

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 75893 / September 10, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4193 / September 10, 2015

Admin. Proc. File No. 3-15850

In the Matter of

MATTHEW D. SAMPLE

OPINION OF THE COMMISSION

APPLICATION FOR CONSENT TO ASSOCIATE

Denial of Rule 193 Application

Applicant, who was barred in a settled follow-on proceeding based on an antifraud injunction, applied for consent to associate with a registered investment adviser. The Director of the Division of Enforcement denied the application pursuant to delegated authority. *Held*, denial of the application is affirmed because Applicant failed to show that the proposed association is consistent with the public interest.

APPEARANCES:

Edwin J. Tomko, of Dykema Cox Smith, for Matthew D. Sample.

Joseph Brenner, Sam Waldon, Kenneth H. Hall, and Carolyn Morris, for the Division of Enforcement.

Appeal filed: February 18, 2015
Last brief received: July 7, 2015

Matthew D. Sample, a former associated person of Kingsroad Financial Insurance Services, Inc. ("Kingsroad"), d/b/a Measured Risk Portfolios, a Commission-registered investment adviser, appeals from action taken by the Director of the Division of Enforcement ("Division") pursuant to delegated authority.¹ The Division Director denied his application for consent to associate with Kingsroad and its related broker-dealer, Independent Financial Group, LLC ("IFG"),² under Rule 193 of the Commission's Rules of Practice.³ The Division opposes Sample's appeal. For the reasons set forth below, we conclude that Sample has failed to show that the proposed association would be consistent with the public interest. Accordingly, we affirm the action taken by delegated authority.

I. Background

A. Sample consented to be permanently enjoined from violating antifraud provisions of the federal securities laws.

On April 4, 2014, we filed a complaint against Sample in the United States District Court for the Northern District of Texas, alleging that, from October 2009 to June 2012 ("Relevant Period"), he raised almost \$1 million from five investors based on representations that he would use the money to trade on the investors' behalf.⁴ Instead, the complaint alleged, Sample fraudulently diverted approximately one-third of the money for his personal use and to make payments to other investors. The complaint further alleged that during the Relevant Period Sample was associated with broker-dealer and investment adviser firms, including Kingsroad.⁵

According to the complaint, Sample raised the money from investors in New Mexico and elsewhere through his unregistered hedge fund, The Lobo Volatility Fund, LLC. Sample told investors he would take a monthly management fee of 1/12 of 1% of the hedge fund's net asset value, 20% of trading profits, and limited expenses. But almost immediately after receiving the investors' funds, Sample diverted significant amounts for his own personal use. When his trading strategy failed, resulting in the loss of all remaining investor funds, Sample provided investors

¹ See 17 C.F.R. § 200.30-4(a)(5) (granting the Division Director delegated authority to grant or deny applications made pursuant to Rule 193).

² IFG is registered with the Commission as a broker-dealer and investment adviser. The exact relationship between Kingsroad and IFG is unclear.

³ 17 C.F.R. § 201.193.

⁴ *SEC v. Sample*, Civil Action No. 3:14-CV-01218-B (N.D. Tex. Apr. 4, 2014), ECF No. 1.

⁵ Between August 2007 and July 2010, Sample was employed by VTrader Pro, LLC, a registered broker-dealer. Between April 1, 2012 and April 23, 2014, Sample was employed by Kingsroad. Sample represents that the fraudulent activity that overlapped with his employment at Kingsroad involved the preparation and transmittal of a false monthly account statement of one investor.

with false documents that made it look like his trading had been successful. Additionally, Sample raised at least \$50,000 from a new investor under false pretenses and then used those funds to make partial payment to prior investors who had demanded a refund.

On April 7, 2014, without admitting or denying the allegations in the complaint, Sample consented to the district court's entry of a final judgment permanently enjoining him from violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5, and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Advisers Act Rule 206(4)-8,⁶ and from directly or indirectly soliciting or accepting funds from any person or entity for any unregistered offering of securities.⁷

B. Sample consented to be barred from the securities industry based on the antifraud injunction.

On April 22, 2014, following the entry of the injunction, we instituted and simultaneously settled administrative proceedings against Sample ("Settled Order").⁸ In the Settled Order, we found that Sample had been permanently enjoined from violating the aforementioned provisions of the securities laws based on allegations that he managed an unregistered hedge fund that raised \$1 million from five investors, misrepresented his intended use of investor funds, misappropriated investor funds for his personal use and to repay prior investors, and intentionally concealed trading losses from investors.⁹

Without admitting or denying the findings therein, except as to the Commission's jurisdiction and the fact that he had been permanently enjoined as a result of the April 7, 2014 judgment, Sample consented to the entry of a bar prohibiting him from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in a penny stock offering, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in a penny stock, or inducing or attempting to induce the purchase or sale of a penny stock.¹⁰ The bar from association was unqualified because it did not contain a provision indicating that after the expiration of a

⁶ 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b) & 17 C.F.R. § 240.10b-5; 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4) & 17 C.F.R. § 275.206(4)-8.

⁷ *SEC v. Sample*, Civil Action No. 3:14-CV-01218-B (N.D. Tex. Apr. 7, 2014), ECF No. 7. The judgment further provided that, on motion of the Commission, the court would determine the appropriateness of disgorgement and/or a civil penalty. *Id.*

⁸ *Matthew D. Sample*, Exchange Act Release No. 71993, 2014 WL 1603591 (Apr. 22, 2014).

⁹ *Id.* at *1.

¹⁰ *Id.* at *2.

specified time Sample could apply to re-enter the securities industry.¹¹

C. Sample filed a Rule 193 application seeking consent to associate with Kingsroad.

On June 5, 2014, Sample filed a Rule 193 application with the Commission, subsequently supplemented, seeking a "limited lifting" of the bar to permit him to associate with Kingsroad as a wholesaler to "market [the] firm's managed account strategy to financial advisors at broker-dealers with whom [the firm] has [selling] agreements." In the application, Sample asserts that his "primary goal" is to make "full restitution" to defrauded investors. To this end, Sample represents that a friend has offered to lend him \$200,000, to be placed in an escrow account for the benefit of defrauded investors and to be repaid from his earnings after he obtains consent to associate. Sample also represents that he will deposit all of his after-tax, annual income in excess of \$60,000 into the escrow account for the repayment of defrauded investors, and that he will make defrauded investors the beneficiaries of his \$2 million, 15-year term life insurance policy.¹²

Sample further represents that he will be directly supervised by Kingsroad's principals and will have no contact with retail customers or access to investor funds. A written statement dated May 16, 2014, from Kingsroad principal Lawrence Kriesmer¹³ describes the proposed supervision to be exercised over Sample:¹⁴

[Sample] would be a solicitor of our firm and would call exclusively on other [registered investment advisers] as well as broker dealers and their investment advisor representatives in order to explain our money management strategy and try to secure solicitation or sub-advisory arrangements. [Sample] would work strictly with advisors and not with the general public. Our firm will have other employees who will be able to

¹¹ See Letter to: National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., and American Stock Exchange Re: Unqualified Bar Orders, Exchange Act Release No. 34720, 1994 WL 544424, at *1 (Sept. 26, 1994) (stating that unqualified bars "do not contain any proviso for re-application . . . after the expiration of a specified period").

¹² The application represents, without elaboration or support, that if Sample is not permitted to associate with Kingsroad, he "most likely" will be prosecuted by the U.S. Attorney's Office in Albuquerque, New Mexico.

¹³ The written statement is attached to Sample's brief as "Exhibit 2."

¹⁴ See 17 C.F.R. § 201.193(b)(4) (requiring the written statement of the proposed employer to describe: "(i) the terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant; (ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant; (iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and (iv) the names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant").

host or attend events where the general public will be present. [Sample] will not have access to client accounts and will play no role in the day to day operations or trading decisions in our firm. He will be located in our office so that we are able to overhear his conversations with other advisors. His email will be monitored. My business partner or I will periodically make joint visits with [Sample] or follow up calls to outside advisors to insure that [Sample's] communications are consistent with our strategies.

The written statement indicates that Kingsroad has not had any disciplinary events during the past two years, other than the proceedings against Sample discussed above, that no other associated persons are subject to bars, and that Kriesmer has no disciplinary history.

