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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16937

In the Matter of

JAMES MICHAEL MURRAY,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT JAMES MICHAEL MURRAY AND SUPPORTING MEMORANDUM OF LAW

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B	Trial transcript, Volume 2 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.) on September 24, 2015
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L	Trial transcript, Volume 12 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.) on October 13, 2015

[1] The Division Exhibits are being filed contemporaneously with this Motion for Summary Disposition and are attached to the Declaration of Jason M. Habermeyer ("Habermeyer Decl.").

[2] Although the relevant portions of the trial testimony are cited in the accompanying Memorandum of Law, the trial transcripts in their entirety are being provided for context.

M	Excerpts of SEC investigative testimony of James Michael Murray dated February 23, 2011
N	Admitted Trial Exhibit[3] No. 159 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
O	Admitted Trial Exhibit No. 160 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
P	Excerpts of Admitted Trial Exhibit No. 141 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
Q	Admitted Trial Exhibit No. 158 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
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S	Excerpts of Admitted Trial Exhibit No. 102 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
T	Excerpts of Admitted Trial Exhibit No. 40 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
U	Admitted Trial Exhibit No. 390 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
V	Admitted Trial Exhibit No. 391 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.)
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Y	Fourth Superseding Indictment dated March 17, 2015 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.) (ECF Docket No. 203)
Z	Jury Verdict Form dated October 13, 2015 in *United States v. Murray*, No. 12-CR-00278 (EMC) (N.D. Cal.) (ECF Docket No. 310)

[3] We have only included a small number of the admitted trial exhibits for sake of brevity but are pleased to provide any additional exhibits upon request of Respondent or the Court.

MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("Division") hereby moves for summary disposition against Respondent James Michael Murray ("Respondent"), pursuant to Rules 154 and 250 of the Securities and Exchange Commission's Rules of Practice. The Court previously granted the Division leave to move for summary disposition at the December 3, 2015 prehearing conference. The Division respectfully submits that summary disposition is appropriate and that the Court should resolve this proceeding in favor of the Division and impose a collateral bar in the public interest against Respondent.

In support of this Motion, the Division relies upon the accompanying Memorandum of Law and the Declaration of Jason M. Habermeyer and the exhibits attached thereto.

Dated: January 22, 2016

Respectfully submitted,

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INTRODUCTION

Respondent James Michael Murray ("Respondent" or "Murray") has been charged by the Securities and Exchange Commission ("Commission"), been convicted by a jury of wire fraud, identity theft, money laundering, and contempt of court, and is the epitome of why the securities industry bar exists under Section 203(f) of the Investment Advisers Act of 1940. As the investment adviser to a hedge fund he alone controlled, Respondent repeatedly deceived the investors into believing that his fund was actually profitable through the use of fake account statements and fake audit reports. Indeed, Respondent brazenly set up a phony accounting firm to create the illusion that the fund was being audited, and further deceived his investors as to the safety of their investment by representing that the fund had a third-party administrator and legal counsel, which it did not. He also lied to his investors about his background, claiming that he held degrees which he did not have to create an aura of legitimacy to the professed complicated market strategy he claimed to execute for the fund.

These facts alone are sufficient to establish that Respondent should be barred from the industry, but the story does not end there. Respondent used the sham audit firm to steal hundreds of thousands of dollars in a credit card scheme to prop up the fund. Following his arrest by the criminal authorities, Respondent set up a new account to execute a short sale trade without disclosing the fact that nearly half of the amount he claimed was available for investment had been seized by the United States Secret Service. He then laundered the proceeds from the trade into another account he created through fraudulent means, using a business partner's identity and photoshopped bank documents. And, finally, Respondent defied a federal court order that precluded him from, *inter alia*, providing financial advice, contacting his business partner, or accessing the internet. Respondent violated *all* of these conditions, perhaps most incredibly by

stashing a tablet computer in the ceiling of his counsel's office so that he could surreptitiously access the internet.

As a result of this and other misconduct, a jury found Respondent guilty of all 23 counts with which he was charged, including for wire fraud, aggravated identity theft, money laundering, and contempt of court. The public interest requires that an individual such as Respondent who continually demonstrates a propensity to lie to virtually anyone in his path – investors, brokerage firms, federal judges, a jury, and even his own parents – is not fit for employment in the industry. Accordingly, the Division of Enforcement ("Division") respectfully requests that the Court impose a full collateral bar against Respondent, permanently barring him from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or any nationally recognized statistical rating organization.

STATEMENT OF FACTS

I. RESPONDENT ACTED AS AN INVESTMENT ADVISER

Respondent's criminal conviction arose out of an intricate scheme to defraud while serving as the investment adviser of Market Neutral Trading, LLC ("MNT"), an investment fund he founded in 2006. Div. Ex. M at 23:1-25.

Murray was MNT's sole member, and the Private Offering Memorandum distributed to investors listed Murray as the investment manager of the fund. *Id.* at 20:1-9; Div. Ex. I at 1552:14-19, 1555:8-10; Div. Ex. N at 45.[4] In this capacity, Murray had 100 percent control over MNT, and the sole authority to make trading decisions, enter orders, reconcile trades, and ensure compliance with the fund's disclosures. Div. Ex. C at 595:20-598:24. Murray also provided investment advice

[4] Murray also held himself out to be MNT's Chief Investment Officer, and monthly performance updates disseminated by the fund named Murray its Senior Portfolio Manager. Div. Ex. Q.

to potential investors in the fund. *See, e.g.*, Div. Ex. A at 183:11-184:12, 186:20-188:25; Div. Ex. B at 237:20-238:21.

In exchange for providing investment advice, Murray received compensation in the amount of 20 percent of the quarterly profits in each fund owner's capital account (styled as an "incentive" fee in fund documents), as well as a 2 percent management fee. Div. Ex. O at 4; Div. Ex. P at 4-5, 9.

II. RESPONDENT'S CRIMINAL CONVICTION

On October 13, 2015, a jury unanimously reached a verdict finding Murray guilty of 23 counts in *United States v. Murray*, Case No. 3:12-cr-00278-EMC (N.D. Cal.). Div. Ex. Y (fourth superseding indictment including 16 counts of wire fraud in violation of 18 U.S.C. § 1343, four counts of money laundering in violation of 18 U.S.C. § 1957, two counts of aggravated identity theft in violation of 18 U.S.C. §1028A, and a single count for contempt of court in violation of 18 U.S.C. § 401); Div. Ex. Z (verdict). The evidence at Respondent's criminal trial established that Murray engaged in a multifaceted fraud designed to deceive investors, credit card companies, brokerage firms, and others, beginning in at least 2009 and continuing even after his arrest in 2012. The Government elicited testimony from 35 witnesses and introduced hundreds of exhibits detailing the fraud. Some specifics of the scheme follow.

A. Respondent Executed a Long-Running Investment Fraud Through False Account Statements, a Phony Audit Firm and Fake Audit Reports, and Other Misrepresentations, and Failed to Return Money to Investors.

By 2009, Respondent was managing over $2 million in the MNT fund. Div. Ex. C at 413:10-414:20, 431:8-20, 434:24-435:8; Div. Ex. R at 1. However, the fund suffered staggering losses in the final four months of that year, and by the end of December, MNT had lost 95 percent of its value. Div. Ex. C at 431:4-17, 434:7-440:7; Div. Ex. R at 1. Respondent did not disclose this fact, but instead created false account statements that did not reflect the massive losses and

recommended that investors remain in the fund. *See, e.g.*, Div. Ex. B at 249:12-255:12, 265:9-266:17.[5]

Undeterred by the fund losing nearly its entire value, Respondent set out in 2010 to solicit new investment in MNT. Murray retained a consultant to assist with raising additional capital, and provided him with various documents purporting to represent the fund's historical performance. Div. Ex. C at 493:15-494:2, 498:24-499:2. These documents made a series of misrepresentations, including the fact that MNT had a positive rate of return of 13.44 percent in 2009 and that MNT had a significantly higher rate of return than other comparable indices and benchmarks. Div. Ex. C at 499:3-501:20, 503:8-506:11; Div. Ex. Q. Murray incorporated these and other falsehoods into marketing materials that the consultant used to solicit new investors in the fund (Div. Ex. C at 564:2-23, 568:13-569:24), and multiple investors testified that they relied on MNT's positive rate of return during the economic downturn in deciding to invest in the fund. Div. Ex. E at 850:4-24; Div. Ex. D at 770:9-773:12. Between 2011 and 2012, Murray raised an additional $2.3 million from various investors in the fund. Div. Ex. G at 1261:9-22, 1273:14-1276:3. Yet Murray never disclosed MNT's previously-sustained losses to any of the investors. *Id.* at 1284:10-1291:5.

Respondent also defrauded the fund and its investors through the use of fake audit reports through a phony audit firm he created. In December 2008, Respondent established a virtual office for a purported accounting firm named Jones, Moore & Associates, Ltd. ("JMA"), forging his then-wife's signature and using her identity to set up the office. Div. Ex. A at 49:1-52:14; Div. Ex. B at 342:21-24, 357:10-365:8. JMA served as the ostensible independent auditor of MNT, and Murray admitted at trial that he provided his capital-raising consultant with MNT audit reports

[5] For at least one particular investor, it does not appear that Respondent ever actually invested her money in MNT, according to fund documents. *See* Div. Ex. C at 426:15-428:12, 433:21-434:3; Div. Ex. R at 11.

supposedly prepared by JMA. Div. Ex. J at 1685:4-8. Murray lied on the stand, however, in claiming that he did not create the reports, when in fact the forensic evidence showed that the reports were not prepared by JMA (which was a sham entity) but by Murray himself. *Id.* at 1592:10-14, 1712:8-13, 1714:15-1729:4.[6] The Murray-prepared reports purported to show positive performance for the fund and did not disclose the fact that MNT had suffered a near-total loss in 2009. Div. Ex. C at 550:2-552:20. Thus, unwitting investors received the audit reports – which confirmed the fictitious returns reflected in MNT's marketing materials – and relied on JMA's ostensibly independent verification of such returns in deciding to invest in the fund. Div. Ex. D at 731:6-11, 747:13-754:22; Div. Ex. E at 831:2-832:15; *see also* Div. Ex. A at 193:7-194:2, 195:6-13.

Respondent also lied about other supposedly independent service providers to the fund. In 2010, Murray fired the third-party administrator to the fund that had confirmed the 95 percent loss in 2009, and replaced it with a new administrator, HF Administrators. Div. Ex. C at 505:7-506:2. Murray touted HF Administrators in various materials provided to investors, and that HF was independently calculating the monthly net asset value of the fund based on information provided directly from MNT's prime broker to HF. Div. Ex. C at 513:2-514:5, 521:15-523:1, 523:24-525:10; Div. Ex. E at 826:4-827:22, 829:24-830:17; Div. Ex. O at 17, 20.

In fact, however, HF Administrators was just another Murray-created sham company. Murray admitted at trial to purchasing the domain name for HF Administrators, and the United States Secret Service seized evidence from Murray's home that included a HF Administrators checkbook. Div. Ex. J at 1607:9-11; Div. Ex. E at 877:18-21, 879:1-8, 891:4-10; Div. Ex. S at 9-

[6] Murray even backdated audit reports that predated JMA's existence, to create the illusion that the fund had been continually audited since inception. *See* Div. Ex. C at 573:6-575:10, 581:3-582:9.

10. Respondent failed to disclose his relationship with HF or JMA, but instead represented in fund documents that they were "well-established organizations with 10 or more reputable years of experience in their field." Div. Ex. C at 516:12-520:5, 523:2-15; Div. Ex. O at 7, 19. Respondent's consultant testified that these conflicts of interest would have been "a major red flag" and that "[t]here is no way to explain it being appropriate or close to ethical." Div. Ex. D at 721:18-722:12. Respondent further admitted at trial that the purported legal counsel to the fund did not actually represent the fund, but was an attorney Murray used for a prior and unrelated litigation. Div. Ex. E at 803:5-805:2, 807:21-23, 809:22-810:16, 811:22-812:13, 813:8-18; Div. Ex. J at 1593:10-1594:2.

Finally, Respondent lied in fund documents about his background. For example, in multiple documents provided to investors, Murray claimed that he had graduated cum laude, with a Bachelor of Science degree in economics and finance and a Master's degree in economics from the University of Arizona. Div. Ex. C at 506:12-509:18, 512:7-514:5, 521:8-14; Div. Ex. O at 10; Div. Ex. N at 45.[7] Confronted at trial, Respondent admitted these were lies, as in fact he did not graduate cum laude, did not obtain a Bachelor of Science degree, and did not receive any Master's degree. Div. Ex. J at 1634:21-1635:12, 1656:2-17. Multiple investors testified that Murray's educational profile was material to their decision to invest in MNT. Div. Ex. B at 322:7-18; Div. Ex. D at 728:16-730:17; Div. Ex. E at 828:2-12, 851:3-852:5. Murray also failed to disclose in fund offering documents and required disclosures the fact that he was previously suspended by the New York Stock Exchange for six months. Div. Ex. I at 1457:19-1458:21; Div. Ex. C at 515:18-

[7] During his investigative testimony in this case, Respondent also falsely represented to Commission staff that he had obtained a Bachelor of Sciences degree in economics. Div. Ex. M at 17:17-18:7.

516:11, 532:13-17, 536:14-537:8; Div. Ex. D at 735:4-736:19, 737:9-739:15; Div. Ex. O at 6; Div. Ex. N at 45.

All told, Respondent's lies left a devastating wake of destruction, as multiple investors testified they lost all, or significant amounts of, their investments in the fund. These included:

- The entire life savings ($162,000) of one of his own friends (Div. Ex. A at 173:24-178:16; Div. Ex. B at 240:1-241:9, 244:17-19, 278:24-279:1);
- The entire $189,000 investment from an 83-year-old military veteran (Div. Ex. D at 767:9-18, 779:21-780:5, 783:13-784:6);
- The entire $250,000 from a 78-year-old investor, who in turn got his brother to invest an additional $325,000 (Div. Ex. E at 822:3-7, 834:1-13, 839:8-24, 841:14-25, 842:11-13);
- Another $250,000 from a pooled pension fund (Div. Ex. D at 724:3-13, 725:20-726:5, 756:9-759:17, 762:15-18); and
- $20,000 from Murray's then-wife (Div. Ex. B at 355:5-356:1).

B. Murray Engaged In a Credit Card Scam By Processing Over $660,000 In False Credit Card Returns.

Desperate to recoup the near-total losses in the fund, Respondent conjured up a further scheme to obtain hundreds of thousands of dollars in credit card refunds for large artificial payments made by Murray himself to JMA. In May 2010, Murray set up a Chase Paymentech ("Chase") merchant account for JMA that allowed him to use a credit card swiper to process purported payments made to JMA. Div. Ex. A at 103:9-14, 115:22-125:5; Div. Ex. J at 1616:15-17. In so doing, Murray made two independent falsehoods: first, he represented that an individual named David Lowe was the President of JMA, and used Lowe's passport as the form of identification to set up the account. Div. Ex. A at 120:9-21. Lowe, a British citizen, testified that he was not president of JMA, had never heard of JMA, had not authorized Murray to use his passport for any purpose, and had not even been to the United States in over 10 years. Div. Ex. E at 922:23-925:22; Div. Ex. T at 15:20-23, 20:14-23:25. Second, Murray doctored an actual MNT

bank account statement at U.S. Bank and passed it off as a JMA account to complete the Chase application. Div. Ex. G at 1219:17-22, 1225:22-1234:22.

Armed with the credit card terminal, Murray then swiped (from his own home) various credit cards he controlled for ostensible payments made to JMA, siphoned the money deposited by Chase into other accounts, and then submitted hundreds of refund requests to Chase without disclosing that there were no funds in the JMA account to cover the refunds. Div. Ex. A at 95:5-10, 97:10-99:8, 114:10-115:17, 127:22-128:15, 132:17-142:6, 148:8-16. Murray admitted to the scheme at trial, and that he converted the Chase return proceeds into cash for purposes of propping up the value of MNT. Div. Ex. J at 1618:8-1620:9; *see also* Div. Ex. G at 1266:14-1270:3; Div. Ex. U. All together, Murray ran up over $663,000 in bogus charges to JMA's merchant account at Chase, of which $550,000 Chase never recovered. Div. Ex. G at 1261:9-1265:20; Div. Ex. U; Div. Ex. A at 157:25-158:4.

Although Respondent tried to conceal his association with JMA by having its mail forwarded to another Murray-related entity (*see* Div. Ex. A at 62:19-63:6, 73:25-75:16), Murray's paraphernalia for the credit card scam was uncovered during a November 2011 search of Murray's home by the United States Secret Service. During the search, agents found, *inter alia*, mail addressed to JMA, a copy of David Lowe's United Kingdom-issued passport, various credit cards that were used to execute the fraud, and the credit card terminals used in the fraud. Div. Ex. E at 890:17-22, 891:4-10, 897:20-24, 906:8-907:24; Div. Ex. S.

C. Respondent Defrauded a Brokerage Firm to Process a Short Sale Trade, and Laundered the Proceeds Through a Separate Brokerage Firm Account That Was Also Created By Fraudulent Means.

In February 2012, Respondent opened a new margin account in the name of MNT Master Fund, Ltd. at Oppenheimer & Co. In doing so, Murray represented that he had $5 million in the fund that was available for investment. Div. Ex. F at 961:13-962:14, 965:25-971:11, 977:12-

978:12. In fact, as of January 2012 there was only $2.6 million in the fund. Div. Ex. G at 1261:9-22, 1273:14-1279:2. Just a month later, in March 2012, Murray was arrested and subsequently charged by the SEC in a civil complaint relating to his MNT activities. Div. Ex. F at 1038:16-1039:5. And in May 2012, the United States Secret Service seized $1.7 million in a Murray-controlled account held at a brokerage firm named Interactive Brokers, also in the name of MNT Master Fund, Ltd. *Id.* at 1039:20-23.

Respondent never informed Oppenheimer of these material events that affected his ability to trade on the account. *Id.* at 988:10-18, 1071:11-1072:16. Instead, just four months after his arrest, Murray asked his broker at Oppenheimer to execute a 50,000-share short sale trade in Netflix. *Id.* at 979:9-14, 982:14-983:9. Based on Respondent's representation that he had $5 million to invest, Oppenheimer borrowed the 50,000 shares in the amount of $3.6 million – putting its own capital at risk – and placed the trade. *Id.* at 986:2-6, 987:16-988:9, 1058:22-25, 1061:16-1062:22. However, Murray never would have been allowed to place the trade had he disclosed the material, intervening events to Oppenheimer – particularly the fact that approximately 40 percent of the amount Murray represented was available for investment had been seized. *Id.* at 992:10-17, 1074:8-1080:7.

Murray's fraud was not complete, however, as Respondent then laundered the proceeds of the trade to other accounts he controlled. Although Murray never paid to settle the Netflix trade, the trade was profitable and Murray received $411,000 in proceeds into his Oppenheimer account. *Id.* at 1082:16-1084:17. Murray wired part of these proceeds ($150,000) to his then-criminal defense attorney, who then wired the money to Respondent's father. Div. Ex. G at 1219:17-22, 1223:5-1225:3. Respondent sent the remaining proceeds, or approximately $261,000, to another

Murray-controlled account at Interactive Brokers in the name of Event Trading GP, LLC ("Event Trading"). *Id.* at 1279:25-1282:18; Div. Ex. V.

The Event Trading account was yet another fraudulent scam perpetrated by Murray. Because the MNT account at Interactive Brokers had been frozen by the Government, the firm added Murray to its "red flag list" that prevented him from opening any new accounts. Div. Ex. G at 1177:15-23, 1190:14-1192:11. Therefore, to avoid detection by Interactive Brokers, Murray opened a new account following the successful Netflix trade using the name of one of his business associates. *Id.* at 1177:15-23, 1192:18-1194:8; Div. Ex. I at 1548:15-1549:2. To disguise his own identity and to prove his partner's address to open the account, Murray used "photoshopping" software to doctor one of his own bank statements and created a false bank statement in his partner's name. Div. Ex. I at 1551:14-1552:5; Div. Ex. J at 1663:7-10. Respondent also impersonated his partner in order to gain access to the account. Div. Ex. J at 1664:10-1668:3. All the while, Murray never disclosed to Interactive Brokers the fact that he had been indicted for wire fraud, despite the fact that he was an authorized trader with Event Trading. *Id.* at 1641:6-1644:11.

D. Respondent Repeatedly and Egregiously Violated the Terms of His Pretrial Release and Committed Contempt of Court.

The *coup de grâce* of the case against Respondent is his brazen flaunting of the terms of his pretrial release following his March 2012 arrest. Pursuant to prior violations of his bail agreement, the District Court in July 2013 placed severe restrictions on Murray "akin to a 24-hour lockdown," which prohibited him from, *inter alia*, trading, providing financial advice, contacting his business partner, accessing the internet, and making any visits from the halfway house to which he was confined other than to his attorney or children. Div. Ex. H at 1316:18-1323:3; Div. Ex. J at 1671:20-1673:7. Murray told his parents, who had put their home up as collateral for Murray to be released on bail, that he would do everything in his power to not violate the bond, and that he

would rather spend 10 years in jail than put them at risk for losing their home. Div. Ex. J at 1674:16-1675:17.

Nevertheless, Respondent violated all of these restrictions. Specifically, Respondent:

- Provided trading advice to an employee at his counsel's law firm (Div. Ex. H at 1324:12-19, 1327:17-1328:13);
- Stopped and opened an account at Wells Fargo, signing an account application that listed the halfway house as his address and his then-defense counsel as his employer (*Id.* at 1329:10-25; Div. Ex. J at 1645:7-1651:11);
- Accessed the internet in an off-limits conference room, visiting sites such as Skype, Match.com, Hide-My-IP.com, and others (Div. Ex. H at 1336:18-1341:6, 1343:19-1358:7; Div. Ex. J at 1675:18-24); and
- Admitted to stashing a tablet computer in the ceiling of a law firm conference room, which he used to communicate online with his business partner, access an online trading center, and conduct various searches relating to extradition proceedings (Div. Ex. H at 1380:6-13, 1399:17-1402:9, 1407:16-25, 1411:8-1417:10, 1425:24-1428:22; Div. Ex. J at 1677:6-10).

E. Murray Is Convicted On Nearly Two Dozen Counts Relating to His Fraudulent Scheme.

On February 16, 2012, the United States Attorney for the Northern District of California filed a criminal complaint under seal against Murray and obtained a warrant for Murray's arrest. Div. Exs. W-X. Respondent was arrested on March 13, 2012. Div. Ex. X. On September 21, 2015, the trial against Respondent commenced before a jury and continued for three weeks. Habermeyer Decl. ¶2. Murray testified before the jury. *See* Div. Exs. I-J.

On October 13, 2015, the jury reached a unanimous verdict finding Respondent guilty on all 23 counts. Div. Ex. Z. Murray is scheduled to be sentenced on March 9, 2016.

III. PROCEDURAL HISTORY

The Commission initiated this proceeding on November 2, 2015 by issuing an Order Instituting Administrative Proceedings and Notice of Hearing against Respondent pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("OIP"). On December 3, 2015, the parties

participated in a telephonic prehearing conference. The Court thereafter issued an order setting a briefing schedule for summary disposition. Respondent filed an Answer on January 4, 2016, summarily denying all of the charges against him in the OIP. Resp. Answer at 1.

ARGUMENT

A. STANDARD FOR GRANTING SUMMARY DISPOSITION BASED ON RESPONDENT'S CRIMINAL CONVICTION

Rule 250(b) of the Commission's Rules of Practice provides that summary disposition may be granted when there is "no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." SEC Rule of Practice 250(b) . The Commission has "repeatedly upheld the use of summary disposition" in cases in which the respondent has been convicted, leaving the appropriate sanction as the sole determination. *Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009), *pet. denied Kornman v. SEC*, 592 F.3d 173 (D.C. Cir. 2010. Summary disposition is particularly appropriate in cases where the criminal conviction involves fraud, and "the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate 'will be rare.'" *Jesse C. Litvak,* Initial Decision Rel. No. 739, 2015 WL 271259, at *2 (Jan. 22, 2015) (citation omitted).

Section 203(f) of the Advisers Act authorizes the Commission to sanction Murray if three statutory factors are met: (1) at the time of the misconduct, he was associated with an investment adviser; (2) he was convicted within the past ten years of an offense that (a) involved the purchase or sale of any security; (b) "arises out of the conduct of the business of a . . . investment adviser"; (c) "involves the larceny, theft, . . . forgery, . . . fraudulent conversion, or misappropriation of funds"; *or* (d) is a violation of 18 U.S.C. §§ 1341, 1342, or §1343; *and* (3) imposition of the bar is in the public interest. 15 U.S.C. §§ 80b-3(e)(2)(A)-(D), 80b-3(f); *see generally David R. Wulf,* Initial Decision Rel. No. 824, 2015 SEC LEXIS 2603, at *18-*19 (June 25, 2015) (Grimes, J.)

