall of 2008.[54] As fee-paying investors in a Schroder mutual fund, Baldt contends that he was entitled

[52] Despite *general* knowledge that Kingsbury planned to redeem her holdings, Baldt contends that he did not lie when he responded that he had no knowledge of the *specific* redemption order tickets shown to him by Hemenetz on October 8. (Resp. Br. 22.) Baldt's attempt to parse words is unpersuasive.

[53] Baldt contends his phrasing was a mistake and that he meant to say that he believed he always tried to put the decisions back in his family's hands. If true, the Division correctly points out that Baldt's "mistake" was made both at the beginning and end of the October 8 Conference Call. (Div. Reply Br. 5; Div. Ex. 84, Part I at 7, Part II at 9.) I do not credit Baldt's self-serving, exculpatory statement.

[54] As support that he provided only suitability advice, Baldt notes that he never counseled his daughter Kate or brother Rick on their investments in the Short-Term Fund. (Resp. Br. 26.) Baldt argues that had he acted with scienter, he would have recommended that his other family members sell their positions as well. (Resp. Br. 24.) However, Baldt did not have the same incentive to "tip" other Baldt family members. Unlike Julia and Kingsbury, Kate and Rick never expressed to Baldt concerns about job security or altered risk tolerance. (Resp. Br. 26.)

to, and in fact required to, advise Julia and Kingsbury as to the suitability of their holdings in the Short-Term Fund.[55] (Resp. Br. 3, 25.)

I am not persuaded by Baldt's suitability argument. Julia stated that she did not seek suitability advice from Baldt regarding her municipal holdings during the October 3 call. Rather, Julia called Baldt to discuss her Cornerstone investment.[56] On that call, Baldt advised Julia to hold onto Cornerstone, a much riskier investment, unless she wanted to invest in something more distressed. Therefore, Baldt's advice on her Cornerstone investment was inconsistent with his stated goal to alleviate Julia's stress and secure her investment principal.

Baldt also stated that, contrary to the Division's argument, it was unnecessary for him to ask Julia how much of her holdings she had sold previously because her desire was to protect her principal. (Resp. Reply Br. 9-10.) If Baldt was advising Julia to protect her principal, he would not have recommended she hold onto Cornerstone. Rather than suitability, it appears that Baldt's advice became noticeably more direct as a result of additional material nonpublic information he learned after the September 17 call and before the October 3 call.

By the time of the September 17 call, there was significant adverse market information in the public domain, including the failure of major financial market participants and the Reserve Fund "breaking the buck." Neither the market events up to that date, nor Baldt's recommendation on September 17 telling Julia "I think you probably should do it . . . both of you and Gongi," were sufficient to prompt Julia or Kingsbury to liquidate their entire holdings.

However, between September 17 and October 3, Baldt learned about the Aequitas redemption and management's directive to raise a ten to twelve percent cash cushion in the Fund.[57] Baldt also learned that at least one dealer inquired whether Schroder was in trouble, after identifying the Schroder portfolio as being put out for bid. Baldt was concerned that this rumor would spread and be damaging to the Bond Funds.[58] On October 3, Baldt turned the

---

[55] Baldt further contends that his recommendation to Julia was "required by his status as an investment advis[e]r responsible to an upset client who was seeking absolute preservation of principal." (Resp. Br. 5.) However, Julia and Kingsbury were investors in a mutual fund. In the fund context, it is clear that it is the fund, not the investors in the fund, to whom a fiduciary duty is owed. Goldstein v. SEC, 451 F.3d 873, 881 (D.C. Cir. 2006). Moreover, Baldt's contention that he was required to advise Julia and Kingsbury is contrary to his statement that he told Julia "I really can't give you any advice on the fund."

[56] Julia also indicated on the October 3 call that her concern was diversifying her investments, "just in case, . . . there's a run on the fund." At this point, had Baldt been acting in good faith, he would have certainly told Julia, as he told Schroder he did, that he could not advise her about the Short-Term Fund.

[57] Kingsbury stated that her decision to sell was influenced by steep market declines on both September 29 and October 3, resulting from the failure and then passage of TARP.

