

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 58789 / October 15, 2008

INVESTMENT ADVISERS ACT OF 1940  
Rel. No. 2799 / October 15, 2008

Admin. Proc. File No. 3-8394

In the Matter of

VICTOR TEICHER  
c/o Andrew J. Levander  
David S. Hoffner  
Dechert, LLP  
1095 Avenue of the Americas  
New York, NY 10036

ORDER DENYING MOTION TO  
MODIFY BAR ORDER

I.

Victor Teicher moves to modify a 1998 order barring him from association with any broker, dealer, investment adviser, investment company or municipal securities dealer (the "1998 Order"). <sup>1/</sup> Teicher requests that the 1998 Order be modified to permit him to associate with Cedarview Capital Management, LP ("Cedarview"), a registered investment adviser "in which he has no economic interest," as a portfolio manager. Specifically, Teicher asks that he be permitted to "provide portfolio management services to Cedarview in connection with the establishment of a \$30 million investment fund" (the "Proposed Fund"). Teicher represents that the "start-up capital" for the Proposed Fund will be provided by Teicher and "certain highly sophisticated investors with whom" Teicher has a relationship, although Teicher also hopes to attract additional third-party investors. Teicher further represents that trading in the Proposed Fund would be "supervised" by Cedarview's three principals, none of whom has any disciplinary record, and that each trade would receive the prior approval of one of the Firm's principals. The Division of Enforcement (the "Division") opposes Teicher's motion as not being consistent with

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<sup>1/</sup> Victor Teicher, 53 S.E.C. 581 (1998), aff'd in part, rev'd in part, 177 F.3d 1016 (D.C. Cir. 1999) (affirming Commission order barring Teicher but reversing bar order as to separate respondent).

the public interest or investor protection. We agree with the Division and, therefore, have determined to deny the motion.

## II.

A. The 1998 Order was imposed following Teicher's conviction for insider trading in 1990. On April 6, 1990, a jury convicted Teicher and Victor Teicher & Co., L.P., a former unregistered investment adviser that Teicher controlled, of criminal securities fraud charges for trading on the basis of material non-public information that Teicher knew had been misappropriated. <sup>2/</sup> Teicher was sentenced to eighteen months' imprisonment, placed on five years' probation and fined \$200,000. Teicher & Co. was fined \$600,000. On December 11, 1997, in a separate civil proceeding brought by the Commission, Teicher was enjoined by consent from violations of antifraud provisions, Sections 10(b) and 14(e) of the Securities Exchange Act of 1934, and Exchange Act Rules 10b-5 and 14e-3, and was ordered to pay disgorgement and penalties, based on the same underlying misconduct. <sup>3/</sup> On the basis of the criminal conviction, we instituted administrative proceedings against Teicher. Following litigated proceedings, we issued the 1998 Order.

B. On November 5, 2007, we denied a motion by Teicher to modify the 1998 Order (the "2007 Order"). <sup>4/</sup> At that time, Teicher requested permission to associate with a then-unregistered investment adviser which would manage the assets of Teicher family members and a limited number of "extremely sophisticated" investors, with knowledge of Teicher's disciplinary history. To address compliance concerns, Teicher represented, among other things, that the investment adviser would register with the Commission, designate a compliance officer and retain an independent consultant to monitor all trading and investment activity.

In rejecting Teicher's motion, we observed that "[t]he underlying misconduct, participation in an extensive insider trading scheme, involved serious violations of the antifraud provisions of the federal securities laws," and that "[n]ine years have elapsed since the imposition

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<sup>2/</sup> United States v. Teicher, No. 88 Cr. 796 (CSH) (S.D.N.Y.), aff'd, 987 F.2d 112 (2d Cir. 1993). Teicher and Victor Teicher & Co., L.P. were convicted on nine counts of securities fraud in violation of Exchange Act §§10(b), 15 U.S.C. §§ 78j(b), Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2; two counts of fraud in connection with a tender offer in violation of Exchange Act § 14(e), 15 U.S.C. §§ 78n(e) and Exchange Act Rule 14e-3, 17 C.F.R. § 240.14e-3, and one count of conspiracy to violate the securities laws and anti-fraud laws, in violation of 18 U.S.C. § 371. Teicher was also convicted on two counts of mail fraud in violation of 18 U.S.C. §§ 1341 and 1342.

<sup>3/</sup> SEC v. Victor Teicher, No. 91 Civ. 1634 (MP) (S.D.N.Y. Dec. 11, 1997).

<sup>4/</sup> Victor Teicher, Securities Exchange Act Rel. No. 56744 (Nov. 5, 2007), 91 SEC Docket 3068.

of the bar, a time frame that is not unduly lengthy." 5/ We noted that Teicher had not sought permission to associate with any entity regulated by the Commission since imposition of the bar and, therefore, there was "no history of compliance in an associated capacity that would support modification of the bar order." 6/ We also expressed our concern that Teicher was proposing "to re-enter the securities industry as the head [and owner] of a firm," and that this would create a "difficult supervisory situation" for the persons proposed to be hired as independent consultant and compliance officer for the firm. We concluded that the public interest and investor protection would not be served if Teicher were permitted to associate with an investment adviser, as he had proposed.

### III.

We consider requests to modify bar orders by determining whether, "under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar." 7/ We have stated that administrative bars should "remain in place in the usual case and be removed only in compelling circumstances." 8/ Further, we have made clear that, when an unqualified bar has been imposed, as is the case here, this "evidences [our] conclusion that the public interest is served by permanently excluding the barred person from the securities industry . . . [and that], absent extraordinary circumstances, a person subject to an unqualified bar will be unable to establish that it is in the public interest to permit reentry to the securities industry." 9/ This exercise of caution before modifying or lifting administrative bars "ensures that the Commission,

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5/ Id. at 3070.

6/ Id. at 3071. In the 2007 Order, we noted that Teicher had not made an application pursuant to Commission Rule of Practice 193, 17 C.F.R. § 201.193, which governs applications by barred individuals for consent to associate with, among other things, investment advisers. Id. at 3070. We further stated that, in any event, Teicher's submission did not meet the requirements of Rule 193. Id. at 3070 n.7. Teicher's current motion also does not appear to meet the requirements of Rule 193.

7/ William Masucci, Exchange Act Rel. No. 53121 (Jan. 13, 2005), 87 SEC Docket 347, 348; Peter F. Comas, Exchange Act Rel. No. 49894 (June 18, 2004), 83 S.E.C. Docket 251, 252; Edward I. Frankel, 57 S.E.C. 186, 193 (2003); Ciro Cozzolino, 57 S.E.C. 175, 181 (2003); Stephen S. Wien, 57 S.E.C. 162, 170 (2003).

8/ Charles E. Gaecke, Investment Advisers Act Rel. No. 2681 (Dec. 4, 2007) 92 SEC Docket 321, 322.

9/ Unqualified Bar Orders, Exchange Act Rel. No. 34720 (Sept. 13, 1994), 57 SEC Docket 1941, 1941 (emphasis in original).

in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals' activities." 10/

Consideration of a range of factors guides the public interest and investor protection inquiry. These factors include:

the nature of the misconduct at issue in the underlying matter; the time that has passed since issuance of the administrative bar; the compliance record of the petitioner since issuance of the administrative bar; the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar; whether the petitioner has identified verifiable, unanticipated consequences of the bar; the position and persuasiveness of the Division of Enforcement's response to the petition for relief; and whether there exists any other circumstances that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors. 11/

We did not find, in 2007, that a consideration of those factors justified a modification of the 1998 Order, and nothing contained in Teicher's current motion, submitted less than a year after the 2007 Order, causes us to alter that conclusion.

Teicher contends that the proposed association with Cedarview satisfies our concern, expressed in the 2007 Order, that Teicher should not re-enter the securities industry as the head of a firm. He asserts that, "[i]n light of the supervisory and compliance procedures" proposed in his motion, "the elapse of more than twenty years since the events giving rise to the Bar and Teicher's unblemished history during such lengthy period," the bar should be modified to permit him to associate with Cedarview.

The Division argues that there is no basis for reassessing our earlier decisions to bar Teicher and to deny his 2007 motion to modify the bar. It argues that, "[t]o the extent that there is a distinction between this motion and that filed in 2007, it is limited to the differences between the proposed employers and the related terms and conditions of Teicher's association." The Division asserts that, while Teicher has sought to correct one of the Commission's concerns by proposing to associate with Cedarview, "the critical point here is that nothing in Teicher's situation presents -- or even suggests -- the 'compelling circumstances' that would distinguish him from anyone else subject to a bar order . . . ."

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10/ Gaecke, 92 SEC Docket at 322-23.

11/ Gaecke, 92 SEC Docket at 323. We also have observed that no single factor is dispositive. See, e.g., Frankel, 57 S.E.C. at 193.

We agree that there are no compelling circumstances to justify Teicher's return to the securities industry. While we appreciate that Teicher has taken certain steps to address some of the concerns raised in the 2007 Order, we nevertheless remain troubled about the possibility of further misconduct in the event he is permitted to return to the industry. For example, although technically not a principal of Cedarview, given the large amount of capital that likely will be contributed by Teicher and the other investors with whom Teicher has an existing relationship, we are concerned that this could give Teicher significant influence over the firm's operations. In short, effective supervision by Cedarview's senior management could be hampered given his and his associates' financial importance to the firm. In light of the serious nature of the underlying misconduct, the fact that only ten years have elapsed since the imposition of the bar, and our concerns regarding the terms of Teicher's proposed association with Cedarview, we believe that it would be inconsistent with the public interest and investor protection to modify the bar in the manner proposed by Teicher.

Accordingly, IT IS ORDERED that the motion of Victor Teicher to modify the administrative bar order be, and it hereby is, denied.

By the Commission.

Florence E. Harmon  
Acting Secretary