

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3419/ June 15, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14832

In the Matter of	:	ORDER MAKING FINDINGS
	:	AND IMPOSING SANCTIONS
ANDREY C. HICKS	:	BY DEFAULT

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Administrative Proceedings (OIP) on April 3, 2012, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). Respondent Andrey C. Hicks (Hicks) was served with the OIP on April 9, 2012, in accordance with Rule 141(a)(2)(i) of the Commission's Rules of Practice. To date, Hicks has not filed an Answer, which was due within twenty days after service of the OIP. See OIP at 3; 17 C.F.R. § 201.220(b).

On May 2, 2012, Respondent was ordered to show cause by May 18, 2012, why he should not be barred from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Because Hicks has not filed an Answer or otherwise defended the proceeding, he is in default, and the following allegations of the OIP are deemed to be true. See 17 C.F.R. §§ 201.155(a)(2), .220(f).

FINDINGS OF FACT

Hicks, age 28, is a resident of Boston, Massachusetts. OIP, p. 1. From at least June until October 2011, he was the principal, partner, managing director, and chief executive officer of Locust Offshore Management, LLC (Locust), an investment advisory firm with a primary place of business in Cambridge, Massachusetts. Id. Hicks was also the managing partner and sole director of Locust Offshore Fund, Ltd. (Locust Offshore Fund), a non-existent pooled investment fund that was purportedly incorporated in the British Virgin Islands. Id., pp. 1-2. Locust and Locust Offshore Fund are not registered with the Commission. Id., p. 1.

From at least June until October 2011, Hicks engaged in a fraudulent scheme to solicit potential investors in Locust Offshore Fund by making numerous material misrepresentations regarding: (1) his educational and professional background, (2) the existence of Locust Offshore Fund as a legitimate company incorporated in the British Virgin Islands, and (3) the existence of a purported auditor, prime broker, and custodian for Locust Offshore Fund. Id., p. 2. By making these representations and creating other indicia of legitimacy, including an offering

memorandum and a website publishing year-to-date returns and other false information for the fictional Locust Offshore Fund, Hicks obtained at least \$1.7 million from ten investors. Id. He transferred substantially all of these funds to his personal bank accounts and misappropriated at least a portion of them for personal expenses. Id.

On March 20, 2012, the United States District Court for the District of Massachusetts entered a final judgment against Hicks by default, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder in SEC v. Hicks, 1:11-CV-11888-RGS. The district court also ordered Hicks to pay \$2,481,004 in disgorgement, \$31,054.39 in prejudgment interest, and a civil penalty of \$2,512,058.39. See 17 C.F.R. § 201.323.

CONCLUSIONS OF LAW

Section 203(f) of the Advisers Act instructs the Commission to sanction any person who at the time of the misconduct was associated with an investment adviser, if the Commission finds that the sanction is in the public interest and the person is enjoined from any action, conduct, or practice specified in Section 203(e)(4) of the Advisers Act. Hicks is permanently enjoined from engaging in or continuing certain conduct or practice in connection with acting as an investment adviser, and in connection with the purchase or sale of securities, within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act. Accordingly, a sanction shall be imposed on Hicks if it is in the public interest. See 15 U.S.C. § 80b-3(f); Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, request for clarification denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (barring an unregistered, associated person of an unregistered broker-dealer from association with a broker or dealer).

SANCTIONS

An associational bar is in the public interest, in accordance with the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). See Christopher A. Lowry, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1141. Hicks's conduct was egregious, recurrent, and involved a high degree of scienter. Over the course of several months, he violated the antifraud provisions of the federal securities laws by perpetuating a pervasive scheme to misappropriate funds from numerous investors through the use of material misrepresentations. The egregiousness of Hicks's conduct is further demonstrated by the district court's order that he disgorge approximately \$2.5 million in illegally-obtained profits and pay a civil penalty of more than \$2.5 million. By his default in both proceedings, Hicks has failed to offer assurances against future violations or recognize the wrongful nature of his conduct.

Furthermore, the Commission has noted that "the fact that a person has been enjoined from violating antifraud provisions 'has especially serious implications for the public interest.'" Michael T. Studer, Exchange Act Release No. 50411 (Sept. 20, 2004), 57 S.E.C. 890, 898, reconsideration denied, Exchange Act Release No. 50600 (Oct. 28, 2004), aff'd, 148 F. App'x 58

(2d Cir. 2005) (unpublished) (quoting Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 713). The Commission has also stated that “conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions under the securities laws.” Marshall E. Melton, 56 S.E.C. at 713.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted July 21, 2010, added collateral bar sanctions to Section 203(f) of the Advisers Act. Because Hicks’s misconduct occurred after the enactment of Dodd-Frank, retroactivity is not a concern. Whether collateral bars are appropriate in any given case depends on the specific facts at issue. In this case, the full array of collateral bars will be imposed on Hicks both because, by his default in both proceedings, he has failed to contest the available sanctions, and because Hicks’s conduct was egregious, recurrent, and involved a high degree of scienter.

ORDER

It is ORDERED, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that Andrey C. Hicks is barred from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Cameron Elliot
Administrative Law Judge