

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3935 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16165

In the Matter of

DAVID SCOTT CACCHIONE,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against David Scott Cacchione (“Respondent” or “Cacchione”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT AND RELATED ENTITY

1. Cacchione, 49 years old, is a resident of Menlo Park, California. He is a Managing Member, Chief Compliance Officer, and owner of at least fifty percent interest in Montara Capital Management LLC (“Montara”). From 1987 to 2008, Cacchione was a registered representative with various registered broker-dealers and lastly with Merriman Curhan Ford & Co. (“Merriman”). Cacchione has a disciplinary history with NASD. In January 2004, he consented to a thirty day suspension and was fined \$30,000 after the NASD found that he sold unregistered securities to public customers without proper disclosure. In 1995, a customer alleged that Cacchione made an unauthorized disbursement from her account to a third party.

Cacchione also has \$1.2 million in outstanding federal and state tax liens.

2. Montara is a Delaware limited liability company with its principal place of business in Menlo Park, California.

3. On June 25, 2014, Montara filed an application on Form ADV with the Commission for registration as an investment adviser but withdrew its application on July 21, 2014.

4. Based upon Cacchione's positions and ownership interest in Montara, and his efforts to remain associated with Montara and/or other investment advisers, Cacchione is, or is seeking to be, a "person associated with" an investment adviser as that term is defined in Section 202(a)(17) of the Advisers Act.

B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

5. On April 1, 2009, a final judgment was entered by consent against Cacchione, permanently enjoining him from future violations of 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. David Scott Cacchione, Civil Action Number 3:09-CV-1259-CRB, in the United States District Court for the Northern District of California. The Commission also issued an order permanently barring him from association with any broker-dealer under Section 15(b) of the Exchange Act. In the Matter of David Scott Cacchione, Exch. Act Release No. 59812, Admin. Proc. File No. 3-13455 (Apr. 22, 2009).

6. The complaint alleged that from 2007 to 2008, in connection with the purchase or sale of securities, Cacchione supplied account statements of unknowing Merriman customers to a friend knowing that his friend would fraudulently pledge the securities in the accounts as collateral to obtain more than \$45 million of personal loans. Cacchione was motivated to assist his friend in the latter's scheme, in part, because Cacchione owed over \$2 million to his friend. The complaint further alleged that Cacchione selected the statements in a manner to avoid detection and that he signed lending agreements falsely certifying that the securities owned by several Merriman customers belonged to his friend.

7. The Commission's complaint also alleged that Cacchione defrauded his own clients, including a local children's charity and an elderly widow, by engaging in a pattern of unauthorized trading in the customers' accounts and pocketing the commissions from those trades. According to the complaint, from 2006-2007, Cacchione made at least 20 trades in highly risky, thinly-traded stocks in his customers' accounts without the customers' permission and in one or more instances, against the customer's express instructions not to trade such stocks.

8. On March 31, 2009, Cacchione pleaded guilty to one count of aiding and abetting securities fraud in violation of Title 18 United States Code, Sections 1348 and 2 before the United States District Court for the Northern District of California, in United States v. David Scott Cacchione, Crim. Information No. 3:09-CR-296. On October 13, 2009, a judgment in the criminal case was entered against Cacchione. He was sentenced to a prison term of 60 months followed by

three years of supervised release and ordered to make restitution in the amount of \$47,542,887. Cacchione was released from custody on June 9, 2014. He has not satisfied the restitution requirement of his sentence.

9. The criminal information to which Cacchione pleaded guilty alleged, among other things, that Cacchione, while he was associated with a broker-dealer, aided and abetted a scheme to defraud lenders in connection with the fraudulent pledge of securities underlying the Commission's complaint described in Paragraph 6 above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary