

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5081 / December 20, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18943

In the Matter of

MARK J. MOSKOWITZ,

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 Mark J. Moskowitz (“Respondent” or “Moskowitz”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From June 2004 to October 2007, Respondent was a registered representative of a broker-dealer registered with the Commission. From May 2006 to October 2007, Respondent was an investment adviser representative associated with an investment adviser registered with the Commission. On October 18, 2007, Respondent was terminated from his employment at the investment adviser. In November 2009, the Financial Industry Regulatory Authority, Inc. suspended Respondent from association with any of its members for failing to comply with an arbitration award stemming from a customer dispute during his employment at the investment adviser and has not since been associated with any investment advisor or broker-dealer registered with the Commission.

B. RESPONDENT'S CRIMINAL CONVICTION

2. On March 28, 2017, Respondent pled guilty to one count of wire fraud in violation of Title 18 of the United States Code, Section 1343, before the United States District Court for the District of New Jersey, in *U.S. v. Mark Moskowitz*, Crim. No. 2:17-CR-109-KSH. On July 27, 2017, a judgment was entered against Respondent. He was sentenced to a 33-month prison term, followed by three years of supervised release, and ordered to make restitution and forfeiture in the amount of \$694,576.71 and pay a \$100 special assessment. Respondent is currently serving his prison sentence in FCI Otisville, New York.

3. According to the criminal information to which Respondent pled guilty and his sworn admissions to the court, Respondent's conviction for wire fraud was based on facts sufficient to establish, among other things, that from at least in or around March 2012 through in or around October 2015 (the "Relevant Criminal Period"), in association with his company Edge Trading, LLC ("Edge Trading"), Respondent knowingly, and with the intent to defraud investors, acted as an investment adviser by providing investment advice and selling securities to at least eight clients, obtained money by means of materially false and misleading statements, engaged in the offer and sale of unregistered securities, provided false investment advice, and diverted investor funds to his personal bank account. During the Relevant Criminal Period, Respondent raised at least \$675,000 from the offer and sale of unregistered securities to investors who believed they were contributing to one or more investment pools or individual managed trading accounts. Respondent instead diverted a significant portion of the investor funds for his personal use and to pay off other investors in the fraudulent scheme. Neither Moskowitz nor Edge Trading was registered as an investment adviser during the course of these events.

C. FINAL STATE ORDER

4. On March 28, 2017, the Bureau of Securities for the State of New Jersey entered a Summary Penalty and Cease and Desist Order (the "New Jersey Order") against Respondent in an action entitled *In the Matter of Mark J. Moskowitz (CRD #2187277) and Edge Trading, LLC*. The New Jersey Order required Respondent to cease and desist from future violations of the Uniform Securities Law and any related regulations or orders and assessed a \$1,000,000 civil money penalty.

5. The Findings of Fact contained in the New Jersey Order found that, from at least March 2012 through April 2016 (the "Relevant Bureau Period"), Respondent engaged in a scheme to defraud investors by offering and selling unregistered securities in the form of limited liability interests in certain business entities. During the Relevant Bureau Period, Respondent raised at least \$798,000 from the offer and sale of the unregistered securities to at least 8 investors. Respondent, acting as an investment adviser, induced clients to invest by offering investment advice and falsely touting his investment success. Respondent made false and misleading statements to his clients regarding, among other things, the uses of their investment funds and the profitability of their investment accounts. Respondent misused at least \$440,000 of the investor funds by diverting the money for his personal use and paying off other investors in the fraudulent scheme.

6. The New Jersey Order concluded that Respondent, among other things, employed a device, scheme, or artifice to defraud investors in violation of Uniform Securities Law (1997), N.J.S.A. 49.3-52(a).

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 before the Commission 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 by further order of the Commission, pursuant to 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(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference 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 by any means permitted by the Commission's Rules of Practice.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission, and that any motion for summary disposition shall be filed under Rule 250(a) or (b).

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

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