SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2656 / September 26, 2007

Admin. Proc. File No. 3-12433

In the Matter of

CONRAD P. SEGHERS

c/o Charles B. Manuel, Jr. and Shira Y. Rosenfeld
Manuel & Rosenfeld, L.L.P.
One Penn Plaza, Suite 2527
New York, NY 10119

c/o Carl A. Generes
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OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Ground for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the federal securities laws. Held, it is in the public interest to bar respondent from association with any investment adviser.

APPEARANCES:

Charles B. Manuel, Jr. and Shira Y. Rosenfeld, of Manuel & Rosenfeld, L.L.P., and Carl A. Generes, of the Law Office of Carl A. Generes, for Conrad P. Seghers.

Karen Matteson, for the Division of Enforcement.

Appeal filed: March 1, 2007
Last brief received: May 17, 2007

I.

Conrad P. Seghers, an unregistered investment adviser, appeals from the decision of an administrative law judge. 1/ The law judge found that on September 14, 2006, the United States District Court for the Northern District of Texas had permanently enjoined Seghers from violating the antifraud provisions of the federal securities laws. The law judge barred Seghers from associating with any investment adviser. We base our findings on an independent review of the record, except with respect to those findings of the law judge not challenged on appeal.

II.

On March 1, 2006, following a civil trial in the United States District Court for the Northern District of Texas, a jury returned a verdict finding that Seghers violated Section 17(a) of the Securities Act of 1933, 2/ Section 10(b) of the Securities Exchange Act of 1934, 3/ Exchange Act Rule 10b-5, 4/ and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 5/ in connection with Seghers's involvement with three hedge funds. 6/

On September 14, 2006, the District Court issued a memorandum opinion and order (the "District Court Opinion") 7/ finding the trial record sufficient to support the jury's verdict and denying Seghers's motion for a judgment as a matter of law. The District Court entered final judgment against Seghers, permanently enjoining him from violating the antifraud provisions found by the jury. Additionally, the District Court imposed a $50,000 civil penalty on Seghers and denied the Division's request for disgorgement. Both the Commission and Seghers have

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1/ Conrad P. Seghers, Initial Decision Rel. No. 326 (Feb. 5, 2007), 89 SEC Docket 3263.

2/ 15 U.S.C. § 77q(a).

3/ 15 U.S.C. § 78(b).

4/ 15 C.F.R. § 240.10b-5.

5/ 15 U.S.C. §§ 80b-6(1), (2).

6/ The jury did not find Seghers liable on a claim that he had violated the securities registration provisions of Section 5 of the Securities Act.

7/ SEC v. Seghers, Civ. 3:04-CV-1320-K, slip op. (N.D. Tex. Sept. 14, 2006). On November 20, 2006, the District Court issued an Amended Final Judgment by order of the Fifth Circuit upon a motion by the Division to correct the Final Judgment pursuant to Federal Rules of Civil Procedure 60(a) and 65(d). The Amended Final Judgment does not substantively alter the District Court's judgment and relief.

appealed the District Court's Amended Final Judgment to the United States Court of Appeals for the Fifth Circuit, cross-appeals which are pending. 8/

During the underlying injunctive proceeding, both parties stipulated that Seghers participated in the offer and sale of securities in the form of limited partnership interests in three hedge funds, Integral Hedging, L.P., Integral Arbitrage, L.P., and Integral Equity, L.P. (collectively, the "Funds"), and that Seghers acted as an investment adviser to these Funds. The District Court Opinion stated that the Funds' assets were invested in an account known as the Galileo Fund at Morgan Stanley Dean Witter, which Samer M. El Bizri, Seghers's former partner and business associate, opened in June 1999. Olympia Capital Associates, L.P., acting as the Funds' administrator, sent monthly and quarterly statements to the Funds' investors. Seghers also had personal assets invested in the funds.

According to the District Court Opinion, Seghers's participation in the Funds included furnishing Olympia Capital with information relating to the Funds' value. Seghers obtained the information from values reported by Morgan Stanley. Olympia Capital relied on the information provided by Seghers "in order to value the Funds' assets, prior to sending the [monthly and quarterly] statements to investors."

The District Court Opinion stated that, by June 6, 2001, Seghers had become aware that "the statement values for the Integral Equity [hedge fund] had been incorrect since February 2001." Seghers asked Morgan Stanley to "document the fact that Morgan Stanley agreed that the statements had been wrong." On June 6, 2001, Morgan Stanley sent Seghers a letter in response, stating that "the statement values for the Funds 'have been incorrect since February 2001 . . . [i]ncluding most recently the statements for May 31, 2001. They have not accurately reflected the actual value of the accounts during any of these periods.'" At the trial, Seghers testified that he "had known that the [Morgan Stanley] statements were incorrect."

Seghers also testified that his "concerns started to grow almost exponentially beginning approximately the 10th through the 12th of June, 2001." On June 15, 2001, Seghers sent an e-mail to Morgan Stanley stating that there were new errors "every day" and that the accounts were "continually full of multi-million dollar errors." In the e-mail, Seghers requested that Morgan Stanley "please help get this fixed, together with our web pages that are incorrect so frequently that they can never be trusted." Seghers went on to state, "Morgan Stanley's continued inaccuracies with respect to our account positions and incorrect order fills continue to materially damage our funds and the respective investors."

Despite knowing that the information provided by Morgan Stanley overstated the Funds' values, Seghers continued to provide Olympia Capital with inaccurate asset information. Seghers sent a letter on July 13, 2001 to the investors, which reported "positive developments" and stated that "amidst the volatility in the markets we have continued to post respectable

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8/ SEC v. Seghers, No. 06-11146 (5th Cir. appeal docketed Dec. 8, 2006).

returns." On August 1, 2001, Seghers informed his personal attorney that the Funds were "in the toilet." Investors ultimately incurred losses from their investments in the Funds; the District Court found that Seghers "lost over $900,000 of his own money with the investors."

Between June 6, 2001 and September 30, 2001, Seghers provided Olympia Capital with information that caused Olympia Capital to overstate to investors the Funds' value as reported on the monthly statements by 47% to 77%. During this period the Funds' actual assets ranged between $34.31 million to $49.40 million per month, and the overstatements ranged between $23.12 million to $29.58 million per month. These overstated values were reported in four monthly statements, respectively, dated as of the last calendar days of June, July, August, and September 2001. One witness testified at trial that "there were millions of dollars difference between the reported value to the investors and the ultimate--the true value, or the value put on the Morgan Stanley statement, during that period of time." According to this witness, from January 2001 to July 15, 2001, the maximum difference between the Funds' mark-to-market value and the value which investors saw was about $23 to $24 million.

The District Court concluded that the "evidence establishes that Seghers acted knowingly or recklessly with respect to the fact that he was causing the Funds to overstate the value of the Funds' assets beginning June 6, 2001." The Court found that there was sufficient evidence to support the jury's findings that "Seghers employed a scheme, or practice of business, to defraud investors" and that, in his July 13, 2001 letter to investors, "Seghers made an untrue statement of a material fact, or omitted to state a material fact necessary in order to make the statements true, in the light of the circumstances under which they were made."

On September 26, 2006, we instituted administrative proceedings against Seghers to determine whether he had been enjoined and, if so, what remedial action would be in the public interest. On February 5, 2007, the law judge granted the Division's motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 9/ finding that "there is no genuine issue as to the . . . material facts." The law judge determined that Seghers had been enjoined within the meaning of Section 203(e)(4) of the Advisers Act. The law judge further concluded that it was in the public interest to permanently bar Seghers from associating with any investment adviser.

III.