D. The Director of the Division of Enforcement, acting pursuant to delegated authority, denied the Rule 193 application.

On October 23, 2014, the Division's Office of Chief Counsel provided Sample with a formal statement setting forth the reasons for its proposed recommendation that the application be denied, and on November 21, 2014, Sample submitted a response.¹⁵ On February 4, 2015, the Division Director, acting pursuant to delegated authority, denied the application.¹⁶ This appeal followed.

II. Analysis

Rule 193 provides a process by which barred individuals can apply to the Commission for consent to become associated with an entity that is not a member of an SRO, *e.g.*, an investment adviser, an investment company, or a transfer agent.¹⁷ Rule 193 states that applicants "shall make

¹⁵ See 17 C.F.R. § 201.193(e) (requiring applicant to be advised of any adverse recommendation proposed by the staff and provided with a written statement of reasons, after which the applicant has thirty days to submit a written response).

¹⁶ *Matthew D. Sample*, Advisers Act Release No. 4021, 2015 WL 456508, at *3 (Feb. 4, 2015).

¹⁷ 17 C.F.R. § 201.193(a) (providing that an application for consent to associate may be made "where a Commission order bars an individual from association with a registered entity and: (1) [s]uch barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or (2) [t]he order contains a proviso that application may be made to the Commission after a specified period of time").

In "Attachment A" to his brief, Sample requests that we "modify" the bar to allow him to associate with Kingsroad. But Rule 193 does not provide for modification of bars, which remain in effect even after consent to associate is granted, *see Applications by Barred Individuals for Consent to Associate with a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company*, Exchange Act Release No. 20783, 1984 WL 547096, at *2 (Mar. 16, 1984) (stating that "Commission approval of an application for consent to associate [under the

(continued. . .)

a showing satisfactory to the Commission that the proposed association would be consistent with the public interest."¹⁸ Rule 193 requires an applicant to address the manner and extent of the supervision to be exercised over the applicant and the capacity or position in which the applicant proposes to be associated. The Preliminary Note to the Rule states:

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to the imposition of the bar.¹⁹

Rule 193 further requires an applicant to address the passage of time since the imposition of the bar, any restitution or similar action taken to recompense persons injured by the misconduct that resulted in the bar, the applicant's compliance with the order imposing the bar, the applicant's employment following the imposition of the bar, any relevant courses, seminars, or examinations completed after the bar to prepare for a return to the securities business, and any other information material to the application.²⁰ Finally, the Preliminary Note to Rule 193 states that the Commission "will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest."²¹

As discussed below, Sample has not met his burden of demonstrating that the proposed association is consistent with the public interest. He provides no support for his assertion that the proposed supervisory procedures are reasonably designed to prevent a recurrence of the misconduct, and the events that have occurred in the short time since the imposition of the bar do

(...continued)

predecessor version of Rule 193] . . . does not modify or vacate the Commission order nor does it remove or lift the bar; the order and bar remain in effect"), and Sample's petition is for review of the Division Director's denial of his Rule 193 application. As a result, the request for modification of the bar is not properly before us. *Cf. Victor Teicher*, Exchange Act Release No. 56744, 2007 WL 3254806, at *2 (Nov. 5, 2007) (rejecting request to modify bar order that sought relief under Rule 193 where respondent had not filed a Rule 193 application or complied with its requirements).

¹⁸ 17 C.F.R. § 201.193(c).

¹⁹ *Id.* (Preliminary Note).

²⁰ 17 C.F.R. § 201.193(d).

²¹ *Id.* (Preliminary Note). The Note emphasizes that the Commission "will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the Commission's bar order." In "Attachment 7A" to his brief, Sample states that he is "in no way attempting to reargue or rehash the conditions that led to the bar."

not support his application. Further, the nature of the findings that resulted in the bar does not support his proposed association.

A. Sample has not demonstrated that his proposed supervision, procedures, and terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to the bar.

