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ADMINISTRATIVE PROCEEDING
FILE NO. 3-17751

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of ROY DEKEL, Respondent.	The Honorable Carol Fox Foelak

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT ROY DEKEL AND MEMORANDUM OF LAW IN SUPPORT

March 22, 2017

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I. INTRODUCTION

The Division of Enforcement ("Division") moves, pursuant to Rule 250 of the Securities and Exchange Commission ("SEC")'s Rules of Practice, for summary disposition of the claims in the Order Instituting Proceedings Pursuant to Section 203 (f) of the Investment Advisers Act of 1940 and Notice of Hearing (the "OIP"), against Respondent Roy Dekel ("Dekel"). The Division requests that Dekel be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization.

Dekel is formerly the chairman, chief executive officer, and 45% owner of the now-defunct financial services provider Diverse Financial Corporation ("Diverse Financial"). He is also a former registered investment adviser with Diverse Financial Investment Advisory Group, at one time a California-registered investment adviser and wholly-owned subsidiary of Diverse Financial.

The SEC sued Dekel and Diverse Financial for securities fraud in October 2015, alleging that they misappropriated over $3.2 million in investor monies from the noteholders in Diverse Financial's now-bankrupt subsidiary, DF Capital Partners, LLC ("DF Capital"). In November 2016, Dekel and Diverse Financial were found liable on summary judgment by the district court. In December 2016, Dekel consented to the SEC's full requested relief against him in that action, including the imposition of a permanent injunction. In his consent to judgment, Dekel agreed that he could not contest any of the allegations of the district court complaint in any follow-on proceeding before the SEC.

Because the Division has established the requirements for an industry bar as a matter of law, Dekel should be permanently barred. First, Dekel, a former investment advisor, has been permanently enjoined from violating the antifraud provisions of the securities laws, specifically,

from fraud in connection with the purchase or sale of securities. Second, a permanent bar is clearly in the public interest. Dekel was found liable for a far-reaching, multi-year fraud—the details of which he cannot dispute—that resulted in the bankruptcy of himself and numerous of his affiliate entitles. And new evidence suggests that Dekel is now seeks to raise more investor capital, by promoting his "investment management" expertise, without disclosing that he has been found liable for fraud. The evidence therefore shows that the Division's request for a permanent bar against Dekel should be granted.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. The Undisputed Allegations of Dekel's Fraud

In October 2015, the SEC sued Dekel, Diverse Financial, and another former Diverse Financial officer, in a matter entitled *SEC v. Diverse Financial Corp., et al.*, Case No. Case 8:15-cv-01746-PA-KES (Central District of California). *See* Declaration of Amy Jane Longo ("Longo Decl.") *filed concurrently herewith*, Ex. 1 [Complaint]. Over a three-year period, Dekel misappropriated more than $3.2 million raised from investors through DF Capital, based on materially false and misleading representations about the use of the investment proceeds. The SEC alleged, and the court ruled on summary judgment, that Dekel violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; and Section 17(a) of the Securities Act of 1933 ("Securities Act").

1. Dekel, Diverse Financial, and their affiliates

According to the SEC's complaint, (the allegations of which Dekel has agreed he may not dispute here), Diverse Financial, formed in 2007, was a financial services company located in Irvine, California, that was insolvent as of the filing of the district court action. *Id.* ¶¶ 4, 12. Dekel owned 45% of Diverse Financial and served as its chairman and chief executive officer. *Id.* ¶ 4. Dekel alone controlled Diverse Financial's bank accounts, as the sole authorized

signatory. *Id.* ¶¶ 47-48.

The complaint also alleged that, between 2009 and 2013, Dekel founded and controlled three Diverse Financial subsidiaries: (1) DF Capital, the investment vehicle whose investors' monies were at issue in the district court action (*id.* ¶ 15); (2) DF Real Estate Partners, LLC ("DFREP"), purportedly a real estate investment firm (*id.* ¶ 16); and (3) DF Insurance Services ("DFIS"), an insurance firm. *Id.* ¶ 17. Dekel alone also controlled these subsidiaries' bank accounts, with sole signatory authority. *Id.* ¶¶ 15-17, 47.

In 2015, all three subsidiaries filed for bankruptcy, as did Dekel himself. *Id.* ¶¶ 13, 15-17.