Advisers Act Sections 203(e) and 203(f) authorize us to discipline, consistent with the public interest, investment advisers or associated individuals whom a court of competent jurisdiction has enjoined from, among other things, any conduct or practice connected with investment advisory activities or the purchase or sale of any security. 10/ We find that the United

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9/ 17 C.F.R. § 201.250.

10/ 15 U.S.C. §§ 80b-3(e)(4), 80b-3(f).

States District Court for the Northern District of Texas permanently enjoined Seghers within the meaning of Section 203(e)(4) of the Advisers Act.

In appealing the law judge's decision to impose a permanent bar, Seghers bases his objections on three grounds: 1) this proceeding should be stayed pending his appeal of the District Court's action; 2) summary disposition was inappropriate and the law judged erred in not holding an evidentiary hearing; and 3) the sanction imposed is excessive.

A.

Seghers argues that the law judge erred in denying Seghers's motion to stay the administrative proceedings pending his appeal of the District Court's underlying injunction. Seghers has acknowledged that it is an "uncontested point that there are circumstances in which the Commission may conduct its administrative proceedings prior to the conclusion of an appeal," but he argues that the Commission "usually" stays administrative proceedings pending appeals of underlying proceedings. Seghers is mistaken. 11/

It is well established that the existence of an appeal of the District Court's decision does not affect the injunction's status as a basis for administrative action. 12/ As we previously have stated, "Unless and until it is vacated, the injunction entered against [the respondent] is a valid

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11/ In support of his claim, Seghers cites only one case, Ted Harold Westerfield, 54 S.E.C. 25 (1999). In that case, however, the administrative proceeding was not stayed pending resolution of the appeal. The U.S. Supreme Court denied certiorari for Westerfield's criminal appeal on October 20, 1997, Westerfield v. United States, 522 U.S. 939 (1997), five days after the administrative hearing was held on October 15, 1997. Ted Harold Westerfield, Initial Decision Rel. No. 120 (February 9, 1998), 66 SEC Docket 1616. Furthermore, the law judge had denied Westerfield's motion to stay the hearing until Westerfield completed his incarceration. Ted Harold Westerfield, Admin. Proc. Rel. No. 550 (September 25, 1997), 65 SEC Docket 1471.

12/ See Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994) ("Under the statutory language, existence of the injunction provides a ground for the bar adequate in itself."); Michael T. Studer, Securities Exchange Act Rel. No. 50411 (Sept. 20, 2004), 83 SEC Docket 2853, 2859 ("[T]he fact that [a respondent] is still litigating [an injunctive] action does not affect our statutory authority to conduct this proceeding."); Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002) ("[T]he pendency of an appeal does not preclude us from acting to protect the public interest."); Ira William Scott, 53 S.E.C. 862, 865 (1998) ("The Advisers Act permits us to impose sanctions on the basis of a qualifying conviction. We need not await the outcome of any post-conviction proceeding in order to proceed.").

basis for administrative action." 13/ If an appellate court reverses the District Court's judgment, Seghers may seek to vacate any action based upon that judgment. 14/

Seghers contends that a stay is appropriate because he "has the due process right to deny that his acts or omissions constituted fraud and he has the right to complete his appeal to the Fifth Circuit without the [Division of Enforcement] accusing him of a 'lack of remorse'" in this administrative proceeding. The existence of this administrative proceeding, however, does not prevent Seghers from fully challenging the District Court's decision on appeal.

Seghers also argues that his due process rights were violated because he was, in effect, "obligated to testify against himself" 15/ in order to establish that he recognizes the wrongful nature of his conduct, one of the factors that we consider in determining the need for remedial sanctions. 16/ However, the Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. 17/ We recognize that the fact that Seghers has not acknowledged the wrongful nature of his conduct is consistent with a vigorous defense of the charges against him. Our consideration of the public interest factors in this matter reflects this fact. 18/

13/ Studer, 83 SEC Docket at 2859. See Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1104 (D.C. Cir.1988) ("[T]he fact that a judgment is pending on appeal ordinarily does not detract from its finality . . . for purposes of subsequent litigation."); Martin v. Malhoyt, 830 F.2d 237, 264 (D.C. Cir. 1987); William F. Lincoln, 53 S.E.C. 452, 456 (1998).

14/ See Elliott, 36 F.3d at 87; Studer, 83 SEC Docket at 2859; Charles Trento, Exchange Act Rel. No. 49296 (Feb. 23, 2004), 82 SEC Docket 785, 789-91; Lincoln, 53 S.E.C. at 456; C.R. Richmond & Co., 46 S.E.C. 412, 414 n.11 (1976). Cf. Terry Harris, Investment Advisers Act Rel. No. 2622 (July 26, 2007), __ SEC Docket __ (finding that criminal conviction that has been reversed on appeal may not serve as the basis for sanctions under Advisers Act Section 203(f)).

15/ Original emphasis.

16/ See infra note 40 and accompanying text (discussing factors in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)).

17/ See Robert W. Armstrong, III, Exchange Act Rel. No. 51920 (June 24, 2005), 85 SEC Docket 3011, 3039 (citing KPMG Peat Maverick, 54 S.E.C. 1135, 1992 (2001), petition denied, 289 F.3d 109 (D.C. Cir. 2002)). See also Blinder, Robinson, 837 F.2d at 1112 (referencing the fact that the Commission weighs the factors relevant to a sanction in the public interest).

18/ See text accompanying note 49, infra.

B.

Seghers challenges the law judge's decision to grant the Division's motion for summary disposition under Rule of Practice 250. The rule provides that 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." 19/ Seghers contends that granting summary disposition in "matters of this import" conflicts with the requirement of Section 203(f) of the Advisers Act, which requires that our findings for sanctions be based "on the record after notice and opportunity for hearing." 20/ Seghers states that this "unequivocal language" indicates that he is entitled to an in-person, oral evidentiary hearing, which summary disposition cannot satisfy. 21/

Contrary to Seghers's argument, Section 203(f) of the Advisers Act does not require the Commission to hold an in-person evidentiary hearing in every administrative proceeding. The requirement that adjudicatory proceedings be on the record after notice and opportunity for hearing does not necessitate an in-person hearing. 22/ Moreover, courts have upheld summary disposition where no genuine issue of material fact is in dispute. 23/ In addition, courts have

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19/ 17 C.F.R. §201.250.

20/ 15 U.S.C. § 80b-3(f).

21/ We note that although Seghers challenges the validity of summary disposition under the Advisers Act before us, Seghers made a motion for summary disposition under Rule 250 before the law judge. The law judge denied this motion.

22/ See, e.g., Crestview Parke Care Ctr. v. Thompson, 373 F.3d 743, 747-50 (6th Cir. 2004) (affirming the validity of the Department of Health and Human Services' internal procedure for summary judgment in a sanction proceeding, required by statute to be "on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person").

23/ See, e.g., id. at 750 ("[I]t would seem strange if disputes could not be decided without an oral hearing when there are no genuine issues of material fact."); Puerto Rico Aqueduct & Sewer Auth. v. EPA, 35 F.3d 600, 606-11 (1st Cir. 1994) (affirming generally the validity of summary disposition procedures in the administrative context and stating that a grant of summary disposition is proper when there fails to be a genuine issue of material fact); cf. Veg-Mix, Inc. v. U.S. Dep't of Agric., 832 F.2d 601, 607-08 (D.C. Cir. 1987) (affirming the Agriculture Department's denial of an evidentiary hearing under its procedural rules, which allowed the Department to "dispense with a hearing when no answer is filed," because there was no material issue of fact).

sustained Commission findings that sanctions were in the public interest following administrative hearings based on summary disposition. 24/