Sample represents that he will be subject to "enhanced" supervisory procedures,²² but he fails to demonstrate that the procedures are "reasonably designed to prevent a recurrence" of the misconduct that led to the bar—his outside business activities in managing an unregistered hedge fund and raising money from investors.²³ Sample's failure to make this showing is a deficiency that, standing alone, is a sufficient basis for us to deny his application as inconsistent with the public interest. Moreover, even if Sample, as an outside salesperson, "would be operating in a different area of [Kingsroad's] business and could not repeat the precise violations that led to his bar, [that would be] of little moment. Fraud and other misconduct can be committed in any area."²⁴

²² In "Attachment B" to his brief, Sample sets forth the proposed enhanced procedures, *i.e.*, his contact would be limited to registered investment advisers and registered representatives, he would have no access to the public or to client information, he would be subject to "advanced email and cell phone monitoring," his schedule would be monitored and approved and "all meetings/recap logged weekly," he would be subject to "[r]andom follow up with [his] contacts from prospective advisers, he would be subject to "[c]ompany monitored cell phone with spyware," his correspondence would be subject to approval, his telephone calls would be "recorded and catalogued," and he would be subject to "[w]eekly compliance meetings."

²³ Sample argues that, because the bar will remain in place, he will be prohibited from engaging in the misconduct that led to the bar. But the bar does not relieve Sample of his burden under Rule 193 of showing that the supervision to be exercised over him is "reasonably designed" to prevent a recurrence of the misconduct.

²⁴ *Sidney I. Shupak*, Advisers Act Release No. 1061, 1987 WL 757575, at *4 (Mar. 23, 1987) (denying application under former Rule 29, now Rule 193, for consent to associate with registered investment adviser, and stating that applicant, who was barred from associating with any investment adviser based on antifraud, proxy, and other securities law violations, failed to show that such association would be consistent with the public interest in light of his record, including a false statement made in his original application, and the lack of effective supervision to be exercised over him).

B. The relatively short time since the bar was imposed and events that have occurred in the meantime do not support Sample's application or the public interest in the proposed association.

Sample filed his application less than two months after the imposition of the bar, and it has been approximately 16 months since the bar was imposed.²⁵ In *Stephanie J. Hibler*,²⁶ we reviewed an application by NASD, now FINRA, for an order granting consent for Hibler, a person subject to statutory disqualification based on a criminal conviction and unqualified bar, to associate with two NASD member firms. Fourteen months after we imposed the bar, NASD notified us that it had proposed to permit the association.²⁷ On review, we found that we were unable to conclude that the proposed association would be in the public interest given the seriousness of Hibler's prior misconduct and sanction and the short period of time that had passed since imposition of the bar.²⁸ In so finding, we stated that "[w]e are concerned that this application does not accord sufficient deference to the sanction imposed on Hibler by our previous decision."²⁹ Similarly, here, the bar is relatively recent.³⁰ To permit Sample to associate so soon after the imposition of the bar would be inconsistent with our determination to exclude him from the securities industry and would run counter to the remedial goals of deterrence.³¹

Sample asserts that he has complied with the bar order, is no longer associated with Kingsroad, and is "currently unemployed."³² He has taken no action to recompense defrauded

²⁵ Sample's application and supporting documentation acknowledge that "very little time has passed since the imposition of the bar."

²⁶ Exchange Act Release No. 22067, 1985 WL 548465 (May 23, 1985).

²⁷ *Id.* at *1 & n.3.

²⁸ *Id.* at *2.

²⁹ *Id.*

³⁰ See also, e.g., *William H. Pike*, Investment Company Act Release No. 20417, 1994 WL 389872, at *2 (July 20, 1994) (denying motion to vacate settled order entered "a little more than two years" before the motion; stating that this time period "is hardly enough time to conclude that its continuation is no longer required in the public interest"), *petition denied*, 52 F.3d 1122 (D.C. Cir. 1995) (per curiam).

³¹ See, e.g., *Mark S. Parnass*, Exchange Act Release No. 65261, 2011 WL 4101087, at *3 (Sept. 2, 2011) (denying in part petition to vacate bar and stating that the function of a bar "is not limited to merely preventing future identical violations, but is more broadly designed to achieve the goals of deterrence, both specific and general, to address the risks of allowing a respondent to remain in the industry, to serve as a 'legitimate prophylactic remedy consistent with [our] statutory obligations,' and, above all, to 'protect[] investors and the integrity of the markets'" (quoting *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *8 (Jan. 14, 2011)).