[58] By October 3, Beck was concerned about the ability of the Bond Funds to meet future redemptions. Baldt and Beck worked closely together. There is no reason to believe that Baldt would not have been similarly concerned.

conversation back to Julia's municipal holdings, and after learning that she had sold some of her holdings, told Julia to "go with the full route."[59]

Baldt contends that his October 3 advice to Julia was influenced by the fact that he had spoken to Kate just two days prior to the October 3 call, who informed him, again, of Julia's heightened anxiety. (Resp. Reply Br. 9.) Baldt also contends that despite the tumultuous market conditions, his positive outlook on municipal bonds was inconsistent with scienter.[60] However, given the quantity and significance of the information Baldt learned between September 17 and October 3, I conclude that Baldt knew or consciously disregarded the material nonpublic information when he told Julia to "go with the full route" on October 3.

E. Baldt Breached His Fiduciary Duty in Order to Make "Secret Profits"

1. Baldt Breached His Fiduciary Duty to Schroder and the Short-Term Fund

Under the misappropriation theory of insider trading, a tipper commits insider trading by "misappropriat[ing] confidential information for securities trading purposes, in breach of a duty owed to the source of the information." See O'Hagan, 521 U.S. at 652. Baldt, as an employee of Schroder, owed his employer a duty of loyalty and confidentiality. Baldt understood as much, evidenced by his receipt of and agreement to comply with Schroder's code of ethics. Therefore, his recommendation to Julia that she and Kingsbury sell their holdings in the Short-Term Fund, while in possession of material nonpublic information, breached his fiduciary duty to his employer.

Under the classical theory of insider trading, a tipper breaches a fiduciary duty to the counterparty of the transaction whom the trader "tak[es] unfair advantage of" when trading on the information. Chiarella, 445 U.S. at 228 (1980). In the context of mutual fund redemptions, the counterparty to a shareholder's redemption of fund shares is the mutual fund itself. There is no dispute that Baldt, as an investment adviser to the Short-Term Fund, owed the fund a fiduciary duty. Schroder's compliance manual said as much. See also Goldstein, 451 F.3d at 881 ("The [investment] adviser owes fiduciary duties only to the fund, not to the fund's investors.").

Baldt breached his fiduciary duty to the Short-Term Fund by recommending that Julia and Kingsbury sell their holdings, while in possession of material nonpublic information. Moreover, Baldt's recommendation to Julia that she sell her position ran counter to the best interests of the Short-Term Fund. The Short-Term Fund's best chance for survival during this period of market distress was to seek liquidity through measured sales at reasonable prices and

---

[59] Baldt contends that he quickly rephrased his statement when he told Julia "No. Go with your original thought." (Resp. Br. 9.) He wanted to clarify that it was Julia's decision to make. (Id.) However, Baldt cannot "unring the bell." The fact that Julia and other members of Baldt's family proceeded immediately to liquidate their entire holdings demonstrates that Baldt's initial directive was understood by Julia.

[60] On September 30, Baldt authored an article distributed to Schroder clients evidencing his positive outlook. (Resp. Ex. 14.)

build cash reserves sufficient to cover future redemptions without materially disrupting its liquidity tiers. Baldt was aware of the illiquid market, difficulty selling bonds at reasonable prices, and management's directive to raise cash levels. His recommendation that Julia and Kingsbury sell close to $2 million worth of shares exacerbated those difficulties and was contrary to both management's directive and the best interests of the Short-Term Fund.

2. Baldt Tipped His Family to Make "Secret Profits"

"The elements of fiduciary duty and exploitation of nonpublic information . . . exist when an insider makes a gift of confidential information to a trading relative or friend. The tip and trade resemble trading by the insider himself followed by a gift of the profits to the recipient." Dirks, 463 U.S. at 664. By recommending Julia and Kingsbury liquidate their holdings while in possession of material nonpublic information, Baldt helped his daughter and former wife receive ready access to their money and avoid future potential losses.

IV. SANCTIONS

The Division seeks a cease-and-desist order, an order barring Baldt from association with an investment adviser, disgorgement of ill-gotten gains, and a civil penalty.

In determining sanctions, the Commission considers the following Steadman factors: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (citing SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), aff'd on other grounds, 450 U.S. 91 (1981). The severity of sanctions depends on the facts of each case and the value of the sanctions in preventing a recurrence of the violative conduct. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

Baldt's conduct was egregious. He has over thirty-five years of industry experience and was well aware of the laws prohibiting insider trading. He placed himself in a tenuous position as both portfolio manager and concerned father, and he knew that he could not advise his daughter about her investment in the Short-Term Fund. His lack of candor when confronted by Schroder management about his family's trades is evidence of consciousness of guilt. He clearly breached both his duty to his employer, as well as to the mutual fund he advised. His conduct was isolated, but was also reckless. Baldt does not even acknowledge that he possessed material nonpublic information regarding the Short-Term Fund. Baldt has not provided any assurances against future violations and has failed to recognize his wrongful conduct. Baldt is not currently employed, but seeks employment, which may provide future opportunities for him to violate the securities laws.

A. Cease-and-Desist Order

Section 8(A) of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act authorize the imposition of a cease-and-desist order on any person who has violated any provision of the Securities Act, Exchange Act, Advisers Act or the rules and regulations thereunder.

In KPMG Peat Marwick LLP, 74 SEC Docket 384, 428-38 (Jan. 19, 2001), recon. denied, 74 SEC Docket 1351 (Mar. 8, 2001), petition denied, 289 F.3d 109 (D.C. Cir. 2002), the Commission considered the standard for issuing cease-and-desist relief. It concluded that it would continue to consider the Steadman factors in light of the entire record, noting that no one factor is dispositive. It explained that the Division must show some risk of future violation. See 74 SEC Docket at 430. However, it also ruled that such a showing should be "significantly less than" required for an injunction and that, "absent evidence to the contrary," a single past violation ordinarily suffices to establish that the violator will engage in the same type of misconduct in the future. See 74 SEC Docket at 430, 435.

Baldt's multiple failures to comply with Schroder's code of ethics in his personal trading demonstrate disregard for regulatory requirements. When these facts are coupled with the discussion of the Steadman factors above, I conclude that there is a risk of future violations and that a cease-and-desist order is fully warranted.

B. Bar From Association with an Investment Adviser

Section 203(f) of the Advisers Act authorizes the Commission to, if in the public interest, bar or suspend from association with an investment adviser anyone who committed willful violations of the federal securities laws while associated with an investment adviser. The Commission treats insider trading cases and breaches of fiduciary duty very seriously. See e.g., James C. Dawson, 98 SEC Docket 30697, 30703 (July 23, 2010) (upholding an investment adviser bar and "consistently view[ing] misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious."); Gary M. Korman, 95 SEC Docket 14246, 14256 (Feb. 13, 2009) ("[T]he importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business."); Robert Bruce Lohmann, 56 S.E.C. 573, 582-83 (2003) (upholding an investment adviser bar, noting that "[i]nsider trading constitutes clear defiance and betrayal of basic responsibilities of honesty and fairness to the investing public."); Martin B. Sloate, 52 S.E.C. 1233, 1236 (1997) (finding a bar with right to reapply after one year insufficient, noting that "[a] registered securities professional who engages in the serious misconduct of insider trading should be excluded for a longer period of time."). The public interest requires that Baldt be barred from association with an investment adviser.

C. Disgorgement

Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act, and Section 203(j) of the Advisers Act authorize the Commission to order disgorgement of ill-gotten gains

based on willful violations of any of those statutory acts or rules or regulations thereunder. "Disgorgement is an equitable remedy designed to prevent a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." See SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989). Tippers may be ordered to disgorge the losses avoided by their tippees. See SEC v. Clark, 915 F.2d 439, 454 (9th Cir. 1990) (noting that the tippee need not be found liable). Tippers are liable for the profits or avoided losses of tippees whenever they are a reasonably foreseeable consequence of the tipper's actions. See SEC v. Yun, 148 F. Supp. 2d 1287, 1292 (M.D. Fla. 2001) (finding the tippee's realization of profits to be a reasonably foreseeable consequence of the tipper's actions).