Here, Respondent was convicted on all 23 counts with which he was charged, the majority of which involved fraud. There are no genuine disputes of material fact. Therefore, the only remaining issue is the appropriate sanction. As described below, the Division respectfully requests that Murray be barred from the securities industry in order to protect the public interest.[8]

B. MURRAY WAS ASSOCIATED WITH AN INVESTMENT ADVISER

The first factor, requiring that Murray be associated with an investment adviser at the time of the misconduct, is easily met here. Murray's conviction was predicated on conduct that occurred between 2008 and 2013. *See generally* Div. Ex. Z; Div. Ex. Y at ¶¶11-12. During that time, Murray acted as an investment adviser to MNT. As defined in the Advisers Act, an investment adviser is a person who, for compensation, "engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities" or who "issues or promulgates analyses or reports concerning securities." 15 U.S.C. § 80b-2(a)(11).

Respondent was the investment adviser to MNT and had 100 percent control over the investment decisions of the fund. Div. Ex. C at 595:20-598:24; *see Randal Kent Hansen*, Initial Decision No. 754, 2015 SEC LEXIS 1001, at *12 (Mar. 18, 2015) (Grimes, J) (respondent was investment adviser where he controlled all operations and activities of funds and was responsible for researching, selecting and monitoring funds' investments). In this capacity, Murray provided advice to individuals who considered investing in the fund, and continued to provide advice after investment. *See, e.g.*, Div. Ex. A at 183:11-184:12, 186:20-188:25; Div. Ex. B at 237:20-238:21,

[8] The Division requests that a full "collateral bar" be imposed upon Murray to preclude him from "any aspect of the securities business"; specifically, from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *Toby G. Scammell*, Advisers Act Rel. No. 3961, 2014 SEC LEXIS 4193, at *1 n.1 (Oct. 29, 2014); 15 U.S.C. § 80b-3(f). As detailed herein, Murray committed numerous fraudulent acts after July 2010, when Section 925(b) of the Dodd-Frank Act became effective.

246:7-250:10, 259:10-262:14; Div. Ex. D at 728:16-730:10. He issued "monthly performance updates" and an accompanying newsletter concerning the fund that compared the fund to other securities benchmarks. *See, e.g.*, Div. Ex. Q at 5-7. Finally, Murray received compensation for these activities. Div. Ex. O at 4; Div. Ex. P at 4-5, 9.

C. MURRAY WAS CONVICTED OF THE OFFENSES SPECIFIED IN SECTION 203(e)(2) OF THE ADVISERS ACT

The second statutory factor is also indisputably met. Murray's October 2015 criminal conviction included 16 counts of wire fraud under Section 1343 of Title 18 of the United States Code. Div. Ex. Z. That alone suffices to meet the offenses specified by Section 203(e)(2) of the Advisers Act. 15 U.S.C. § 80b-3(e)(2)(A)-(D).[9]

D. TO PROTECT THE PUBLIC INTEREST, MURRAY SHOULD BE PERMANENTLY BARRED

Murray's misconduct also warrants an associational bar, with no right to reapply, to protect the public interest. In determining whether such a bar should be imposed, the court may consider: (1) the egregiousness of Respondent's actions; (2) the isolated or recurrent nature of his misconduct; (3) the degree of scienter involved; (4) the sincerity of any assurance against future violations; (5) Respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979, *aff'd on other grounds*, 450 U.S. 91 (1981). The application of these factors is "flexible" and "no single factor is dispositive." *Thomas D. Melvin, CPA*, Exchange Act Rel. No. 75844, 2015 SEC LEXIS 3624, at *8-*9 (Sept. 4, 2015) (citation omitted). The court may also consider the degree of harm resulting from the violation, *KPMG Peat Marwick LLP*, Exchange Act Rel. No. 43862, 2001 SEC

[9] Murray's conduct also meets at least two other subdivisions of Section 203(e)(2), because his criminal conviction (A) "involve[d] the purchase or sale of any security," including in his role as investment adviser to MNT and the fraudulent short sale Netflix transaction he effected at Oppenheimer & Co., and (B) arose "out of the conduct of the business of a[n] . . . investment adviser." § 80b-3(e)(2)(A)-(B); *see* Statement of Facts, Sections II.A and II.C, *supra*.

LEXIS 98, at *100 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002), as well as the deterrent effect of the sanction. *Melvin*, 2015 SEC LEXIS 3624, at *8-*9 (citation omitted). Each of these factors show that a permanent bar is warranted here.

1. Murray's Conduct Was Egregious

The nature of the criminal charges of which Murray was convicted – wire fraud, aggravated identity theft, money laundering, and contempt of court – are alone sufficient to mandate the severe sanction of a permanent bar. *See Daniel Imperato*, Exchange Act Rel. No. 74596, 2015 SEC LEXIS 1377, at *17 (Mar. 27, 2015) (criminal activity involving fraud "requires a severe sanction"); *John J. Bravata*, Initial Decision Rel. No. 737, 2015 WL 220986, at *6 (Jan. 16, 2015) ("The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business").

But the circumstances behind Murray's misconduct compel that result. Not only did Murray fail to inform the investors that the MNT fund had lost nearly its entire value in 2009, he solicited new investors without disclosing these losses and distributed false reports that led investors to believe that his fund was actually profitable. He lied about his background which materially misled investors into believing he was someone he was not. Even more egregiously, Murray created a sham audit firm that he controlled and created phony audit reports that purported to show that the MNT fund was being audited. He also duped investors into believing that the fund was safe by representing that the fund had a third-party administrator and counsel.

These reasons alone show that a full collateral bar should be imposed. *See Hansen*, 2015 SEC LEXIS 1001, at *15-*16 (imposing collateral bar where respondent "worked to present the false image that investment funds were safe," including issuing misleading statements to create the impression that funds were being audited when no audits were conducted); *Sachin K. Uppal*, Initial

Decision No. 920, 2015 SEC LEXIS 4902, at *19 (Dec. 1, 2015) (imposing collateral bar where respondent issued false account statements; "[t]here is no doubt that someone who is willing to lie to induce investors is ill-suited to remain in the securities industry"); *Stephen L. Kirkland*, Initial Decision Rel. No. 875, 2015 SEC LEXIS 3583, at *16 (Sept. 2, 2015) (Grimes, J) (investment adviser who perpetrated a fraud on fund investors "shows that [respondent]'s conduct is egregious and that he is not suited to remain in the securities industry") (citations omitted).

Murray's criminal conduct was egregious even outside of his misrepresentations to investors. He stole money as part of a credit card swiping scheme. He stole the identities of a British citizen, a business partner, and his then-wife to establish shell companies to further his fraud. He doctored documents to avoid detection by compliance personnel at brokerage firms of his arrest and that the government had seized funds. He deliberately defied a U.S. District Court judge – twice – in violating the terms of his pretrial release. In short, it is difficult to conceive of conduct more deserving of a permanent bar than the conduct at issue here.

2. Murray's Misconduct Was Recurrent and Not Isolated

Murray's crimes recurred multiple times, across multiple investors, between 2008 and 2013. Murray's misconduct spans similar timeframes as conduct by other respondents who have been barred from the industry. *See Kirkland*, 2015 SEC LEXIS 3583, at *16-*17 (misconduct involved at least ten investors and occurred over at least two-year period); *Gordon Brent Pierce*, Securities Act Rel. No. 9555, 2014 SEC LEXIS 839, at *84 (Mar. 7, 2014 (misconduct that occurred over eight-month period deemed "recurrent and long-lasting"); *Richard P. Callipari*, Initial Decision Rel. No. 237, 2003 WL 22250402, at *5 (Sept. 30, 2003) (scheme of several weeks constituted recurring behavior).

Nor do Murray's crimes represent an isolated incident. As described above, they occurred over a protracted timeline. Moreover, Murray was previously suspended by the New York Stock Exchange for six months. Div. Ex. I at 1457:19-1458:21. He also committed tax fraud concerning his 2000 tax return, where a United States tax court judge found that Murray underreported his income and did so while hiding account statements from his first wife. Div. Ex. J at 1690:13-1692:10.

3. Murray Acted with a High Degree of Scienter

The evidence discussed in Section IV.A, *supra*, demonstrates Murray's degree of scienter with which he executed his scheme. Moreover, courts have recognized that a conviction involving fraud indicates a "high degree of scienter," *Adam Harrington*, Initial Decision No. 484, 2013 WL 1655690, at *4 (Apr. 17, 2013), and this factor is met where the jury must have found that the defendant acted with scienter, or an intent to defraud. *Wulf*, 2015 SEC LEXIS 2603, at *26.

Here, in order to convict Respondent of the 16 counts of wire fraud, the jury was required to find that he acted with "intent to defraud," which the jury was told meant that he acted with "an intent to deceive or cheat." Div. Ex. K at 1778:11-1779:3. In addition, for the aggravated identity theft charges, the jury was required to find that the defendant committed such a crime "during and in relation to wire fraud," and with respect to the money laundering charges, that the property was "derived from wire fraud." *Id.* at 1779:21-1780:23. In other words, the jury necessarily found that Murray acted with an intent to defraud with respect to these 22 counts. In so doing, the jury also considered whether Murray acted with "good faith" as a defense to these charges. *Id.* at 1779:13-20. The jury rejected this defense, finding that Respondent did not have "an honest, good-faith belief in the truth of the specific misrepresentations alleged in the indictment," but that he acted with an intent to defraud. Finally, the jury also found that Murray "acted willingly and knowingly"

in disobeying his pretrial release orders in finding him guilty of contempt of court. *Id.* at 1781:23-1782:13.

4. Murray Has Not Recognized the Wrongful Nature of His Misconduct, Nor Provided Any Assurance Against Future Violations

Murray has yet to accept any responsibility for his crimes. He indicated during the prehearing conference in this case that he intends to challenge the validity of his conviction, and he issued a one-page blanket denial of the Division's allegations against him in the OIP. The evidence presented at Respondent's criminal trial also provides a glimpse into his ongoing denial of his responsibility. Following his arrest, one of Murray's friends, an investor in MNT, confronted him at his office. Murray was not apologetic, was defensive and patronizing, and made light of the situation. Div. Ex. B at 276:5-277:24. Then, right before a court hearing on the Government's asset freeze, Murray told the same friend, "Oh, you're going to be fine. Your daddy's a doctor." *Id.* at 279:2-25.

Murray's disregard of the harm he has done and his refusal to accept responsibility for his actions demonstrates that there is no assurance against future violations upon his release. *Jesse C. Litvak*, 2015 WL 271259, at *10 ("[Respondent]'s failure to recognize the wrongful nature of his misconduct indicates a significant risk of future misconduct, if given the opportunity to commit it") (citation omitted).

5. There Is a Strong Likelihood of Future Violations

Respondent claims to have been involved with the securities industry for 22 years. Div. Ex. I at 1457:14-18. Accordingly, if given the opportunity, the record of his repeated violations suggests that Murray would engage in similar conduct. *Hansen*, 2015 SEC LEXIS 1001, at *17-*18 (citation omitted); *see also John W. Lawton*, Advisers Act Rel. No. 3513, 2012 SEC LEXIS

3855, at *43 (Dec. 13, 2012) (respondent's "occupation as an investment adviser presents opportunities for future illegal conduct in the securities industry").

Respondent's long and checkered history further demonstrates his propensity for dishonesty that is likely to continue unabated absent a bar. The New York Stock Exchange suspended his securities license. He was found guilty of tax evasion. He lied to investors, and failed to return money entrusted with him to those investors. He stole hundreds of thousands of dollars in a credit card scam. He was arrested and then set up new accounts in the names of others to conceal his identity. He flaunted a court order and was found guilty of contempt of court for violating the terms of his pretrial release. His lies continued all the way to his criminal trial, when he took the stand and lied. *See, e.g.*, Div. Ex. J at 1592:10-14, 1593:19-1594:8, 1626:5-1627:23, 1712:8-13, 1714:15-1729:4. This factor thus favors a permanent bar.

6. A Permanent, Collateral Sanction Is Required to Deter Others from Similar Misconduct

Finally, this Court should consider the effect of any outcome short of a permanent collateral bar on the ability to deter others from committing such egregious conduct. "Because the securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence, it is essential that the highest ethical standards prevail in every facet of the securities industry.'" *George N. Krinos*, Initial Decision No. 929, 2015 SEC LEXIS 5188, at *59-60 (Dec. 21, 2015) (quoting *Donald L. Koch*, Exchange Act Rel. No. 72179, 2014 SEC LEXIS 1684, at *86 (May 16, 2014). In these proceedings, the "focus is on the welfare of investors generally and the threat one poses to investors and markets in the future." *Tzemach David Netzer Korem*, Exchange Act Rel. No. 70044, 2013 SEC LEXIS 2155, at *18 (July 26, 2013) (citation omitted).

Accordingly, this Court should impose a permanent, collateral bar against Murray, as authorized under Section 203(f) of the Advisers Act. Respondent is an individual who has been criminally convicted of 23 counts of fraud-related conduct. Advisers who disseminate false and misleading reports, and who lie to and deceive investors, their own partners and family, and even the Court, undermine the integrity of the securities industry and the markets in general. The public interest requires protection against Murray's participation in the industry for future would-be investors.

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court grant the Division's motion for summary disposition and issue an order permanently barring Murray from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or any nationally recognized statistical rating organization.

Dated: January 22, 2016

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH LENGTH LIMITATION

Pursuant to SEC Rule of Practice 154(c)), I certify that the foregoing Motion for Summary Disposition Against Respondent James Michael Murray and Supporting Memorandum of Law, exclusive of the Table of Contents, Table of Authorities, and Exhibit List, complies with the 7,000-word length limitation. The motion and accompanying brief, including footnotes, totals 6,538 words.

By: 
JASON M. HABERMEYER

CERTIFICATE OF SERVICE

I, Janet L. Johnston, hereby certify that on January 22, 2016, an original and three copies of the foregoing: 1) Letter to The Honorable James E. Grimes; 2) Division of Enforcement's Motion for Summary Disposition Against Respondent James Michael Murray and Supporting Memorandum of Law; 3) Declaration of Jason M. Habermeyer in Support of Division of Enforcement's Motion for Summary Desposition Against Respondent James Michael Murray (and accompanying exhibits) and 4) Certificate of Service were sent by United Parcel Service for next day delivery for filing to the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549, with a copy transmitted by facsimile to (703) 813-9793 for filing, and that a true and correct copy of the foregoing has been served by United Parcel Service, marked for next day delivery, on the following persons entitled to notice:

The Honorable James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Alan A. Dressler, Esq.
400 Montgomery Street
Suite 200
San Francisco, CA 94104

and by messenger service on the following person entitled to notice:

James Michael Murray
[redacted]
San Francisco, CA [redacted]

Janet L. Johnston
Janet L. Johnston

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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January 22, 2016

Via UPS Next Day Air and Email

The Honorable James E. Grimes
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2557

Re: In the Matter of James Michael Murray (Admin. Proc. File No. 3-16937)

Dear Judge Grimes:

Enclosed please find a copy of the Division of Enforcement's Motion for Summary Disposition Against Respondent James Michael Murray, the Memorandum of Law in Support of the Division's Motion, the Declaration of Jason M. Habermeyer in support of the Motion with accompanying exhibits, and the related Certificate of Service. All of these documents were filed today with the Secretary's Office.

Sincerely,

Jason M. Habermeyer
Trial Counsel, Division of Enforcement

Enclosures: Motion for Summary Disposition
Memorandum of Law in Support of the Division's Motion
Declaration of Jason M. Habermeyer (with exhibits)
Certificate of Service

cc: James Michael Murray (via hand delivery)
Alan Dressler, Esq.