

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
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MATTHEW LA MADRID : INITIAL DECISION  
 : July 17, 2009  
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APPEARANCES: John M. McCoy III and Peter F. Del Greco for the Division of Enforcement, Securities and Exchange Commission.

Joseph N. Casas and Tamara M. Craft of Casas Law Group, P.C., for Respondent.

BEFORE: Robert G. Mahony, Administrative Law Judge.

The Securities and Exchange Commission (Commission) issued its Order Instituting Administrative Proceeding (OIP) on March 26, 2009, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on March 3, 2009, the federal district court for the Southern District of California entered a final judgment, permanently enjoining Matthew La Madrid (La Madrid or Respondent) from violating Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 204(6)-8 thereunder. The Commission instituted this proceeding to determine whether these allegations are true and, if so, to decide whether remedial action is appropriate in the public interest. The Division of Enforcement (Division) seeks to bar La Madrid from association with any investment adviser.

The Division has provided evidence that La Madrid was served with the OIP on April 2, 2009, and he filed an Answer on April 29, 2009, which he subsequently withdrew and re-filed on May 26, 2009.<sup>1</sup> At a telephonic prehearing conference, I granted Respondent's counsel's request to withdraw the Answer filed on April 29, 2009, and set the matter for summary disposition (Prehearing Conference Transcript at 5, 7-8; Order of May 1, 2009). Respondent's counsel indicated that Respondent did not intend to contest the allegations in the OIP. (Prehearing

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<sup>1</sup> La Madrid's Answer of April 29, 2009, did not comport with the terms of the consent judgment entered into with the Division in the district court proceeding. (Prehearing Conference Transcript at 5.) Based on Respondent's voluntary withdrawal of the April 29, 2009 Answer, all references to Respondent's Answer herein are to the May 26, 2009 Answer.

Conference Transcript at 6). The Division filed its Motion for Summary Disposition and accompanying exhibits on May 18, 2009 (Motion). La Madrid did not submit an Opposition.

### The Standards for Summary Disposition

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice.

Rule 250(b) of the Commission's Rules of Practice requires the hearing officer to promptly grant or deny the motion, or to defer decision on the motion. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. See Felix v. N.Y. City Transit Auth., 324 F.3d 102, 104 (2d Cir. 2003); O'Shea v. Yellow Tech. Svcs., Inc., 185 F.3d 1093, 1096 (10th Cir. 1999); Cooperman v. Individual, Inc., 171 F.3d 43, 46 (1st Cir. 1999).

By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. See Anderson, 477 U.S. at 249.

La Madrid's Answer admits the allegations contained in paragraphs one and two of the OIP, and asserts his Fifth Amendment right against self-incrimination in refusing to admit or deny paragraph three of the OIP. Thus, there is no issue of material fact at issue, and the matter is ripe for summary disposition.

### FINDINGS OF FACT

La Madrid, age 42, is a resident of Jamul, California. (Answer at 1.) He was the treasurer and president of Plus Money, Inc. (Plus Money), a Nevada corporation located in El Cajon, California. (Id.) Plus Money was the investment adviser to and manager of The

Premium Return Fund Limited-Liability Limited Partnership, The Premium Return Fund II Limited-Liability Limited Partnership, and The Premium Return Fund III Limited-Liability Limited Partnership (collectively, the Premium Return Funds). (Id.) The Premium Return Funds are Nevada-based limited partnerships that operated as purported hedge funds. (Id.) Through his control of Plus Money, La Madrid acted as investment adviser for the Premium Return Funds, including making all investment decisions on behalf of the Premium Return Funds. (Id.) Neither La Madrid nor Plus Money is registered as an investment adviser under the Advisers Act. (Id.)

On March 3, 2009, a judgment of permanent injunction and other relief was entered by consent against La Madrid, permanently enjoining him from future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act, in the civil action entitled SEC v. Plus Money, Inc., No. 08-CV-0764-MMA (NLS), in the United States District Court for the Southern District of California. (Answer at 1.) By order of the consent judgment, the district court will make further determinations on disgorgement of ill-gotten gains by La Madrid and imposition of civil monetary penalties against La Madrid upon motion by the Division. (Motion Ex. 3 at 3.)

The complaint underlying the consent judgment alleged that, between May 2004 and July 2007, La Madrid, through Plus Money, raised approximately \$30.6 million from at least 300 investors for trading in the Premium Return Funds. (Motion Ex. 1 at 3-4.) La Madrid received a one percent quarterly fee for managing the Premium Return Funds. (Id. at 4.) In September 2007, La Madrid formed Vision Quest Investments (Vision Quest), and began transferring funds from the Premium Return Funds to Vision Quest's account without alerting the Premium Return Funds' investors. (Id.) In November 2007, Vision Quest transferred \$10 million to Palladium Holding Company (Palladium), an entity controlled by Donald Lopez. (Id.) Palladium dispersed the funds, wiring \$500,000 to La Madrid, \$1.8 million to real estate title companies, \$90,000 to a car dealership, and used \$95,000 toward the purchase of automobiles. (Id. at 4-5.) Palladium employed \$5 million in a failed trading strategy, losing \$2.6 million. (Id. at 5.) La Madrid did not inform the Premium Return Funds' investors about these transfers or Palladium's losses. (Id.)

After missing a monthly disbursement to investors in February 2008, La Madrid explained the failure as being related to a Commission inquiry, though the Commission's inquiry did not begin until April 9, 2008. (Id.) He continued to use this excuse for the failure to make dispersals in March 2008. (Id.) On April 5, 2008, La Madrid emailed a spreadsheet to the Premium Return Funds' investors, showing average monthly returns of 2.5% on their investments through January 2008. (Id.)

## **CONCLUSIONS OF LAW**

Under Sections 203(e)(4) and 203(f) of the Advisers Act, the Commission may impose a remedial sanction on a person associated with an investment adviser, consistent with the public interest, if the person has been permanently or temporarily enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities. The district court has entered a permanent injunction against La Madrid, pursuant to Sections 206(1), 206(2), and 206(4) of the Advisers Act. Though neither La Madrid nor Plus Money were registered as an

investment adviser under the Advisers Act, the Commission has authority to bar persons from association with registered or unregistered investment advisers or otherwise sanction them under Section 203 of the Advisers Act. See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999).

### The Public Interest

To determine whether sanctions under Section 203(f) of the Advisers Act are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. No one factor is controlling. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

La Madrid's actions were egregious and recurrent. His scheme caused millions of dollars of harm to approximately 300 investors. He provided false and misleading information to those investors, and failed to make adequate disclosures to them on multiple occasions. He used investor funds for his own benefit. The scheme stretched over a four-year period.

His use of funds for his own benefit, and his attempts to cover-up the transfers and subsequent loss of investor funds by sending out false account statements evidence that La Madrid acted with scienter. To an extent, entering into the consent judgment may be considered recognition of his wrongful conduct, but La Madrid has provided no assurances against future violations.

Viewing the Steadman factors in their entirety, I conclude that an associational bar is necessary and appropriate to protect the public interest.

### ORDER

Based on the findings and conclusions set forth above:

It Is ORDERED that the Division of Enforcement's Motion for Summary Disposition is GRANTED; and,

It Is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Matthew La Madrid is BARRED from association with any investment adviser.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision pursuant to Rule 111 of the Commission's Rules of Practice. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to

file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or unless the Commission determines on its own initiative to review this Initial Decision as to any party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Robert G. Mahony  
Administrative Law Judge