The Division requests that Baldt disgorge Julia's and Kingsbury's avoided losses of $7,013.46 directly attributable to his recommendation that they sell their holdings in the Short-Term Fund. (Div. Ex. 94; Div. Br. 41.) The Division also requests the Baldt be ordered to disgorge Kate's avoided loss of $2,390.09. (Id.) The evidence established that there was an extremely close relationship between Julia, Kate, and Kingsbury. As such, it was reasonably foreseeable that Baldt's tip would be shared with Kate. Kate's redemption, immediately following Baldt's October 3 call with Julia, supports this finding. Therefore, disgorgement in the amount of $9,403.55 will be ordered.

D. Civil Penalty

Under Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, and Section 203(i) of the Advisers Act, the Commission may assess a civil monetary penalty if it finds that a respondent has willfully violated any of those statutory acts or rules and regulations thereunder. The Commission must also find that such a penalty is in the public interest. Six factors are relevant: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. See Section 21B(c) of the Exchange Act; Section 203(i)(3) of the Advisers Act. "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." See Robert G. Weeks, 76 SEC Docket 2609, 2671 (Feb. 4, 2002).

A three-tier system identifies the maximum amount of a civil penalty. For each "act or omission" by a natural person, the maximum amount of a penalty in the first tier is $6,500; in the second tier, it is $65,000; and in the third tier, it is $130,000.[61] A first-tier penalty is imposed for each statutory violation. A second-tier penalty is permissible where the conduct involves fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. A third-tier penalty involves conduct where such state of mind is present and where the conduct directly or indirectly (i) resulted in substantial losses, (ii) created a significant risk of substantial losses to other persons, or (iii) resulted in substantial pecuniary gain to the person who committed the act or omission.

[61] These amounts reflect inflationary adjustments, as required by the Debt Collection Improvement Act of 1996, as of October 2008, the time of Baldt's violative conduct. See 17 C.F.R. § 201.1003.

The Division requests a third-tier penalty, based on Baldt's intentional misconduct and the risk of substantial loss to the Short-Term Fund's investors had Schroder not cancelled the majority of the Baldt family's redemptions. (Div. Br. 42.) Baldt contends that no shareholder suffered monetary loss as a result of Julia's and Kingsbury's redemptions. (Resp. Br. 25.) However, Baldt's argument ignores the fact that Schroder cancelled approximately $3 million in Baldt family redemptions, which if processed, would have created a "significant risk of substantial losses."[62] (Div. Ex. 94A.) I conclude that Baldt's conduct satisfies the criteria for a third-tier penalty.

However, a civil penalty is not in the public interest. While Baldt's conduct involved reckless disregard of a regulatory requirement, it did not, in fact, result in significant harm to other persons, nor was any person unjustly enriched in any material way. Baldt's only violations during his thirty-five year career involved minor infractions of Schroder's code of ethics, made without malice. Accordingly, I find that a cease-and-desist order, associational bar, and disgorgement provide adequate deterrence and protect the public interest. I therefore decline to impose a civil penalty.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the record index issued by the Commission's Office of the Secretary on March 16, 2011.

VI. ORDER

IT IS ORDERED that, pursuant to Section 8(A) of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, David W. Baldt cease and desist from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act;

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Advisers Act, David W. Baldt is barred from association with an investment adviser; and

IT IS FURTHER ORDERED that, pursuant to Section 8A of the Securities Act, 21C of the Exchange Act, and Section 203(j) of the Advisers Act, David W. Baldt disgorge $9,403.55 in ill-gotten gains.

Payment of the disgorgement shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent and the proceeding designation, shall be delivered to the Comptroller, Securities and Exchange

[62] Assuming the Short-Term Fund had sufficient cash, the Baldt family's redemptions would have reduced the Short-Term Fund's cash to an unsafe level given the market's illiquidity.

Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then that 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 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.

_____

Robert G. Mahony
Administrative Law Judge