SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6467 / October 20, 2023

Admin. Proc. File No. 3-19590

In the Matter of

THOMAS D. CONRAD, JR.

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violating the antifraud provisions of the securities laws. *Held*, it is in the public interest to bar respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

Thomas D. Conrad, Jr., pro se.

Kristin W. Murnahan for the Division of Enforcement.

On October 22, 2019, the Securities and Exchange Commission instituted administrative proceedings against Thomas D. Conrad, Jr., pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] The Division of Enforcement now moves for summary disposition and sanctions. Conrad does not dispute that summary disposition is appropriate, but he argues that the imposition of any sanction is unjustified. We find that there is no genuine issue with respect to any material fact and that it is in the public interest to bar Conrad from the securities industry.

I. Background

In 1971, the Commission found that Conrad willfully violated the registration provisions of the Securities Act of 1933 and willfully aided and abetted violations of provisions of the Securities Exchange Act of 1934, permanently barred him from associating with any broker or dealer, and revoked the registration of a broker-dealer that he controlled.[2] The Commission found that imposing a full bar was in the public interest because, among other things, Conrad's "numerous violations and [ ] supervisory failures" were "compounded by [his] lack of candor" in the proceedings.[3] The Commission determined that "[t]he record amply demonstrate[d] not only Conrad's unfitness for assuming any proprietary or supervisory role with a broker-dealer, but for engaging in the securities business in any capacity."[4] Since the imposition of the broker-dealer bar, Conrad has worked in the securities industry in an unregistered capacity.

On July 15, 2016, the Commission filed a civil action against Conrad, Financial Management Corporation ("FMC"), and others in the U.S. District Court for the Northern District of Georgia.[5] The Commission's complaint alleged that, between 1994 and 2011, Conrad established at least four hedge funds. According to the complaint, by 2008, Conrad had organized the funds in a "master-feeder" structure through which investors bought limited partnerships in the "feeder" funds and those funds' assets were invested in the "master" fund, which in turn invested in outside hedge funds and private equity funds.

The complaint identified Conrad as the owner and controlling person of FMC, which was the general partner and unregistered investment adviser of the hedge funds.[6] In the complaint, the Commission alleged that Conrad violated the securities laws by touting his experience and accomplishments in the securities industry to persuade people to invest in his funds, while failing

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1 *Thomas D. Conrad, Jr.*, Advisers Act Release No. 5404, 2019 WL 5395545 (Oct. 22, 2019); 15 U.S.C. § 80b-3(f).

2 *Thomas D. Conrad, Jr.*, Exchange Act Release No. 9417, 1971 WL 120507, at *1–2 & n.1, *4–5 (Dec. 14, 1971).

3 *Id.* at *5.

4 *Id.*

5 Compl., *SEC v. Conrad*, Case No. 1:16-CV-2572-LMM (N.D. Ga. July 15, 2016), ECF No. 1.

6 According to the complaint, in 2014, Financial Management Corporation S.R.L., another entity that Conrad owned and controlled, assumed FMC's roles as the hedge funds' general partner and adviser.

to disclose his disciplinary history. The Commission further alleged that Conrad violated the securities laws by falsely telling investors in the feeder funds that redemptions were suspended, while permitting favored investors, including FMC and his relatives, to redeem their investments. The Commission sought to permanently enjoin Conrad from violating the securities laws and to obtain civil penalties against him.

On January 17, 2019, the district court granted partial summary judgment in favor of the Commission.[7] The undisputed evidence showed that Conrad was the president, general partner, and only person authorized to act on FMC's behalf. The evidence further showed that, between 2011 and 2014, in pitches, prospectuses, and offering memoranda to investors in the feeder funds, Conrad and FMC publicized Conrad's wealth management experience dating back to 1965 and his former seat on the Philadelphia-Baltimore-Washington Stock Exchange, without disclosing Conrad's broker-dealer bar or that the stock exchange suspended—and eventually expelled—Conrad. The district court found that "reasonable minds cannot differ on the question of the materiality of the nondisclosure of [ ] Conrad's disciplinary history" because investors would likely attach importance to his experience in deciding whether to invest in the funds that he controlled through FMC.[8] The court further held that, by voluntarily relying on Conrad's experience to persuade people to invest in the feeder funds, Conrad and FMC had a duty to disclose Conrad's disciplinary history to avoid rendering their statements about his experience misleading. But because they omitted that information, the district court concluded, Conrad and FMC's statements about his experience were materially misleading in violation of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.

The district court further held that, between 2009 and 2014, Conrad made false statements about the funds' redemption practices to existing and prospective investors that violated those same provisions, as well as Rule 206(4)-8(a)(1) of the Investment Advisers Act of 1940. The undisputed evidence showed that Conrad told prospective investors that they would be able to withdraw their money in 60 days or less, despite knowing that existing investors had been waiting years to do so, and that he told existing investors that redemptions were suspended and that no exceptions could be made, while making exceptions for favored investors like FMC and his relatives. Although the funds' partnership agreement disclosed that the general partner (*i.e.*, Conrad) could suspend redemptions and make exceptions to such suspensions, the district court held that the disclosure of the existence of this discretionary power did not transform Conrad's "affirmative misrepresentations to investors about what was happening in real time . . . into accurate statements."[9]

Based on its summary judgment order, the district court enjoined Conrad from violating Exchange Act Section 10(b), Rule 10b-5, Securities Act Section 17(a), Advisers Act Section 206(4), and Rule 206(4)-8.[10] In assessing whether Conrad was reasonably likely to violate the

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7 *SEC v. Conrad*, Case No. 1:16-CV-2572-LMM, 354 F. Supp. 3d 1330 (N.D. Ga. 2019).

8 *Id.* at 1345.

9 *Id.* at 1357.

10 *SEC v. Conrad*, Case No. 1:16-CV-2572-LMM, 2019 WL 13214083, at *3, *9–10 (N.D. Ga. Sept. 30, 2019).

securities laws in the future, the district court found that Conrad's actions "were clear violations of securities statutes committed with a high degree of scienter over a period of years," for which Conrad had not shown remorse and which he had not promised to stop.[11] In addition to the injunction, the court also ordered Conrad to pay $327,500 in civil penalties—representing two $160,000 (third tier) penalties for Conrad's violations of Securities Act Section 17(a)(1) and Exchange Act Section 10(b), and one $7,500 (first tier) penalty for his violation of Advisers Act Section 206(4). The Commission asked the court to order Conrad to disgorge ill-gotten gains, but the court denied that request on the ground that the disgorgement sought was not sufficiently related to Conrad's misconduct.[12] Neither the Commission nor Conrad appealed the district court's judgment.

On October 22, 2019, the Commission instituted these proceedings against Conrad to determine whether remedial action was appropriate.

II. Analysis

A. The Advisers Act authorizes sanctions based on the district court's injunction and Conrad's association with an investment adviser.

Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from the securities industry if it finds, on the record after notice and opportunity for hearing, that (i) the person was enjoined from engaging in or continuing any conduct or practice in connection with acting as an investment adviser or in connection with the purchase or sale of any security; (ii) the person was associated with an investment adviser at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[13]

The record establishes, and Conrad does not dispute, that the first two of these elements are met. Because the district court enjoined Conrad from violating Advisers Act Section 206(4) and Rule 206(4)-8 thereunder, Conrad has been enjoined from "engaging in or continuing any

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[11] *Id.* at *3 (finding that "the egregiousness of Conrad's fraud, the multiple violations lasting over a period of years, the willfulness of the violations, and his refusal to acknowledge his wrongs" weighed in favor of an injunction).

[12] *Id.* at *3–4. The disgorgement dispute involved the apportionment of liability for a Ponzi scheme incurred by one of the hedge funds among its investors, including FMC and FMC's retirement plan, both of which Conrad controlled. The court agreed with Conrad that the court had not held him "liable for fraudulent accounting practices based on how [he] apportioned the [Ponzi scheme] liability," and therefore concluded that the requested disgorgement was insufficiently related to Conrad's proven wrongdoing. *Id.* at *4.

[13] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)); *see also id.* § 80b-3(e)(4) (specifying injunctions against various actions, conduct, and practices).

conduct or practice in connection with" acting as an investment adviser.[14] The district court also enjoined Conrad from violating Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Securities Act Section 17(a), which means that he has been enjoined from engaging in conduct "in connection with the purchase or sale of any security."[15] At the time of the misconduct that led to the injunction against him, Conrad was the president and general partner of FMC and the only person authorized to act on FMC's behalf.[16] FMC, in turn, served as an investment adviser to the hedge funds that Conrad established because the firm controlled the investments made by the funds.[17] Conrad therefore was associated with an investment adviser at the time of his misconduct. We thus need determine only if any remedial action against Conrad is in the public interest.

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[14] *See, e.g.*, *Richard Vu Nguyen*, Advisers Act Release No. 6325, 2023 WL 3931439, at *3 & n.14 (June 8, 2023) (holding that respondent "was enjoined from conduct in connection with acting as an investment adviser" based on injunction against violating Adviser Act Section 206(4) and Rule 206(4)-8, and other Adviser Act provisions, "which prohibit securities fraud by investment advisers"); *Michelle Morton*, Advisers Act Release No. 6094, 2022 WL 3587990, at *3 & n.16 (Aug. 22, 2022) (holding that respondent "was enjoined from conduct in connection with acting as an investment adviser" based on injunction against violating Advisers Act Section 206 and Rule 206(4)-8).

[15] *See, e.g.*, *Nguyen*, 2023 WL 3931439, at *3 & nn.15–16 (holding that respondent was enjoined from conduct "in connection with the purchase or sale of securities" based on injunction against violating Securities Act Section 17(a), "which prohibits fraud in the offer or sale of securities," and Exchange Act Section 10(b) and Rule 10b-5, "which prohibit fraud in connection with the purchase or sale of securities"); *Conrad A. Coggeshall*, Exchange Act Release No. 97474, 2023 WL 3433398, at *2 & n.10 (May 10, 2023) (holding that respondent "was enjoined from engaging in any conduct or practice in connection with the purchase or sale of a security" based on injunction against violating Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5); *Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *4 & n.23 (Mar. 29, 2023) (same).

[16] 15 U.S.C. § 80b-2(a)(17) (defining "person associated with an investment adviser" to include "any partner, officer, or director of such investment adviser . . ., or any person directly or indirectly controlling . . . such investment adviser"); *see also United States v. Elliott*, 62 F.3d 1304, 1310 (11th Cir. 1995) (holding that individuals acted as investment advisers by advising customers on their choice among different investment vehicles and "controlling the investments underlying those investment vehicles"); *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at *14 (Feb. 20, 2015) (holding that individual who "controlled [ ] and was solely responsible for everything that [an investment adviser] did and said" was also an "investment adviser").

[17] 15 U.S.C. § 80b-2(a)(11) (defining "[i]nvestment adviser" as anyone "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"); *see, e.g.*, *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *2 (Jan. 30, 2017) (determining that an individual who controlled an unregistered investment adviser was a person associated with an investment adviser) (citing *Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010)).

B. An associational bar is in the public interest.

In analyzing the public interest, we consider 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, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that respondent's occupation will present opportunities for future violations.[18] Our public interest inquiry is flexible, and no single factor is dispositive.[19] The remedy is intended to "protect[] the trading public from further harm," not to punish the respondent.[20]

We have weighed all of the factors and find that an industry bar is warranted to protect the investing public. Conrad engaged in an egregious and recurrent fraud. The district court found that Conrad's actions were "clear violations of securities statutes committed with a high degree of scienter over a period of years."[21] Conrad not only repeatedly omitted information about his disciplinary history that he had a duty to disclose, he also made "numerous [affirmative] misrepresentations regarding redemptions" to both potential and existing investors.[22] Conrad made these misrepresentations repeatedly over the course of at least five years, from 2009 through 2014.[23]

Conrad disputes that his statements involved a high degree of scienter or that they were "part of a calculated or egregious effort to defraud investors." But the district court reached the opposite conclusion, finding that Conrad acted "with a high degree of scienter" and engaged in "fraud."[24] And collateral estoppel prevents Conrad from relitigating the district court's factual findings and legal conclusions in this proceeding.[25]

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[18] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

[19] *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

[20] *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

[21] *Conrad*, Case No. 1:16-CV-2572-LMM, 2019 WL 13214083, at *3.

[22] *Conrad*, 354 F. Supp. 3d at 1357–58.

[23] *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *3 (Feb. 4, 2008) (determining that misconduct repeated over the course of three years was recurrent).

[24] *Conrad*, Case No. 1:16-CV-2572-LMM, 2019 WL 13214083, at *1, *3, *6, *8.

[25] *See, e.g.*, *Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *4 & ns.12–13 (Mar. 26, 2010) ("We have repeatedly held that a respondent in a follow-on proceeding may not challenge the findings made by the court in the underlying proceeding and we consider those findings in determining the appropriate sanction."); *James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *4 & n.14 (Oct. 12, 2007) ("The doctrine of collateral estoppel precludes the Commission from reconsidering the injunction as well as factual and procedural issues that were actually litigated and necessary to the court's decision to issue the injunction.").

