

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 59436 / February 24, 2009

INVESTMENT ADVISERS ACT OF 1940  
Release No. 2844 / February 24, 2009

ADMINISTRATIVE PROCEEDING  
File No. 3-13322

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In the Matter of :  
: ORDER MAKING FINDINGS AND  
JOSEPH LOVAGLIO : IMPOSING REMEDIAL SANCTIONS  
: BY DEFAULT

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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on December 31, 2008, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). Respondent Joseph Lovaglio (Lovaglio) was served with the OIP on January 8, 2009.

I find Lovaglio in default because he has not filed an Answer to the OIP, he did not appear at a telephonic prehearing conference on February 19, 2009, and he has otherwise failed to defend the proceeding. See 17 C.F.R. §§ 201.155(a), .220(f), .221(f). Accordingly, I find the allegations in the OIP to be true. See 17 C.F.R. § 201.155(a).

From at least August 2005 through November 2007, Lovaglio, age twenty-six, was the managing director of Rabinovich & Associates, LP (Fund or Firm) and he was the head of its sales operation. The Fund's general partner and portfolio manager, with whom Lovaglio also was associated, was Alex Rabinovich (Rabinovich), an unregistered investment adviser. From March 2005 until October 2005, Lovaglio was a registered representative associated with a broker-dealer registered with the Commission.

On December 5, 2008, a final judgment was entered against Lovaglio, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action, SEC v. Rabinovich & Associates, No. 1:07-cv-10547-GEL (S.D.N.Y.).

The District Court's final judgment was based upon findings of fact and conclusions of law that it made in granting the Commission's motion for summary judgment against Lovaglio. Among other things, the District Court found that, from at least August 2005 through November 2007, Lovaglio and Rabinovich operated the Fund, an unregistered investment company and unregistered broker-dealer, out of a storefront boiler room in Brooklyn; that during that period, Lovaglio and others raised approximately \$2,250,000 through the sale of limited partnership interests in the Fund from more than one hundred fifty investors by making fraudulent statements about the Fund's investment performance and other material facts; that Lovaglio repeatedly misrepresented to investors and prospects, both personally and through the salesmen that he supervised and the Firm's website and account statements for which he was responsible, that the Fund was highly profitable, when in fact it had done nothing but lose money throughout its existence, that the Firm was located on Wall Street and was a member of the New York Stock Exchange, the National Association of Securities Dealers (NASD), and the Securities Investor Protection Corporation, when it was not, and failed to disclose that Rabinovich had been barred by the NASD from working for a member broker or dealer and that, in September 2007, the Financial Industry Regulatory Authority (FINRA) instituted proceedings seeking to bar Lovaglio from association with any FINRA member based on his failure to provide FINRA with requested information and documents in connection with a customer allegation of fraud unrelated to this proceeding,<sup>1</sup> and that Lovaglio had illegally offered and sold unregistered securities and illegally operated as an unregistered broker-dealer.

### **Ruling**

Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act authorize the Commission to take action to protect the public interest where someone associated with a broker or dealer or investment adviser, at the time of misconduct, has been enjoined from engaging in any conduct or practice in connection with the activities of a broker-dealer or investment adviser. Lovaglio's conduct that resulted in the injunction was egregious, recurrent, and committed with scienter, and Lovaglio has offered no assurances against future violations, or shown that he recognizes the wrongful nature of his conduct or that his continued participation in the securities industry would not create opportunities for future violations. Lovaglio's conduct, which was the basis for the District's Court's judgment and order, and his default show that a bar is in the public interest. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

Based on the facts and public interest considerations set forth above, I ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Joseph Lovaglio is barred from association with any broker, dealer, or investment adviser.

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Brenda P. Murray  
Chief Administrative Law Judge

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<sup>1</sup> On January 7, 2008, FINRA barred Lovaglio from association with any FINRA member firm.