2. The DF Capital notes

Dekel cannot dispute that he materially misrepresented to DF Capital investors the intended uses of their capital. Founded by Dekel, with Diverse Financial as its managing member (*id.* ¶ 15), DF Capital issued over $3.2 million in notes to 17 investors between May 2011 and December 2013 (the "Notes"), purportedly to raise capital for third party premium finance lending ("PFLs"). *Id.* ¶¶ 15, 18. DF Capital promised to invest the Notes proceeds solely in premium finance lending, or interim short-term cash investments. *Id.* ¶¶ 19-21.

These two exclusive permitted uses of the DF Capital Notes proceeds—premium finance lending or short-term cash investments—appeared in three offering documents provided to investors before they purchased the Notes: a term sheet, an investment overview, and the note purchase agreement. *Id.* ¶¶ 29, 31-33. Dekel reviewed and approved these materials. *Id.* ¶¶ 5, 49-50.

3. Dekel's diversion of the DF Capital Notes proceeds for Diverse Financial's use

Dekel further cannot dispute that the DF Capital Notes proceeds were not used as disclosed. Each year that the DF Capital Notes were issued, Diverse Financial operated with an increasingly negative balance sheet: net losses of $144,000 in 2011; $430,000 in 2012; and $1.3

million for the first 11 months of 2013. *Id.* ¶ 23. To keep Diverse Financial afloat, Dekel—exercising his exclusive control and sole signatory authority over Diverse Financial's and DF Capital's bank accounts (as well as over those of affiliates DFREP and DFIS)—transferred all of the DF Capital Notes proceeds to Diverse Financial's coffers. *Id.* ¶¶ 5-6, 9, 15-17, 22, 24, 37-39, 47. Once commingled with Diverse Financial's funds, the Notes proceeds were used to pay Diverse Financial's various expenses, such as Dekel's and others' salaries, credit card and legal bills, and marketing costs. *Id.* ¶¶ 9, 37. Paying Diverse Financial's operating expenses was not a disclosed or permitted use of DF Capital investors' monies. *Id.* ¶¶ 19-21.

Dekel further misused DF Capital Notes proceeds by making Ponzi-like payments, *i.e.*, paying monies owed to existing DF Capital investors with monies infused from newer DF Capital investors. *Id.* ¶ 40. Between August 2013 and December 2013, DF Capital received new Note investments of $565,000. *Id.* ¶ 42. In January 2014, DF Capital transferred these funds to Diverse Financial, which had an existing account balance of only $6,800. *Id.* ¶¶ 43-44. After receiving DF Capital's monies, Diverse Financial then paid $62,123.85 back to DF Capital, which in turn doled this amount out as quarterly interest owed to earlier DF Capital investors. *Id.* ¶¶ 45-46. Nothing in the permitted uses of the Notes proceeds included paying interest owed to prior investors. *Id.* ¶¶ 19-21.

4. Dekel's roles at the helm of Diverse Financial and DF Capital

Dekel is unable to dispute his role in the DF Capital fraud. Dekel was Diverse Financial's senior-most officer, serving as its chairman and CEO, and a controlling shareholder with 45% ownership. *Id.* ¶¶ 4, 13. Dekel founded and exercised complete control over DF Capital, including through Diverse Financial, its managing member. *Id.* ¶ 15.

Dekel created DF Capital, attending the kick-off meeting where it was presented to Diverse Financial sales agents and offering them incentive bonuses to close sales. *Id.* ¶ 49.

Though he did not himself make the sales of the Notes, he approved the offering materials used to market the Notes to investors and had final decision-making authority over those materials. *Id.* ¶¶ 49-50. Dekel also supervised the law firm that prepared the note purchase agreement and reviewed it before it was finalized. *Id.*

Dekel was the highest ranking officer of Diverse Financial and the only person with control of the bank accounts of Diverse Financial and DF Capital. *Id.* ¶¶ 15-17, 47. Thus, it was he, and he alone, who usurped the DF Capital investor monies for Diverse Financial; commingled those monies in Diverse Financial's accounts; and misused DF Capital loan proceeds to pay Diverse Financial operating expenses, such as Dekel's own salary. *Id.* ¶¶ 9, 22, 37-38. Similarly, Dekel was responsible for the Ponzi-like payments made by DF Capital in January 2014. *Id.* ¶¶ 40-46. In fact, it was Dekel to whom Diverse Financial's outside accountant observed in December 2013 that Diverse Financial's operating losses from 2011 through the first eleven months of 2013 had been "financed by investors." *Id.* ¶ 25.

B. The District Court's Grant of the SEC's Motion for Summary Judgment and Dekel's Consent to Injunctive and Monetary Relief

On November 3, 2016, the district court granted in full the SEC's motion for summary judgment against Dekel and Diverse Financial. The court found both defendants liable for each cause of action asserted in the SEC's complaint—namely, violation of the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and violation of Section 17(a) of the Securities Act. *Id.*, Exs. 2-3 [Civil Minute Orders dated Nov. 3, 2016 & Nov. 17, 2016].[1] The court also found Dekel liable as a control person of DF Capital, for its uncharged violations

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[1] Dekel's co-defendant, the other former officer of Diverse Financial, settled the claims against him in the SEC's enforcement action on a no-admit-no-deny basis.

of Section 10(b) and Rule 10b-5. *Id.*

After the SEC prevailed on summary judgment, the only remaining issues to be tried against Dekel and Diverse Financial were the resulting remedies. On December 8, 2016, however, Dekel (and Diverse Financial) agreed to full relief, consenting to the entry of a final judgment, a permanent injunction, disgorgement, and civil penalties. *Id.*, Ex. 4 [Consent to Judgment]. In the consent, Dekel expressly agreed that "in any disciplinary proceeding before the SEC based on the entry of the injunction ... ***he shall not be permitted to contest the factual allegations of the complaint.*** *Id.*, Ex. 4 at 4:12-13; emphasis added. The same day, the district court entered these final judgments upon Dekel's consent. *Id.*, Ex. 5 [Final Judgment].[2]

C. The Follow-On Administrative Proceeding

The SEC instituted this follow-on proceeding through its OIP on December 27, 2016, pursuant to Section 203(f) of the Advisers Act. Dekel was deemed served with the OIP on January 10, 2017. Under cover of a letter dated December 28, 2016, the Division offered its investigative file to Dekel for inspection, and subsequently provided Dekel an electronic copy of its investigative file, per his counsel's request at the January 30, 2017 prehearing conference. *Id.*, Exs. 6-7 [A. Longo Letters to M. Lazo, Dec. 28, 2016 & February 13, 2017].

Dekel answered the OIP on February 13, 2017. In his answer, Dekel did not contest certain allegations of the OIP, including: (1) that from August 2013 through December 2014, he was a registered investment adviser with Diverse Financial Investment Advisory Group aka Diverse

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[2] Given the timing of Dekel's consent to judgment, the district court's minute orders granting the SEC's motion for summary judgment and directing the parties to prepare final pretrial disclosures on the remedies issues were the final orders issued in connection with the SEC's motion for summary judgment, and the Court did not issue a further written opinion on the SEC's motion. *Id.*

Financial Advisors (CRD #168965), a California-registered investment adviser and wholly-owned subsidiary of Diverse Financial, whose registration was revoked on or about February 6, 2015; (2) that he is not registered with the SEC; (3) that the district court granted the SEC's motion for summary judgment against him; and (4) that the district court entered a permanent injunction against him by consent. *See* Respondent's Answer to Order Instituting Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing, ¶¶ 1-3.

Notwithstanding that in his district court consent, he agreed that he could not contest the allegations of the district court complaint in any disciplinary proceeding before the SEC, Dekel's answer purports to do just that. He both "denies" the allegations of the district court complaint (*id.* ¶ 3), and asserts that he "stipulated to [the Final Judgment] without admitting any liability or conceding any claims or issues that could be used against him in this proceeding." *Id.* ¶ 2. Neither position is permitted by the terms of his consent to judgment.

Nor can Dekel maintain the affirmative defenses he asserts, to the extent they contradict the district court complaint's allegations, including that: (1) his actions were not in connection with the purchase or sale of a security; (2) he acted in good faith as a control person; (3) he lacked scienter or negligence; (4) he did not make any material misstatements or omissions; (5) he did not control Diverse Financial; (6) the investors were sophisticated or were informed of the undisclosed information; (7) Dekel did not benefit; (8) he had no duty to disclose; (9) his fault is excused by the fault of others; (10) there were no nondisclosures; (11) the investors were not harmed; (12) he was protected by the "Business Judgment Rule"; or (13) he relied on counsel or other persons. *Id.* ¶¶ 4-20.

D. Dekel's Newest Capital Raise

As of early 2017, Dekel is promoting himself as the chief executive officer of a different entity, SetSchedule LLC ("SetSchedule"), purportedly a "technology based marketing firm that

connects realtors with homeowners." *See* Longo Decl. Ex. 8 [SetSchedule News & Advice webpage, Feb. 27, 2017]. According to Dekel's January 2017 interview with CEOCFO Magazine, which is available on SetSchedule's website, the company is currently raising investor funds:

> CEOCFO: Are you seeking investment partnerships? Are you funded for the push you would like to make as you go forward?
>
> Mr. Dekel: That is the best question yet! ***SetSchedule is currently in a Series A capital raise and we are in talks with several interested major venture funds.*** We have a tremendous amount of interest from the community.

Id., Ex. 9 ["The First Data and CRM/Practice Management Solutions for the Real Estate Industry Allowing Agents to Connect with Homeowners and Home Buyers, Schedule Appointments, Develop Leads and Close More Transactions," *CEOCFO Magazine*, Jan. 30, 2017; emphasis added].

In connection with this "capital raise," Dekel has recently been promoting his experience managing investor monies—with conspicuously no reference to his being found liable on summary judgment for securities fraud in the district court action; his agreeing to a final judgment thereafter; or his declaration of bankruptcy on behalf of himself and Diverse Financial's subsidiaries. For example, a February 27, 2017 article from SetSchedule's website describes Dekel as a "real estate investor [with] an extensive entrepreneurial background [who] has ***managed millions of dollars in investor capital***, written billions in business transactions, and has held multi-million-dollar real estate portfolios." *Id.*, Ex. 8; emphasis added. A biography of Dekel linked to his recent entrepreneurship award nomination boasts that he has managed not millions, but "***billions*** in real estate and finance portfolios," and states that "***Dekel has led*** SetSchedule to 1,500+ current members and millions in sales revenue in ***just three years***." *Id.*,

Ex. 10 [Feb. 13, 2017, Orange County Business Journal Awards Supplement]; emphasis added.[3] And notwithstanding that both he and Diverse Financial's defunct real estate subsidiary, DFREP, declared bankruptcy in 2015, another article by Dekel on SetSchedule's website touts that: "Roy Dekel purchased 26 homes...rented out the properties, and waited for the market to bounce back. Today, the properties purchased are worth 2 or even 3 times the original purchase price. He did exactly what all investors preach: buy low and sell high." *Id.*, Ex. 11 [SetSchedule News & Advice webpage, Mar. 3, 2017].

Dekel's personal websites, each of which shows a copyright date of 2017, similarly advertise his background in finance. For example, the website http://roydekel.com/ states that Dekel has "invested in multiple markets including the finance and entertainment industries, merchant services and Real Estate Developments" and describes him as having a "strong career track." *Id.*, Ex. 15. The website http://roydekel.net/ (which is linked to the SetSchedule website bearing his photo), claims that he "has served in a number of capacities including investor, financial advisor, Director of Business Development, and CEO." *Id.*, Ex. 16. His website http://roydekelmedia.com/ states that he is a "professional in the real estate and Private Equity

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[3] If Dekel has truly been at the helm of SetSchedule for the past three years (or approximately 2014 through 2017), then it appears he omitted this officer position from his Chapter 7 bankruptcy filings, in Case No. 8:15-bk-1399-TA (U.S. Bankruptcy Court, Central District of California (the "Bankruptcy Docket"). Dekel filed multiple amended statements of financial affairs, none of which list him as an officer of, or otherwise identify, SetSchedule. *See id.*, Ex. 12 [Bankruptcy Dkt. No. 1 at 37, Aug. 11, 2015 Statement of Financial Affairs] (identifying Dekel's sole business in the six years before his bankruptcy filing as "insurance sales" from "2009 to present"); Ex. 13 [Bankruptcy Dkt. No. 23 at 4, Sept. 29, 2015 amended Statement of Financial Affairs] (identifying Dekel's business in the six years before his bankruptcy filing as including Diverse Financial and five of its affiliates, but not SetSchedule); Ex. 14 [Bankruptcy Dkt. No. 48 at 15, July 27, 2016 second amended Statement of Financial Affairs] (identifying Dekel as a "sole proprietor" or "self-employed" within the four years before his bankruptcy filing, and not listing SetSchedule).

industry [and] also has experience with the Los Angeles entertainment industry." *Id.*, Ex. 17. None of these websites refer to Dekel's recent fraud judgment or DF Capital's bankruptcy.

III. ARGUMENT

A. Summary Disposition Is Appropriate

Rule 250(a) of the SEC's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a).[4] Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b).

Summary disposition is "generally proper in 'follow-on' proceedings like this one, where the administrative proceeding is based on a criminal conviction or a civil injunction." *George Charles Cody Price*, Init. Dec. Rel. 1018, 2016 WL 3124675 (June 3, 2016); *accord Omar Ali Rizvi*, Initial Dec. Rel. No. 479, 2013 WL 64626 (Jan. 7, 2013) (the "Commission has repeatedly upheld use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction."), *Notice of Finality*, Release No. 69019, 2013 WL 772514 (Mar. 1, 2013); *Daniel E. Charboneau*, Initial Dec. Rel. No. 276, 84 S.E.C. Docket 3476, 2005 WL 474236 (Feb. 28, 2005) (summary disposition granted and penny stock bar issued based on injunction), *Notice of Finality*, 85 SEC 157, 2005 WL 701205 (Mar. 25, 2005); *Currency Trading Int'l Inc.*, Initial Dec. Rel. No. 263, 83 SEC Docket 3008, 2004 WL 2297418 (Oct. 12, 2004) (same), *Notice of Finality*, 84 SEC Docket 440, 2004 WL 2624637 (Nov. 18, 2004).

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[4] The Hearing Officer granted the Division leave to file a summary disposition motion in its January 30, 2017 scheduling order.

Moreover, where, as here, facts have been litigated and determined in an earlier judicial proceeding, the SEC does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. *See Peter J. Eichler, Jr.*, Init. Dec. Rel. No. 1032, 2016 WL 4035559 (July 8, 2016) ("It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial") (collecting cases); *accord Robert Burton*, Initial Dec. Rel. No. 1014, 2016 WL 3030850 (May 27, 2016); *James E. Franklin*, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713 & n.13, 2007 WL 2974200, *petition for review denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Jeffrey L. Gibson,* Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *9-11 (Feb. 4, 2008) (injunction entered by consent), *pet. denied,* 561 F.3d 548 (6th Cir. 2009).

B. The Section 203(f) Industry Bar Is Warranted

Section 203(f) of the Advisers Act, as amended by Section 925(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 925(b), 124 Stat. 1376 (2010) [codified at 15 U.S.C. § 80b-3(f)], provides that the SEC may bar "any person associated...or, at the time of the alleged misconduct, associated...with an investment adviser... from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization." Advisers Act, Section 203(f).[5] To impose a bar, the hearing officer must find, on the record after notice and opportunity for a hearing, that: (1) a bar "is in the public interest"; and, (2) the person "is enjoined from" any one of certain "action[s], conduct or practice[s]," (*id.*), including for

[5] Dekel does not dispute that he was associated with the investment adviser arm of Diverse Financial. Dekel Answer, ¶ 1.

purposes of this proceeding, being "permanently...enjoined...from engaging in or continuing any conduct or practice in connection with...the purchase sale or sale of any security." Advisers Act, Section 203(e)(4).

Whether an administrative sanction based upon an injunction is in the public interest turns on the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, recognition of the wrongful conduct, and the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *In re Vladimir Boris Bugarski*, No. 3-14496, 2012 WL 1377357, at *4 (Commission Op. April 20, 2012). The Commission also considers whether the sanction will have a deterrent effect. *Id.* "[N]o one factor is dispositive." *In re Michael C. Pattison, CPA,* No. 3-14323, 2012 WL 4320146, at *8 (Commission Op. Sept. 20, 2012); *In re ZPR Investment Management, Inc.*, No. 3-15263, 2015 WL 6575683, at *27 (Comm. Op. Oct. 30, 2015) (inquiry into the public interest is "flexible").

Here, the Division has established these required elements as a matter of law.

1. Dekel has been permanently enjoined by the district court for securities fraud

The first requirement for the imposition of the bar is easily shown. On December 8, 2016, the district court entered an order and final judgment against Dekel, permanently enjoining him from violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 17(a) the Securities Act. Longo Decl., Ex. 5. Dekel does not dispute the entry of the injunction. Dekel Answer, ¶¶ 1-2.

