INITIAL DECISION RELEASE NO. 372
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13121

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	INITIAL DECISION
MARTIN A. ARMSTRONG	:	February 25, 2009
	:	
	:	

APPEARANCES: David Stoelting and Jill Slansky for the Division of Enforcement, Securities and Exchange Commission.

Martin A. Armstrong, pro se.

BEFORE: Robert G. Mahony, Administrative Law Judge.

INTRODUCTION

The Securities and Exchange Commission (SEC or Commission) issued its Order Instituting Proceedings (OIP) on August 6, 2008, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on July 22, 2008, the U. S. District Court for the Southern District of New York entered a final consent judgment, permanently enjoining Martin A. Armstrong (Armstrong) 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. Further, the OIP alleges that, on August 17, 2006, Armstrong pled guilty before the U.S. District Court for the Southern District of New York to one count of conspiracy to commit securities fraud, wire fraud, and commodities fraud in violation of 18 U.S.C. § 371 and, on April 10, 2007, was sentenced to serve sixty months in federal prison and ordered to pay restitution of $80,000,001. 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 Armstrong from association with any investment adviser.

On September 10, 2008, Armstrong filed his Answer to the OIP. At a telephonic prehearing conference on October 1, 2008, I granted the Division's request for leave to file a motion for summary disposition. (Preh'g Conf. Tr. at 6; Order of Oct. 1, 2008.) The Division filed its Memorandum of Points and Authorities in Support of its Motion for Summary

Disposition and accompanying exhibits on October 31, 2008 (Motion). The Motion included four Exhibits of which the following are admitted into evidence and, pursuant to 17 C.F.R. § 201.323, official notice is taken: Ex. 1) transcript of Armstrong's plea allocution in United States v. Armstrong, No. 99-CR-00997-JFK (S.D.N.Y. Aug. 17, 2006); Ex. 2) copy of the Judgment in a Criminal Case in Armstrong, No. 99-CR-00997-JFK (S.D.N.Y. Apr. 10, 2007); and Ex. 3) copy of the Final Judgment in SEC v. Princeton Econ. Int'l Ltd., No. 99-CV-09667-PKC (S.D.N.Y. July 22, 2008).[1] Armstrong's response to the Motion (Response) was received on December 22, 2008, to which the Division submitted its Reply Brief on December 23, 2008. The Response included five exhibits labeled A through E, which are also admitted into evidence.[2]

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. See 17 C.F.R. § 201.250(a). 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. Id. The hearing officer is required promptly to grant or deny the motion or to defer decision on the motion. See 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted 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. Id.

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

[1] The Division's Exhibit 4 is a copy of the transcript of the prehearing conference held in this proceeding on October 1, 2008, which is already a part of the record.

[2] The content of the Response Exhibits are: Ex. A) letter of December 23, 2008, to Attorney General Mukasey regarding Armstrong's Civil Contempt; Ex. B) excerpted pages thirty-six to thirty-eight from Government's Memorandum of Law in Opposition to Defendant's Pretrial Motions in Armstrong, No. 99-CR-00997-JFK (S.D.N.Y. June 12, 2006); Ex. C) Complaint in Armstrong, No. 99-CR-00997-JFK (S.D.N.Y. Sept. 13, 1999); Ex. D) article "Jailed N.J. financier moved to 'solitary'" from The Philadelphia Inquirer on August 17, 2006; and Ex. E) article "In Fraud Case, 7 Years in Jail For Contempt" from The New York Times on February 16, 2007.

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.

The Commission has repeatedly upheld use of the summary disposition procedure in cases such as this one where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Jeffrey L. Gibson, 92 SEC Docket 2104, 2111-12 (Feb. 4, 2008) (collecting cases), pet. for review pending, 6th Cir., No. 08-3377. Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." See John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), pet. denied, 66 Fed. Appx. 687 (9th Cir. 2003).

Findings of fact and conclusions of law made in the underlying injunctive action are immune from attack in a follow-on administrative proceeding. See Ted Harold Westerfield, 54 S.E.C. 25, 32 n.22 (1999) (collecting cases). The Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See James E. Franklin, 91 SEC Docket 2708, 2713 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). Nor does the pendency of an appeal preclude the Commission from action based on an injunction. See Franklin, 91 SEC Docket at 2714 n.15; Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002); Jon Edelman, 52 S.E.C. 789, 790 (1996). To the extent that Armstrong's Answer and Response raises such challenges, his collateral attack provides no basis for denying the Division's Motion.

There is no genuine issue with regard to any fact that is material to this proceeding. Armstrong pled guilty to all material facts that concern the activities for which he was criminally convicted and permanently enjoined in the criminal and civil cases on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

FINDINGS OF FACT

Armstrong is fifty-nine years old (Mot. Ex. 1 at 2) and currently incarcerated at the Federal Correctional Institution at Fort Dix, New Jersey (Answer). Armstrong was the founder and controlling officer of Princeton Economics International Ltd. (Resp. at 3; Resp. Exs. D, E.)

From 1992 until approximately August 1999, Armstrong sold promissory notes, he called Princeton Notes, to several investors and, in connection with these notes, informed the investors that the funds from these notes would be invested for the benefit of the note-holders in various commodities. (Mot. Ex. 1 at 19.) Each note-holder was to have a separate and segregated trading account at Republic New York Securities (Republic) in which their money would be held. (Mot. Ex. 1 at 19-20.) Armstrong's trading resulted in millions of dollars in losses, which he worked, in combination with others, to conceal. (Mot. Ex. 1 at 20.) Armstrong's concealment efforts included the issuance of false account statements and comingling of note-

holder trading accounts such that the pool of available funds for note repayment was substantially reduced. (Mot. Ex. 1 at 20-21.)