³² Sample argues that the opportunity to earn the amount of money needed to repay defrauded investors "is not likely in an alternative field where I have no background. My entire career has
(continued. . .)

investors; nor has he completed any courses, seminars, or examinations subsequent to the imposition of the bar to prepare for his return to the securities business.³³ His submissions from friends and family attesting to his good character and employment performance highlight his laudable efforts to better himself and others, but they "do not negate the serious misconduct engaged in by [Sample] or provide any justification for permitting [his] re-entry into the securities industry so soon after" the bar.³⁴

C. The proposed association is inconsistent with the public interest in light of the nature of the findings that resulted in the bar.

The nature of the findings that resulted in Sample's bar also lead us to conclude that the proposed association would be inconsistent with the public interest. Sample engaged in serious misconduct when he violated antifraud provisions of the securities laws.³⁵ The fraud, which occurred over a three-year period, resulted in significant financial loss to investors and evidenced a high degree of scienter. Sample compounded the fraud by providing false documents to investors to make it appear as if the trading had been successful, and by raising additional funds from a new investor under false pretenses and using those funds to reimburse prior investors. For this misconduct, we imposed an unqualified bar—a particularly severe sanction reserved for egregious cases.³⁶

(...continued)

been spent in the financial services sector and it is the only job which I am qualified for." While we are not unsympathetic to his plight, Sample has no "absolute right" to engage in the securities industry. *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *15 & n.90 (June 26, 2014).

³³ Sample represents that he has "investigated and will take FINRA courses on Ethics."

³⁴ *Hibler*, 1985 WL 548465, at *2.

³⁵ *See, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (reiterating that "conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions") (internal quotations and citation omitted), *petition denied*, 773 F.3d 89 (D.C. Cir. 2014). In "Attachment A" to his brief, Sample acknowledges that his misconduct was "serious" and involved the "improper taking" of investor funds.

³⁶ *Unqualified Bar Orders*, 1994 WL 544424, at *1 (stating that "[a]n unqualified bar is a particularly severe sanction and is reserved for egregious cases"). Sample argues that his misconduct "should be evaluated by comparison to the behavior of other offenders and not based upon the sanctions to which he consented." But Rule 193 does not require that we draw such comparisons in considering an application for consent to associate. And, in any event, we conclude—as we did when we imposed the bar order—that the unqualified bar is an appropriate remedial sanction for his egregious misconduct.

Sample argues that his misconduct was not so egregious because he was not required to make admissions as a condition of his settlement and his fraud involved only five investors. But whether an admission is required as part of a settlement is a matter within our discretion.³⁷ And the fact that he defrauded five investors and not more does not lessen the egregiousness of his misconduct.³⁸

In light of Sample's failure to show that the proposed supervisory procedures would prevent a recurrence of the misconduct, the relative recency of the bar, and the findings that led to the bar, we conclude that Sample has not demonstrated that the proposed association would be consistent with the public interest.

D. Sample presents no "extraordinary circumstances" that would render the proposed association consistent with the public interest.

We have said, in the analogous context of a request to modify a bar order, that "when an unqualified bar has been imposed, . . . this 'evidences [our] conclusion that the public interest is served by *permanently* excluding the barred person from the securities industry, . . . [and that] absent extraordinary circumstances, a person subject to an unqualified bar will be unable to establish that it is in the public interest to permit reentry to the securities industry."³⁹ Sample argues that this case presents "exceptional circumstances" which establish that his return to the securities industry is consistent with the public interest, including that: (1) he misunderstood the scope of the bar order; (2) he has a standing offer of employment; (3) he has an offer of a loan from a friend to repay investors; (4) two of the five defrauded investors support his application; and (5) he will be unable to make restitution if he is denied consent to associate. We find that none of these arguments demonstrates "extraordinary circumstances" that would render the proposed association consistent with the public interest.⁴⁰

³⁷ Cf. *Shawmut Ass'n v. SEC*, 146 F.2d 791, 796 (1st Cir. 1945) (stating that Commission has "wide discretion in the choice of what 'terms' it shall impose for the protection of investors, and ordinarily a court should not undertake to substitute its judgment of what would be appropriate terms for the administrative judgment").

³⁸ See *Michael J. Fee*, Exchange Act Release No. 31070, 1992 WL 213847, at *3 (Aug. 24, 1992) (rejecting respondent's argument that his sanctions should not be increased because only two customers testified against him, and stating that "[h]is conduct cannot be condoned because he only defrauded a small number of investors"), *aff'd*, 998 F.2d 1002 (3d Cir. 1993) (Table).

³⁹ *Victor Teicher*, Exchange Act Release No. 58789, 2008 WL 4587535, at *2 (Oct. 15, 2008) (quoting *Unqualified Bar Orders*, 1994 WL 544424, at *1 (emphasis in original)).

⁴⁰ *Accord Hibler*, 1985 WL 548465, at *2 (stating that "the record in this case does not disclose any extraordinary or changed circumstances which might justify permitting a person who was barred, unqualifiedly, from the securities industry based on serious misconduct in violation of the federal securities laws to re-enter the business as a salesperson so soon after the imposition of that bar").

First, Sample argues that he misunderstood the scope of the bar order and believed that he would be able to continue working for Kingsroad as an independent contractor. In Sample's view, it was a "radical change of circumstances" when counsel for Kingsroad's related broker-dealer IFG told him that he would not be able to keep his job. Sample argues that, had he known that the bar would preclude his continued association at Kingsroad, he would have negotiated for a more limited bar. But Sample, who at all times was represented by counsel, acknowledges that his consent to the bar (and antifraud injunction) was voluntary. As a result, we find that Sample has waived any claim of errors or inaccuracies in the bar order.⁴¹

Second, Sample argues that he has a standing offer of employment from Kingsroad. The offer letter states, in relevant part, that, "[w]ith stipulations, we are willing to offer you a position" at the firm.⁴² It continues:

As you are aware, we have significant hurdles to overcome before the offer will become valid. Namely: a. The SEC must agree to grant your return to our industry in such terms that allow us to offer a reasonable explanation for your rehire to our current solicitors and clients. b. In our current role as a branch office of Independent Financial Group, LLC, they retain the final say in allowing us to operate as an outside business activity. Therefore, IFG must approve your rehire.

Kingsroad's offer is predicated on a series of events that may or may not occur, and, as discussed above, Sample has not demonstrated that the proposed supervisory procedures that would be in place during his employment with Kingsroad are reasonably designed to prevent a recurrence of the misconduct. As a result, Sample has not shown that the offer constitutes "extraordinary circumstances" affecting his application.

Third, Sample argues that a friend has offered to loan him money to repay defrauded investors. As an initial matter, we note that the loan amount—\$200,000 in two installments of \$100,000 each—is less than the \$1 million that Sample raised from investors. In addition, the loan offer, like the employment offer, depends on Sample satisfying several conditions, all of which make it highly unlikely that he would be able to obtain the loan.⁴³ And there are other

⁴¹ *Edward I. Frankel*, Exchange Act Release No. 38379, 1997 WL 103785, at *2 n.5 (Mar. 10, 1997) (stating that Respondent "elected to settle the matter [bar order] and did not develop the record further" and therefore "cannot now complain that the record is inaccurate or incomplete"). Moreover, we note that Sample has offered no basis for his belief that the bar would have limited application. There is nothing in the language of the order, which broadly prohibits Sample "from association . . . with any investment advisor," that could be read as consistent with that belief.

⁴² The letter is attached as "Exhibit 3" to Sample's brief.

⁴³ A November 19, 2014 letter from the putative lender, attached to Sample's brief as "Exhibit 5," sets forth four conditions: "(1) The SEC modifying the bar to allow his limited reassociation; (2) Upon successful rehire by Kingsroad Financial and its B-D Independent Financial Group; (3) Upon successful negotiation of a non-prosecution or deferred prosecution agreement with the U.S. (continued. . .)

uncertainties associated with the loan, such as the amount of interest to be paid, the time frame for repayment, and, above all, whether Sample stands a realistic chance of acquiring the ability to repay defrauded investors, the loan, and any future judgment requiring disgorgement of ill-gotten gains or a civil penalty.⁴⁴

Fourth, Sample argues that two of five defrauded investors have submitted letters in support of the application. But the number of victims who support his application is irrelevant. When assessing the public interest, we "evaluate the 'welfare of investors as a class' and not the interests of a particular set of investors."⁴⁵ Moreover, the letters hardly give Sample an unqualified endorsement. Rather, the letters indicate that the investors support the application because it is their only hope of recovering their losses and being made whole.⁴⁶

Fifth, Sample argues that he will be unable to repay defrauded investors if he is not granted consent to associate. But even assuming Sample would be more likely to be in a position to repay the investors he defrauded if his application were granted, we conclude for the reasons discussed

(...continued)

Attorney in Albuquerque; [and] (4) The loan would be paid back concurrently in equal shares with the Restitution to investors from [Sample's] excess post tax earnings above \$60,000/year."