For a follow-on proceeding, summary disposition may be inappropriate in certain rare circumstances when "a respondent may present genuine issues with respect to facts that could mitigate his or her misconduct." 25/ Seghers had not made this showing here. According to Seghers, an in-person, oral evidentiary hearing is necessary to establish a developed record upon which the Commission can base its decision. Seghers asserts that an evidentiary hearing would permit the law judge "to hear and see the witnesses and fully evaluate the case based upon the true picture of who they are and what they say." However, Seghers fails to identify any specific evidence or additional facts to be adduced at such a hearing that would create a genuine issue of material fact. 26/

Seghers has submitted a series of affidavits and declarations that describe two general categories of facts that he suggests support denying summary disposition. The first category of facts attacks the District Court's judgment. Seghers asserts that Morgan Stanley calculated the Funds' valuations and that Olympia Capital reported the values to the Funds' investors. Seghers's cites these facts apparently in support of his assertion that he "did not disseminate misleading information," contrary to the District Court's conclusion that he "was causing the Funds to overstate the value of the Funds' assets" by providing inaccurate information to

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24/ See, e.g., Brownson v. SEC, 66 Fed. Appx. 687, 688 (9th Cir. 2003) (unpublished decision denying petition for review) (upholding the use of summary disposition under Rule of Practice 250 during sanctioning proceedings); Michael Batterman, Advisers Act Rel. No. 2334 (Dec. 3, 2004), 84 SEC Docket 1349, 1355-56, aff'd, No. 05-0404 (2d Cir. 2005) (unpublished).

25/ John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), aff'd, 66 Fed. Appx. 687 (9th Cir. 2003). See Blinder, Robinson, 837 F.2d at 1109-10; Jose P. Zollino, Exchange Act Rel. No. 51632 (Apr. 29, 2005), 85 SEC Docket 1292, 1296 & n.10 (discussing Brownson, 55 S.E.C. 1023 (2002), petition denied, 66 Fed. Appx. 687 (9th Cir. 2003)). Seghers must set forth specific facts establishing a genuine issue of material fact and may not rely upon mere allegations in his pleadings to the law judge to create a genuine issue. See Frank P. Quattrone, Exchange Act Rel. No. 53547 (March 24, 2006), 87 SEC Docket 2155, 2164 (noting that the respondent "did not rely on mere conclusory allegations or speculation but instead offered specific facts to support his contention"). See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49, 256 (1986).

26/ Thus, Seghers has failed to establish that the record lacks "a full and true disclosure of the facts." See Sierra Ass'n for Env't v. FERC, 744 F.2d 661, 663 (9th Cir. 1984) (holding that "a trial-type hearing" is not always required because such a hearing was not necessary for a "full and true disclosure of the facts"); Cent. Freight Lines v. United States, 669 F.2d 1063, 1068 (5th Cir. 1982).

Olympia Capital. It is well established that Seghers is collaterally estopped from challenging in this administrative proceeding the judgment of the District Court in the injunctive proceeding. 27/ The doctrine of collateral estoppel precludes the Commission from reconsidering the injunction as well as factual issues that were actually litigated and necessary to the court's decision to issue the injunction. 28/ The appropriate forum for Seghers to challenge the validity of the injunction is through an appeal to the United States Court of Appeals, which Seghers indicates he is pursuing. 29/

The second category of facts set forth in the affidavits and declarations addresses the losses Seghers suffered from investing in the Funds, the statement that Seghers received no fees from the Funds, Seghers's plans for future employment, statements of certain investors in the Funds who support Seghers, and the offer of "tens of investors" who support Seghers and are willing to testify on his behalf. These facts were not disputed here by the Division. Moreover, in considering a motion for summary disposition, the "facts of the pleading of the party against whom the motion is made shall be taken as true . . . ." 30/ This second category of facts were before the law judge and, as discussed below, we have considered them in our determination of what sanction is in the public interest.

