

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 68651 / January 14, 2013

Admin. Proc. File No. 3-14390

In the Matter of  RICHARD L. GOBLE
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ORDER DISMISSING PROCEEDING

**I.**

Richard L. Goble, the founder of North American Clearing, Inc., formerly a broker-dealer registered with the Commission,<sup>1</sup> appeals from an initial decision of an administrative law judge.<sup>2</sup> Pursuant to Exchange Act §§ 15(b)(4)(C) and 15(b)(6)(A)(iii), we may impose sanctions against a person who is permanently enjoined "from engaging in any conduct or practice in connection with [activities as a broker-dealer]" and "in connection with the purchase and sale of securities."<sup>3</sup> The United States District Court for the Middle District of Florida enjoined Goble from violating the antifraud,<sup>4</sup> customer protection,<sup>5</sup> and books-and-records<sup>6</sup> provisions of the federal securities laws,

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<sup>1</sup> In addition to being North American's founder, Goble was the sole trustee of the trust that owned 100 percent of the shares of the firm.

<sup>2</sup> *Richard L. Goble*, Initial Decision Release No. 435, 2011 SEC LEXIS 3492 (Oct. 5, 2011).

<sup>3</sup> 15 U.S.C. §§ 78o(b)(4)(C) and 78o(b)(6)(A)(iii), respectively.

<sup>4</sup> 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Exchange Act § 10(b) and Rule 10b-5 thereunder prohibit the employment of fraudulent schemes or the making of material misrepresentations and omissions in connection with an offer, purchase, or sale of securities. *See, e.g., Gregory O. Trautman*, Exchange Act Release No. 61167, 2009 SEC LEXIS 4173, at \*52 (Dec. 15, 2009).

<sup>5</sup> 15 U.S.C. § 78o(c)(3) and 17 C.F.R. § 240.15c3-3(e). Exchange Act § 15(c)(3) requires that broker-dealers observe Commission rules prescribed to provide safeguards for the broker-dealer's financial responsibility and related practices when effecting the purchase or sale of securities. Exchange Act Rule 15c3-3(e) requires, among other things, that a broker-dealer establish and maintain a customer reserve account and sets forth a formula for calculating the required balance to be maintained in the reserve account. *See Exhibit A to Rule 15c3-3.*

<sup>6</sup> 15 U.S.C. § 78q(3) and 17 C.F.R. § 240.17a-3, respectively. The books-and-records provisions "require that broker-dealers registered with the Commission make and keep current, for prescribed periods, certain books and records." *Joseph John VanCook*, Exchange Act Release No. 61039, 2009 SEC LEXIS 3872, at \*54 (Nov. 20, 2009), *petition denied*, 653 F.3d 130 (2d Cir. 2011). Those provisions include the requirement that the records be accurate. *See Anthony A. Adonnino*, Exchange Act Release No. 48618, 2003 SEC LEXIS 2411, at \*24-25 (Oct. 9, 2003), *aff'd*, 111 F. App'x 46 (2d Cir. 2004).

and from obtaining or seeking to obtain a securities license.<sup>7</sup> On the basis of this injunction, and on consideration of the public interest, the law judge barred Goble from associating with any broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization.<sup>8</sup>

On November 8, 2011, Goble filed his petition for Commission review of the initial decision. On May 29, 2012, while Goble's appeal to the Commission was pending, the United States Court of Appeals for the Eleventh Circuit issued an opinion vacating the injunction the district court imposed.<sup>9</sup> As a result, the parties were asked to file additional briefs on the question of whether we should dismiss the proceeding against Goble because the injunction that served as the basis for the Order Instituting Proceedings has now been vacated.

## II.

### A. **Both parties agree that the proceeding should be dismissed, differing only about whether it should be dismissed with or without prejudice.**

The parties agree it is appropriate to dismiss this administrative proceeding, but disagree as to whether it should be with or without prejudice. In its response to the additional briefing order, the Division of Enforcement acknowledges that we have dismissed proceedings under similar circumstances in the past.<sup>10</sup> The Division, however, asks that the dismissal of the proceeding be without prejudice "because it is likely the District Court will enter a new injunction based on the Eleventh Circuit's remand," which "would be a basis for the Commission to re-institute these proceedings."<sup>11</sup>

Goble requests that the proceeding be dismissed with prejudice. Goble contends that the law judge's decision to bar Goble was based solely on the district court's finding that Goble had violated the antifraud provisions, which the court of appeals reversed. According to Goble, the district court's

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<sup>7</sup> *SEC v. N. Am. Clearing, Inc., et al.*, Docket No. 6:08-cv-00829-MSS-KRS (M. D. Fla. Apr. 27, 2011) (unpublished).

<sup>8</sup> The law judge did not bar Goble from association with a municipal advisor, as the Division of Enforcement sought.

<sup>9</sup> The Eleventh Circuit affirmed the district court's findings that Goble had violated the customer protection and books-and-records provisions of the federal securities laws, but reversed the district court's finding that he had violated the antifraud provisions. The Eleventh Circuit remanded the case to the district court to reconsider the appropriateness of the lifetime bar from the securities business it imposed on Goble, and also to re-write the injunction against violations of the customer protection and books-and-records provisions in a way "that allows Goble to understand his obligations under the injunction." *SEC v. Goble*, 682 F.3d 934, 952-53 (11th Cir. 2012).

<sup>10</sup> *See, e.g., Evelyn Litwok*, Investment Advisers Act Release No. 3438, 2012 SEC LEXIS 2328, at \*3-4 (July 25, 2012) (dismissing a follow-on administrative proceeding after the court of appeals reversed tax evasion convictions for two tax years and vacated and remanded tax evasion and mail fraud convictions for another year, all of which served as the basis of the proceeding); *John M. Lucarelli*, Exchange Act Release No. 56075, 2007 SEC LEXIS 1548, at \*6 (July 13, 2007) (dismissing a proceeding based on a jury verdict after the district court judge entered judgment of acquittal notwithstanding the verdict).

<sup>11</sup> Division's Resp. to Comm'n's Order Directing the Filing of Additional Briefs at 2.

finding that Goble had also violated the customer protection and books-and-records provisions, which the court of appeals affirmed, "were not considered relevant in the Administrative Judge's decision."<sup>12</sup>

**B. It is appropriate to dismiss the proceeding.**

As a result of the Eleventh Circuit's decision vacating the district court's injunction, there is currently no basis for continuing a proceeding against Goble pursuant to Exchange Act § 15(b) on the record before us. Therefore, it is appropriate to dismiss the proceeding.

Our Rules of Practice, however, do not distinguish between dismissing proceedings with or without prejudice.<sup>13</sup> Given the state of the proceeding before us, we can determine only that there is no basis for continuing it. As noted, the Eleventh Circuit directed the district court, on remand, to draft a new injunction against Goble for his violations of the customer protection and books-and-records provisions. We do not suggest any view regarding the institution of any later proceedings against Goble arising from these or any other facts.

Accordingly, it is ORDERED that the proceeding against Richard L. Goble is dismissed.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>12</sup> Goble's Add'l Briefing on the Question of Whether the Comm'n Should Dismiss this Proceeding at 2.

<sup>13</sup> *Lucarelli*, 2007 SEC LEXIS 1548, at \*5.