In relation to the sales of the Princeton Notes and the fraudulent conduct by Armstrong, criminal and civil charges were brought against him by 1) the United States Attorney's Office, Armstrong, No. 99-CR-00997-JFK (S.D.N.Y.), 2) the Commodities Futures Trading Commission (CFTC), CFTC v. Princeton Global Mgmt., Ltd., No. 99-CV-09669 (S.D.N.Y.), and 3) the SEC, Princeton Econ. Int'l Ltd., No. 99-CV-09667-PKC (S.D.N.Y.). In the criminal case, Armstrong pled guilty to one count of conspiracy to commit securities fraud, commodities fraud, and wire fraud in violation of 18 U.S.C. § 371, and he was sentenced to sixty months imprisonment and ordered to pay $80,000,001 in restitution. (Mot. Ex. 2.) To resolve the SEC case against him, Armstrong consented to a final judgment that permanently enjoined him from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[3] (Mot. Ex. 3.)

In his Answer in this proceeding, Armstrong noted several actions pending related to his cases in the U.S. Supreme Court and in the U.S. Courts of Appeals for the Second Circuit and the Third Circuit. (Answer.) Armstrong's petition for writ of mandamus and/or prohibition in the U.S. Supreme Court was denied on October 6, 2008. See In re Armstrong, 129 S.Ct. 308 (2008). An appeal of the SEC civil judgment is pending in the U.S. Court of Appeals for the Second Circuit. See Princeton Econ. Int'l Ltd., No. 08-5902-CV. Finally, an appeal of the district court's dismissal of his petition for writ of habeas corpus is pending in the U.S. Court of Appeals for the Third Circuit. See Armstrong v. Grondolsky, No. 08-CV-00569-RMB (D.N.J. 2008), appeal docketed, No. 08-2851 (3d Cir. June 24, 2008). Official notice, pursuant to 17 C.F.R. §§ 201.250(a), .323, is taken of these actions.

CONCLUSIONS OF LAW

Under Section 203(f) of the Advisers Act, which incorporates Sections 203(e)(2) and 203(e)(4) 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 was convicted of conspiracy to commit any felony involving the purchase or sale of any security or a felony arising out of the conduct of the business of an investment adviser or has been enjoined from engaging in conduct in connection with the purchase or sale of any security. See 15 C.F.R. §§ 80b-3(e)(2)(A), (e)(2)(B), (e)(4), and (f). Armstrong was an investment adviser, although unregistered, within the meaning of the Advisers Act at the time of his underlying misconduct. Following Section 202(a)(11) of the Advisers Act, Armstrong was "engaged in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities" and was compensated for that advice. 15 U.S.C. § 80b-2(a)(11).

[3] During the course of the Commission's case against Armstrong, the district court, on January 14, 2000, found Armstrong in contempt for failure to comply with an order of October 28, 1999, to turn over certain documents and assets to the court-appointed receiver in the case. The contempt order was lifted following a hearing on April 27, 2007. Princeton Econ. Int'l Ltd., No. 99-CV-09667-PKC (S.D.N.Y.).

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).

Armstrong argues that, despite Commission precedent to the contrary, he should be able to relitigate issues surrounding his conviction and injunction. (Resp. at 1.) As such, he contends that the Commission did not have proper jurisdiction over the Princeton Notes and, thus, the actions that occurred relating to the notes. (Resp. at 2.) Further, he argues that his guilty plea and consent judgment were obtained through the denial of his right to due process. (Resp. at 1.) However, as noted above, Section 203(f) of the Advisers Act specifically authorizes an administrative proceeding such as this one. See 15 C.F.R. § 80b-3(f). Regardless of his contentions, Armstrong was convicted of conspiracy to commit securities fraud, commodities fraud, and wire fraud and has been enjoined from violating the antifraud provisions of the federal securities laws, and, therefore, the appropriate focus of this proceeding is on the Steadman factors above.

The Commission has held that "conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest sanctions under the securities laws." Jose P. Zollino, 89 SEC Docket 2598, 2608 (Jan. 16, 2007). In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Marshall E. Melton, 56 S.E.C. 695, 698 (2003). "[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions." Id. at 713. Armstrong has failed to present any "evidence to the contrary."

In his plea before the district court, Armstrong described his fraudulent activities and the lengths to which he went in covering up millions of dollars in losses. The degree of harm caused by his actions is only minimally quantified by the $80,000,001 that the court ordered in restitution. Armstrong's deception occurred over an extended period of time and included the issuance of false account statements to customers through his collusion with Republic. Thus, I find that Armstrong's actions were egregious, recurrent, and demonstrate that he acted with a high degree of scienter.

Armstrong has not admitted the wrongful nature of his conduct. In both his Answer and Response, he maintains that the actions to which he pled guilty were not a crime, that the Commission did not have jurisdiction, and that he could not have committed securities fraud because the Princeton Notes were not securities. He makes these claims despite the fact that his

consent with the Commission requires that he "not []take any action . . . denying . . . any allegation in the complaint or creating the impression that the complaint is without factual basis." (Mot. Ex. 3 at 7-8.) Likewise, he has made no assurances against future violations. Armstrong's occupation, if he were allowed to continue it, will present opportunities for future violations. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975).

Viewing the Steadman factors in their entirety, I conclude that an associational bar is necessary and appropriate in 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, Martin A. Armstrong 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