ADMINISTRATIVE PROCEEDINGS
FILE NO. 3-7403

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

Walter F. Curran

INITIAL DECISION

Washington, D.C.
June 6, 1991

Brenda P. Murray
Administrative Law Judge

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APPEARANCES: Richard P. Jacobson, David J. Freniere for the Securities and Exchange Commission, Division of Enforcement

Walter F. Curran, pro se, for respondent

BEFORE Brenda P. Murray, Administrative Law Judge

Background

The Commission instituted this proceeding on September 28, 1990. The issue is what if any, remedial action is appropriate in the public interest pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) if, as alleged by the Commission's Division of Enforcement (Division), Walter F. Curran, pled guilty on November 20, 1989, to 13 counts of mail fraud (18 U.S.C. 1341 and 1342), and one count of violating the federal currency reporting laws (31 U.S.C. 5316 and 5322) in connection with fraudulent activities committed while he was employed as a sales representative with a registered broker-dealer.

Mr. Curran represented himself at the one-day hearing held at the Federal Correctional Institution, Morgantown, West Virginia, on January 30, 1991, at which the Division introduced several exhibits but called no witnesses. Mr. Curran did not present any evidence and did not file a brief. The Division filed Proposed Findings of Fact and Conclusions of Law, and a Brief in Support of its Proposed Findings and Conclusions on February 26, 1991.

Findings

My findings and conclusions are based on the record. I applied preponderance of the evidence as the applicable standard of proof.

Mr. Curran is a graduate of Boston Latin High School and Boston University. Merrill Lynch, Pierce, Fenner & Smith, Inc. employed Mr. Curran as a sales representative in New York City from 1975 until 1981, and Dean Witter Reynolds, Inc. (Dean Witter) employed him in this capacity in Boston from 1981 until 1989.

On November 20, 1989, Mr. Curran plead guilty to 14 counts in two indictments pending against him in the United States District Court for the District of Massachusetts and the United States District Court for the Northern District of New York. These

indictments charged that from 1981 until 1989, Mr. Curran falsely represented that he maintained a Deferred Compensation Employee Savings Account with Dean Witter which offered investors a safe, low risk investment, guaranteed annual yields of 20 percent, tax advantages, and other benefits. Mr. Curran obtained money from investors as a result of these and other false representations. However, instead of investing this money Mr. Curran converted the funds to his personal use, and he prepared and delivered to investors false information, including statements which purported to show interest earned on the funds he falsely represented were invested. On February 17, 1989, Mr. Curran knowingly transported over $130,000 into the United States from Canada and willfully failed to file a report noting this fact as required by law.

The indictments charged that Mr. Curran defrauded investors of over $3,000,000.

Based on his guilty plea, Mr. Curran received, and is presently serving, a sentence of three years, to run concurrently, on each of seven counts, five years probation, to run concurrently, on each of six counts, and an order to pay $1.2 million in restitution on the mail fraud counts, and thirteen months, served concurrently, for transporting into the United States from Canada monetary instruments in excess of $10,000 and failing to file a report. 1/

Public Interest

Section 15(b)(6)(A)(ii) of the Exchange Act provides that the Commission shall censure, limit the activities or functions, suspend for a period not exceeding 12 months, or

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1/ This sentence was imposed on December 17, 1990. A more severe sentence for the mail fraud counts was reversed on appeal. (United States v. Walter F. Curran, No. 90-1181 (1st Cir. October 29, 1990))

bar a person from being associated with a broker or dealer where the person was convicted of mail fraud or a crime of fraudulent concealment within ten years of the commencement of the proceeding and a sanction is in the public interest. Because Mr. Curran was convicted of mail fraud and violating the federal currency reporting laws on November 20, 1989, I will consider next whether imposition of a sanction is in the public interest.

I find that it is in the public interest to bar Mr. Curran from being associated with a broker or dealer. 2/ Mr. Curran stands convicted of multiple felony counts committed in connection with his activities as a registered representative with a registered broker-dealer based on an indictment which details deliberate egregious conduct committed willfully over an extended time period. The case law consistently holds that illegal conduct by participants should not be countenanced because the securities industry presents so many opportunities for abuse and overreaching, and depends heavily on the integrity of its participants. 3/ Mr. Curran's position, offered in mitigation, that the persons named in the

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2/ Much of the argument has been whether a "permanent" bar is necessary. Mr. Curran wants to be able to reenter the securities field after five or ten years.

Section 15(b) does not use the term permanent bar. A bar has come to mean an indefinite rather than a permanent condition because the Commission retains the power to modify its orders. Steadman v. SEC, 603 F.2d 1126, 1140 n17 (5th Cir. 1979), affd Steadman v. SEC, 450 U.S. 91, 67 L. Ed 2d 69, 191 S. Ct. 999 (1981)

The Commission in Applications for Relief from Disqualification, Securities Exchange Act Release No. 11267 (February 26, 1975) 6 SEC Docket 346 stated:

> The Commission recognizes that situations may exist where, in light of changed circumstances and after the passage of a period of time, it may appear appropriate to the Commission, in its discretion, to permit a disqualified individual or firm to have the disqualification lifted if, in general, the applicant can make a showing satisfactory to the Commission that re-entry into the securities business would be consistent with the public interest.

3/ See Archer v. SEC, 133 F.2d 795, 803 (8th Cir. 1943), cert. denied 319 U.S. 767 (1943); Hughes v. SEC, 174 F.2d 969, 975 (D.C. Cir. 1949)

indictment did not have pure motives for investing their funds with him is irrelevant. In addition, at the hearing Mr. Curran denied converting funds to his personal use and blamed the losses on poor investments. (Tr. 28) However, the indictment to which he pled guilty charged that he converted the monies and used them for his own purposes.

I conclude that there is a high probability that Mr. Curran will commit future violations if given the opportunity. I reach this conclusion based on the illegal acts for which he stands convicted, and I question whether he accepts responsibility for his illegal conduct based on his attempt to deflect the seriousness of his actions by criticizing the motives of investors. According to Mr. Curran:

> This began in a country club over a few drinks over my real estate partner, my lawyer, my accountant. It doesn't mitigate my involvement and my wrong, but it was just as well their idea to circumvent a certain situation that I participated -- I'm the one that's in jail; they're not.
>
> *** This was a group understanding. Give me the money so they could basically hide it. (Tr. 25-26)

Finally, a sever sanction is necessary to deter Mr. Curran and others from activities which here resulted in investor losses of over $3,000,000. There is nothing in the record as to Mr. Curran's financial status, but he admits he earned a very good income in the securities industry during the time the violations occurred. (Arthur Lipper Corp., 46 S.E.C. 78 (1975), rev'd on other grounds 547 F.2d 171 (2d Cir. 1976), cert. denied 434 U.S. 1009 (1978); Steadman v. SEC, 603 F. 2d 1126, 1140 (5th Cir. 1979), affd Steadman v. SEC, 450 U.S. 91, 67 L. Ed 2d 69, 101 S. Ct. 999 (1981); SEC v. Blatt, 583 F.2d 1325, 134 n.29 (5th Cir. 1978)) The record contains no mitigating evidence.

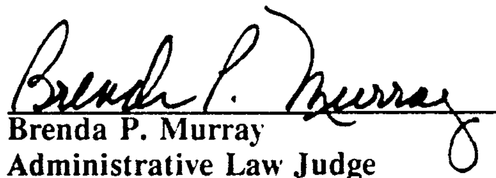
I have considered and rejected those proposed findings, arguments, and conclusions

that are inconsistent with this decision.

Order

Based on the findings and conclusions made above, and pursuant to Section 15(b) of the Exchange Act, I ORDER that Walter F. Curran is barred from being associated with any broker or dealer.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice. (17 C.F.R. 201.17(f)) Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within fifteen days after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission act to review as to a party, the initial decision shall not become final as to that party.



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