⁴⁴ See *supra* note 7.

⁴⁵ See *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *4 (Feb 4, 2008) ("While many of [the] investors executed declarations in support of Gibson, several of those investors apparently did not do so, and their opinions are unknown. In any event, we do not believe that the views of the investors who executed the Investor Declarations should be determinative. As we have held, we look beyond the interests of particular investors, in assessing the need for sanctions, to the protection of investors generally") (footnote omitted), *petition denied*, 561 F.3d 548 (6th Cir. 2009).

⁴⁶ One investor letter, attached as "Exhibit 7" to Sample's brief, states that "the loss in the fund is extremely painful both financially and emotionally. I am angry at Mr. Sample and emotionally drained by the events surrounding [the fund]. ...However, despite the loss and my feelings toward Mr. Sample, I support his request because it would appear this is the only possible way of receiving my money." Another investor letter, attached as "Exhibit 8," states that "we support [Sample's] request for re-association, for the sole reason that we believe it to be the only way we may ever see restitution from his conduct."

above that doing so would be inconsistent with the broader public interest we are charged with protecting. Sample's remaining arguments are likewise unavailing and do not change our view that there are no "extraordinary circumstances" which would render the proposed association consistent with the public interest.⁴⁷

An appropriate order will issue.⁴⁸

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER, STEIN, and PIWOWAR).

Brent J. Fields
Secretary

⁴⁷ For example, Sample argues that he has had a "spotless record" in the thirteen years before, and two years after, the bar; that he was under extreme emotional and financial distress during the events at issue; and that "[a] single violation over a limited period of time to a limited number of victims does not demand a 'life sentence' of exclusion" from the industry. We have considered and rejected such arguments when raised in mitigation of a respondent's violations or sanctions—and we see no basis for crediting them here. *See, e.g., Daniel Imperato*, Exchange Act Release No. 74596, 2015 WL 1389046, *7 (Mar. 27, 2015) (stating that a respondent failed to show mitigating factors when he argued that imposition of a bar was unfair because it "ties [his] hands in involuntary servitude for the rest of [his] life" and destroys his "income, reputation, and the abilities for the shareholders to ever receive their well-deserved rewards and recover their investments"); *Anthony Fields, CPA*, Exchange Act Release No. 74344, 2015 WL 728005, at *22 (Feb. 20, 2015) (stating that "[h]ow a respondent might in other respects suffer as a result of his or her misconduct or the sanctions that follow—*e.g.*, loss of money, unemployment, or harm to reputation—is not a mitigating factor"); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *9 (Feb. 13, 2009) (stating that we do not view respondent's age or lack of disciplinary history as mitigating for sanctions).

⁴⁸ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion. We deny Sample's motion for oral argument, which the Division has opposed. Rule 451(a) provides that oral argument will be allowed only if we determine that that it will significantly aid the decisional process. 17 C.F.R. § 201.451(a). It appears that oral argument will not aid the decisional process because the issues raised in the petition can be determined on the basis of the papers filed by the parties without the Commission hearing oral argument.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75893 / September 10, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4193 / September 10, 2015

Admin. Proc. File No. 3-15850

In the Matter of

MATTHEW D. SAMPLE

ORDER AFFIRMING ACTION TAKEN BY DELEGATED AUTHORITY

On the basis of the Commission's opinion issued this day, it is

ORDERED that the Director of the Division of Enforcement's action taken by delegated authority on February 4, 2015 in the form of an order denying Matthew D. Sample's application for consent to associate pursuant to Rule of Practice 193 be, and it hereby is, affirmed.

By the Commission.

Brent J. Fields
Secretary