2. An industry bar is in the public interest

Barring Dekel from the industry is in the public interest, because the undisputed facts

establish that he defrauded investors with scienter, as the architect of a multi-year scheme that ended with him and his entities in bankruptcy. Moreover, the evidence shows that Dekel is already attempting to raise more capital by misleading descriptions of his financial acumen.

a. The district court held, and Dekel cannot dispute, that he knowingly or recklessly made material misrepresentations and omissions to investors, and misappropriated investor money

The SEC's complaint in the district court action set forth Dekel's fraud in detail. Under the terms of his consent to judgment, Dekel cannot dispute any of those underlying factual allegations in this proceeding, nor that he was found liable on summary judgment for each of the SEC's claims against him.

In considering whether a permanent bar is appropriate in a follow-on proceeding, precedents hold that "[v]iolations involving the antifraud provisions of the federal securities laws are especially serious and merit the severest of sanctions." *Vinay Kumar Nevatia*, Init. Dec. Rel. No. 1021, 2016 WL 3162186, at *5 (June 7, 20-16), citing *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *accord Eichler*, 2016 WL 4035559, at *6 ("The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions...Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on antifraud injunctions in which the Commission issued opinions, and all of the respondents were barred..."), internal citations omitted. "The existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin and Joshua Shainberg*, Initial Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006).

Here, Dekel knew the representations made to the DF Capital investors concerning the uses of their proceeds, yet he misappropriated their monies, commingled them with his own

funds and Diverse Financial's, and used them for operating capital, until the funds ran out. These were material misrepresentations and omissions, made by Dekel with a high degree of scienter, while he exercised exclusive control of Diverse Financial's and its affiliates' bank accounts. His conduct was egregious, and took place over many years. Therefore, Dekel's being found liable for antifraud violations on summary judgment, and his consent to the entry of a permanent injunction thereafter, demonstrate that a permanent bar is in the public interest.

b. Dekel's recent activities, after being found liable by the district court, also justify the bar

Dekel's ongoing "capital raise" as the CEO of SetSchedule, in connection with which he has been touting his experience managing investor monies, vividly demonstrate the likelihood that Dekel will have future opportunities for violations, if not permanently barred from the securities industry. Dekel is currently promoting himself as a successful manager of financial and real estate investments, with no disclosure of the fraud judgment, the permanent injunction, or the recent bankruptcies of DF Capital and other entities he controlled, as well as of himself. The very next month after his consent judgment for securities fraud was entered, Dekel was quoted by CEOCFO magazine concerning the "tremendous amount of interest" his new investment opportunity was purportedly already generating.

Dekel's misleading portrayals of his background as a capable steward of investor funds only highlight why a bar is in the public interest. *See, e.g.*, *Lonny S. Bernath*, Init. Dec. Rel. 993, 2016 SEC LEXIS 1222, at *14 (Apr. 4, 2016) (imposing permanent bar by summary disposition in a follow-on administrative proceeding in part on the basis that respondent had "acknowledged his expectation for future employment opportunities as an officer of an issuer utilizing Rule 506 to raise capital in private placements"); *Nolan Wayne Wade*, Exchange Act Rel. 48245, 2003 SEC LEXIS 1785, at *14, 56 SEC 748 (Comm. Opin. July 29, 2003) (imposing permanent bar in part

on the basis that respondent would have opportunity to commit future violations, since he remained employed with a company that had "indicated that it may raise additional capital through private and/or public sales of securities in the future"). Further, as evidenced by his answer in this proceeding—where he disputes the district court complaint's detailed allegations of fraud that he has sworn not to challenge—Dekel has made no assurances against future violations. Rather, he continues to deny the wrongfulness of his conduct. *Steadman*, 603 F.2d at 1140.

Because the Division has established the necessary elements for Dekel to be permanently barred as a matter of law, its motion should be granted.

IV. CONCLUSION

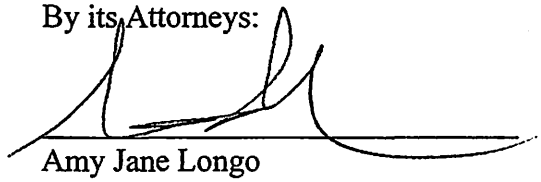
For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted.

DATED: March 22, 2017

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its Attorneys:



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CERTIFICATE OF SERVICE

I certify that on March 22, 2017, I caused the foregoing to be served on the following persons by the method of delivery indicated below.

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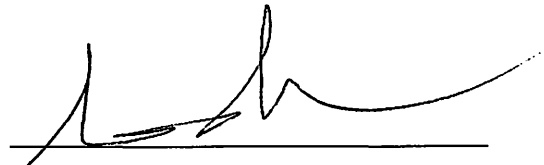

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