Conrad argues that the district court did not "find any evidence of ill-gotten gains or any unethical transactions," by which he seems to suggest that his conduct is less serious because the court did not order him to pay disgorgement. But the court denied disgorgement because it found that the Commission had not established that the disgorgement it sought was sufficiently related to Conrad's wrongdoing, not because it found that Conrad had not harmed investors.[26] To the contrary, the district court imposed third-tier civil penalties against Conrad in part because it found that his actions "caused substantial harm to investors."[27] And although Conrad claims that he eventually honored all redemption requests, investors were harmed by the years-long delays in accessing their funds and the investment losses that several investors suffered while unable to redeem their investments. Indeed, Conrad risked substantial harm to investors by blocking investors from redeeming their money from the funds, while he avoided his own potential investment losses by redeeming millions of dollars of his money from the funds. And even if the court had not found that investors were harmed, the lack of harm to specific investors would not be mitigating because our focus is on protecting investors generally.[28]

Conrad has also never acknowledged the wrongful nature of his misconduct.[29] During the district court litigation, Conrad continued to solicit investors without disclosing his disciplinary history or that redemptions were frozen until at least 2018, stopping only when the district court ruled that his statements violated the securities laws. Conrad explains that he did not stop earlier because "he continued to believe they were appropriate until the Court ruled otherwise." Conrad states that he "respects the Court's authority and decision," but he still "disagrees" with the district court's finding that his statements violated the securities laws. Conrad's continued refusal to admit that his materially misleading and false statements to investors violated the securities laws raises serious questions about his judgment and his ability to avoid making misleading or false statements in the future.

Conrad claims that he "fully intends to comply with" the district court's ruling. He also asserts that he has ceased the practices that the court held violated the securities laws, "relinquished his role as the General partner," and "severed all ties with the fund in question." And before the district court, Conrad represented that he had retired,[30] although it is unclear

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[26] *Conrad*, Case No. 1:16-CV-2572-LMM, 2019 WL 13214083, at *4 ("The alleged reapportionment of liability that the SEC now invokes to justify disgorgement is too far removed from the material misrepresentations for which the Court granted summary judgment.").

[27] *Id.* at *9.

[28] *Edgar R. Page*, Advisers Act Release No. 4400, 2016 WL 3030845, at *6 (May 27, 2016) ("[T]he 'absence from the record of evidence demonstrating any direct customer harm is not mitigating, as our public interest analysis focus[es] . . . on the welfare of investors generally.") (quoting *vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 WL 2674858, at *17 (July 2, 2010)).

[29] *Timothy S. Dembski*, Exchange Act Release No. 80306, 2017 WL 1103685, at *14 (Mar. 24, 2017) (recognizing that respondent who "has not acknowledged the wrongful nature of his conduct . . . cannot claim mitigation on [that] basis").

[30] *Conrad*, Case No. 1:16-CV-2572-LMM, 2019 WL 13214083, at *3.

whether Conrad remains, or intends to remain, retired; indeed, he opposes a bar in part based on his assertion that "he is well qualified" in the investment industry. In any event, Conrad's arguments regarding his likelihood of future misconduct are outweighed by the risk, as we discuss herein, that he will engage in future misconduct if he returns to the securities industry.[31] And Conrad's history of continuing to engage in misconduct while already subject to a Commission bar raises concerns that he will continue to do so in the future, despite his current assurances, and indicates that a full industry bar is thus needed to protect the investing public.[32]

The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm.[33] Here, the record establishes that Conrad is unfit to participate in the securities industry and that his participation in any capacity would pose a risk to investors.[34] We thus grant the Division's motion for summary disposition and conclude that it is in the public interest to bar Conrad from association

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[31] *See Kornman*, 592 F.3d at 187–88 (affirming imposition of industry-wide bar despite respondent's age, lack of prior criminal or disciplinary history, and that he was "winding down his professional career," where the Commission remained concerned that "his occupation presented opportunities for future misconduct"); *Seghers v. SEC*, 548 F.3d 129, 135–36 (D.C. Cir. 2008) (affirming imposition of bar on associating with any investment adviser in part based on opportunities for future violations where respondent "worked exclusively as an investment advisor in the past, desired to keep that career option open in the future and maintained contact with his former clients").

[32] *See Siris v. SEC*, 773 F.3d 89, 94 (D.C. Cir. 2014) (affirming imposition of industry-wide bar despite respondent's providing assurances against future violations and taking steps to avoid future misconduct, where respondent "had not meaningfully recognized the wrongful nature of his conduct" and respondent's "voluntary measures would not adequately guard against future violations"); *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6–7 (Dec. 12, 2013) (holding that the other *Steadman* factors, in particular the respondent's failure to meaningfully recognize the wrongful nature of his misconduct, outweighed his assurances against future misconduct).

[33] *Allan Michael Roth*, Exchange Act Release No. 90343, 2020 WL 6488283, at *5 (Nov. 4, 2020).

[34] *Cf. James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[35]

An appropriate order will issue.[36]

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

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Vanessa A. Countryman
Secretary

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35 *Id.* (imposing associational bar where necessary to protect the public).

36 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.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6467 / October 20, 2023

Admin. Proc. File No. 3-19590

In the Matter of

THOMAS D. CONRAD, JR.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Thomas D. Conrad, Jr., is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary