INITIAL DECISION RELEASE NO. 357
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13066

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	INITIAL DECISION
JAMIE L. SOLOW	:	September 16, 2008

APPEARANCES: Jane M.E. Peterson, M. Alexander Koch, and Stacy L. Bogert for the Division of Enforcement, Securities and Exchange Commission

Jamie L. Solow, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Jamie L. Solow (Solow) from association with any broker or dealer. He was previously enjoined from violating the antifraud provisions of the securities laws, based on his wrongdoing while associated with a registered broker-dealer in trading inverse floating rate collateralized mortgage obligations (inverse floaters).

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on June 12, 2008, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The undersigned granted the parties leave to file Motions for Summary Disposition at a July 14, 2008, prehearing conference, pursuant to 17 C.F.R. § 201.250(a), by July 28, 2008, with Responses due on August 11, 2008. The parties timely filed their Motions for Summary Disposition on July 28, 2008, and their Responses on August 11, 2008. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the parties' July 28, 2008, Motions for Summary Disposition; (2) the parties' August 11, 2008, Responses; and (3) Solow's July 7, 2008, Answer. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which Solow was enjoined were decided against him in the

civil case 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.

B. Allegations and Arguments of the Parties

The OIP alleges that Solow was enjoined on May 14, 2008, from violating the antifraud provisions of the federal securities laws, in SEC v. Solow, 554 F. Supp. 2d 1356 (S.D. Fla. 2008), based on his wrongdoing while associated with two registered broker-dealers. The Division of Enforcement (Division) urges that he be barred from association with any broker-dealer. Solow argues that this proceeding should be dismissed as superfluous and without meaning, in view of the injunction in Solow, permanently enjoining him, inter alia, from attempting to register as, or associating with, a registered broker-dealer or investment adviser.

C. Procedural Issues

1. Exhibits Admitted into Evidence

The following items in the Division's Motion for Summary Disposition at Exhibits A-D are admitted into evidence as Division Exhibits A-D:

> September 24, 2007, Second Amended Complaint in Solow, (also included with Solow's Cross Motion for Summary Disposition as Respondent Ex. B) (Div. Ex. A);
>
> May 14, 2008, Final Judgment in Solow (Div. Ex. B);
>
> May 14, 2008, Order in Solow (also included with Solow's Cross Motion for Summary Disposition as Respondent Ex. A) (Div. Ex. C); and
>
> Undated pages 925 and 1138-40 of the transcript of the trial of Solow (Div. Ex. D);

The following additional items in Solow's Cross Motion for Summary Disposition at Exhibits C-D are admitted into evidence as Respondent Exhibits C-D:

> Solow's April 23, 2008, Supplemental Memorandum of Law in Solow (Resp. Ex. C); and
>
> the Commission's April 23, 2008, Response to the Court's Follow-On Questions in Solow (Resp. Ex. D);

2. Collateral Estoppel

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.

II. FINDINGS OF FACT

Solow, of Hillsboro Beach, Florida, was a registered representative associated as an independent contractor with Archer Alexander Securities Corp. (Archer) from about August 12, 2002, to December 9, 2003, and with SAMCO Financial Services, Inc. (SAMCO), from about June 4, 2004, to July 14, 2006. Answer at 1. At both firms his business consisted almost entirely of trading inverse floaters, for retail clients and the firm's principal account at Archer, and for retail and institutional clients at SAMCO. Answer at 1-2. Solow was (and is) permanently enjoined from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder – and from aiding and abetting violations of Section 17(a) of the Exchange Act and Rules 17a-3(a)(1), 17a-3(a)(2), 17a-3(a)(7), and 17a-5(a)(2) thereunder, and Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.[1] Div. Exs. B, C. Additional sanctions included a third-tier civil penalty of $2,646,485.99 and disgorgement of $2,646,485.99 plus prejudgment interest of $778,302.91. The court also enjoined Solow from attempting to register as, or associating with, a registered broker-dealer or investment adviser. Div. Exs. B, C. Official notice pursuant to 17 C.F.R. §§ 201.250(a), .323 is taken of Solow's pending appeal of the judgment to the United States Court of Appeals for the Eleventh Circuit, No. 08-13012-DD.

The wrongdoing that underlies Solow's injunction was his fraudulent trading scheme involving inverse floaters at Archer, as summarized in the court's May 14, 2008, Order. Div. Ex. C. In determining the sanctions, the court stated that Solow's actions were blatant and brazen and that during the trial Solow blamed others for his failings, refused to accept any responsibility for his own actions, and repeatedly testified falsely under oath.

[1] The court ordered the sanctions following a nine-day jury trial in which the jury found Solow had violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and had aided and abetted Archer's violations of Section 17(a) of the Exchange Act and Rules 17a-3(a)(1), 17a-3(a)(2), 17a-3(a)(7), and 17a-5(a)(2) thereunder, and of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder. Div. Exs. B, C.

III. CONCLUSIONS OF LAW

Solow has been permanently enjoined "from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act.

Solow argues that this administrative proceeding is jurisdictionally flawed – "superfluous and without meaning" – and should be dismissed because he has been permanently enjoined "from attempting to register as a broker-dealer or investment adviser or being associated with or seeking to be associated with a broker-dealer or an investment adviser" in Solow. Additionally, he argues, in reference to the sixth Steadman factor, this injunction means that there is absolutely no "likelihood that [his] occupation will present opportunities for future violations." Official notice is taken, pursuant to 17 C.F.R. § 201.323, of the fact that in his pending appeal of Solow, Solow is arguing that the District Court abused its discretion and acted outside its authority in enjoining him from attempting to register as, or associating with, a registered broker-dealer or investment adviser.[2] In light of the possibility that the Court of Appeals might accept this argument, it cannot be said that this administrative proceeding is superfluous and without meaning. Additionally, as noted above, Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act specifically authorize an administrative proceeding such as this one against a person who is enjoined "from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security."

IV. SANCTION

The Division requests a broker-dealer bar. As discussed below, Solow will be barred from association with a broker-dealer because of the seriousness of his violation, taking account of the facts and circumstances of his conduct.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act. The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which

[2] See Solow's July 21, 2008, Initial Brief in SEC v. Solow, No. 08-13013-DD (11th Cir.) at 57-58.

the sanction will have a deterrent effect. See Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Melton, 56 S.E.C. at 698. "An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules or regulations." Id. at 709. The Commission considers an antifraud injunction to be particularly serious. Id. at 710. The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. See Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

Solow's conduct was egregious and recurrent. The District Court described it as blatant and brazen. At a minimum, a reckless degree of scienter is a necessary element of his violations of the Securities and Exchange Acts. Consistent with a vigorous defense of the charges against him, Solow has not given assurances against future violations or recognition of the wrongful nature of his conduct.

Solow's occupation, if he were allowed to continue it, will present opportunities for future violations. Solow's violations are recent. The degree of harm to investors and the market place is quantified in his ill-gotten gains of $2,646,485.99 that the court ordered disgorged. 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). Additionally, the District Court's conclusion that Solow repeatedly testified falsely under oath shows a lack of honesty and indicates that he is unsuited to function in the securities industry. A broker-dealer bar is also necessary for the purpose of deterrence. The record does not indicate a prior disciplinary record; however, a lack of a disciplinary record is not an impediment to imposing a bar for a respondent's first adjudicated fraud violation. See Robert Bruce Lohmann, 56 S.E.C. 573, 582 (2003); Martin R. Kaiden, 54 S.E.C. 194, 209 (1999).

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, JAMIE L. SOLOW IS BARRED from associating with any broker or dealer.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial 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, 17 C.F.R. § 201.111. 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 the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge