

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 13, 2004

ADMINISTRATIVE PROCEEDING
File No. 3-11708

In the Matter of	:	
	:	ORDER INSTITUTING ADMINISTRATIVE
	:	PROCEEDINGS AND NOTICE OF HEARING
BARRY J. GOODMAN	:	PURSUANT TO SECTION 203(f) OF THE
	:	INVESTMENT ADVISERS ACT OF 1940
	:	Respondent.

:

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 Barry J. Goodman ("Goodman" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. Respondent and Related Entity

1. Goodman, age 41, resides in North Andover, Massachusetts. Goodman did business as an investment adviser under the name New England Capital Advisors, LLC ("New England Capital").

2. New England Capital, formerly Bogey Capital, LLC, is a Massachusetts LLC that is no longer in good standing because of its failure make necessary filings with the Secretary of State's Office since 2000. At all relevant times, New England Capital was an unregistered investment adviser and Goodman was an associated person of New England Capital.

B. Fraudulent Investment Scheme

3. On January 29, 2001, the Commission filed a complaint against Goodman and New England Capital in the United States District Court for the District of Massachusetts, based on alleged violations of certain provisions of the federal securities laws in a civil action entitled SEC v. Barry J. Goodman et al., Civil Action No. 01-CV-10163 (JLT). The complaint alleged

that beginning in February 2000, Goodman, doing business as New England Capital, obtained at least \$800,000 through two fraudulent investment schemes.

4. The Commission's complaint further alleged that the first scheme involved a fictitious "initial public offering pool" whereby Goodman collected \$500,000 after representing to investors that he would use their funds to obtain stock in initial public offerings underwritten by five investment banks during a specified period. According to the complaint, Goodman claimed that he had a special relationship with each investment bank ensuring that he would receive shares in the IPOs the bank underwrote, and that he would be able to sell the IPO shares immediately at a profit, with minimal risk. The complaint further alleges that after investors sent their funds to New England Capital, Goodman made repeated representations that the IPO pool had purchased shares in specific IPOs and sold them at an overall profit of 40% or more.

5. The Commission's complaint also alleged that Goodman thereafter collected an additional \$300,000 in the second scheme, in which he represented that investor funds would be used in a "special" arbitrage program buying stock in Lycos, Inc.

6. The Commission's complaint further alleged that neither Goodman nor New England Capital ever had accounts at any of the investment banks and never purchased IPO shares in any of the companies he identified. Moreover, the complaint alleged that he did not use any of the investor funds to buy Lycos stock. Instead, according to the complaint, Goodman used most of the investor funds from both schemes for his personal benefit, transferring them to his personal bank account, repaying debts owed to previous brokerage customers, and losing the rest in unsuccessful daytrading.

C. Permanent Injunction and Judgment Entered Against Goodman

7. On March 10, 2004, the court entered an injunction against Goodman pursuant to his earlier filed consent that permanently enjoined Goodman from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. The court reserved until trial a decision on liability.

8. The court held a four day bench trial in March 2004. On September 29, 2004, based on the evidence submitted at trial, the United States District Court for the District of Massachusetts entered an Order and Judgment in favor of the Commission finding that Goodman violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act and ordering Goodman to pay a civil penalty of \$220,000.¹

¹ At trial, the Commission presented evidence as to the investments made by one of three investors described in its complaint. The one investor accounted for \$450,000 out of the \$800,000 of fraudulent investments described in the complaint – \$250,000 in the IPO scheme and \$200,000 in the Lycos scheme.

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 pursuant to Section 203(f) of the Advisers Act to determine:

- A. Whether the allegations set forth in Section II 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 and in the public interest 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 personally or by certified mail.

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 proceedings 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.

For the Commission, by its Secretary, pursuant to delegated authority.

Jonathan G. Katz
Secretary