Seghers also suggests that he is being singled out and unfairly denied an oral evidentiary hearing because the Commission has held such hearings in past cases, which the law judged cited in the initial decision. However, four of the cases on which Seghers relies 31/ were decided prior to the adoption of Rule 250, which became effective on July 24, 1995. 32/ A Supreme Court decision reviewing one of those cases, Steadman, cites to our former Rules of Practice -- which Seghers cites in his brief to us to support his claim that an oral hearing is required -- but these

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27/ See Zollino, 89 SEC Docket at 2605 & n.20; Trento, 82 SEC Docket at 789-90; Galluzzi, 55 S.E.C. at 1115-16; Scott, 53 S.E.C. at 866; Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 (1997); Timothy Mobley, 52 S.E.C. 592, 595 n.9 (1996), C.R. Richmond & Co., 46 S.E.C. 412, 414 n.12 (1976). See also Elliot, 36 F.3d at 87.

28/ Shiva, 52 S.E.C. at 1249.

29/ Batterman, 84 SEC Docket at 1354 n.10.

30/ Rule of Practice 250(b), 17 C.F.R. § 201.250(b).

31/ Charles Phillip Elliot, 50 S.E.C. 1273 (1992), aff'd, 36 F.3d 86 (11th Cir. 1994) (per curiam); Steadman Sec. Corp., 46 S.E.C. 896 (1977), aff'd in part and vacated and remanded sub nom., Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); Leo Glassman, 46 S.E.C. 209 (1975); Mac Robbins & Co., Inc., 41 S.E.C. 116 (1962), aff'd sub nom. Berko v. SEC, 316 F.2d 137 (2d Cir. 1963).

32/ 60 Fed. Reg. 32,738 (June 23, 1995) (codified at 17 C.F.R. § 201.250).

Rules were superseded by the Rules enacted in 1995 which include the summary disposition procedure described in Rule 250. 33/ In the other two cases that Seghers cites, it does not appear that either the Division or the respondent moved for summary disposition, and, in any event, the issue of summary disposition was not before the Commission. 34/ Moreover, since we adopted Rule of Practice 250, we have upheld the use of the summary disposition procedure repeatedly in cases, like this one, where the respondent has been enjoined or convicted of a crime and the sole determination concerns the appropriate sanction. 35/

Seghers also contends that granting summary disposition was procedurally inappropriate because, in doing so, the law judge who granted summary disposition "overruled the case management plan" of the original law judge assigned to the proceeding. We find this argument to be without merit. On October 30, 2006, the law judge originally assigned to the proceeding denied the Division's request to file a motion for summary disposition. Pursuant to the Commission's delegated authority, the chief administrative law judge subsequently assigned another law judge to the proceeding on November 29, 2006. 36/ On December 7, 2006, the new law judge granted the Division leave to file a motion for summary disposition. Under Rule of Practice 111, we grant hearing officers with "the authority to do all things necessary and appropriate to discharge his or her duties," which includes "regulating the course of a proceeding and the conduct of the parties and their counsel." 37/ Rule 111 is "broadly worded" to accommodate a law judge's discretion in managing a case plan within the limits of our Rules of

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33/ Steadman, 450 U.S. at 94 n.3 (summarizing several, now-revised Rules of Practice, including 17 C.F.R. § 201.14(a) (1980)); 60 Fed. Reg. 32,738 (June 23, 1995) (codified at 17 C.F.R. § 201.250) (revising Rules of Practice).

34/ Marshall E. Melton, 56 S.E.C. 695 (2003); Westerfield, 54 S.E.C. 25 (1999). Seghers also claims that we have "shown greater solicitude toward convicted felons (see Westerfield, . . .) than to this Respondent." As noted above, however, there is no evidence that either the Division or Westerfield moved for summary disposition in that case. In addition, we have resolved through summary disposition a number of cases where the respondent had been convicted of a crime. See, e.g., Zollino, 89 SEC Docket at 2607; Stuart E. Winkler, Securities Act Rel. No. 8348 (Dec. 17, 2003), 81 SEC Docket 3217; Galluzzi, 55 S.E.C. at 1115; Brownson, 55 S.E.C. at 1028.

35/ See, e.g., Zollino, 89 SEC Docket at 2607; Galluzzi, 55 S.E.C. at 1115; Brownson, 55 S.E.C. at 1028.

36/ Pursuant to Rule of Practice 323, 17 C.F.R § 201.323, we take official notice that the initial law judge retired on January 3, 2007.

37/ 17 C.F.R. § 201.111.

Practice and governing statutes. 38/ The law judge acted within the scope of Rule 111 in granting the Division leave to file a motion for summary disposition. Moreover, as explained above, we find no error in the law judge's grant of summary disposition.

* * *

We agree with the law judge that an evidentiary hearing was not required because there was no genuine issue with regard to any material fact, and we find that the law judge's grant of the Division's motion for summary judgment was appropriate.

IV.

The Division asks that we bar Seghers from association with any investment adviser. As an initial matter, Seghers argues that the Commission is precluded from bringing this proceeding because the District Court's Amended Judgment stated, "[a]ll relief not expressly granted herein is denied." We find this argument without merit. We have held that "injunctive and administrative remedies serve different purposes; one restrains further violative activity, the other seeks to determine whether it is in the public interest to exclude somebody from the securities business or to limit his activities in it. Far from being a barrier to administrative action, an injunction is an express ground for such action." 39/

Seghers challenges the permanent bar imposed against him as "grossly excessive" and asserts that the Commission should reduce the sanction to a three-month suspension or no sanction at all. In determining whether a remedial sanction is in the public interest, we evaluate several factors: "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

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38/ Cf. Schield Mgmt. Co., Exchange Act Rel. No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 861 (holding Rule of Practice 111 to be "broadly worded to permit a law judge to exercise discretion as to which witnesses to allow and which ones to exclude from the hearing room during the testimony of other witnesses").

39/ Samuel H. Sloan, 45 S.E.C. 734, 738-39 (1975). See Lincoln, 53 S.E.C. at 459-61 (concluding that a permanent bar from the securities industry is a civil remedy and thus does not constitute a second punishment for the same underlying activity). See also Zollino, 89 SEC Docket at 2605; Elliot, 50 S.E.C. at 1279; Walter H. T. Seager, 47 S.E.C. 1040, 1042-43 (1984).

Seghers asserts that the sanction is excessive when considered in light of the fact that the District Court "drastically scaled back the relief sought by the Enforcement Division" in rendering its judgment. However, the District Court's reasoning in imposing civil remedies is irrelevant to these proceedings, which are conducted to determine whether remedial sanctions are appropriate to protect the public interest.

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." 40/

Seghers's conduct was egregious. The District Court found that there was sufficient evidence at trial to "support the jury's finding that Seghers knowingly or recklessly defrauded investors" and enjoined Seghers from securities fraud violations. Fraud is "especially serious and subject to the severest of sanctions under the securities laws." 41/ The securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence. 42/ The existence of an antifraud injunction, thus, "can, in the first instance, indicate the appropriateness in the public interest of revocation of registration or suspension or bar from participation in the securities industry." 43/

Moreover, Seghers acted as an investment adviser, a fiduciary role which imposes "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation to employ reasonable care to avoid misleading clients." 44/ Seghers betrayed his fiduciary duties by knowingly or recklessly causing the Funds to overstate the value of their assets. These overstatements were significant. The evidence presented in the injunctive action indicates that there were millions of dollars difference between the value reported to investors and the actual value of the Funds' assets and that the overstatements between June and

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40/ Steadman, 603 F.2d at 1140.

41/ Melton, 56 S.E.C. at 713. See also Zollino, 89 SEC Docket at 2608; Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

42/ See, e.g., Paul K. Grassi, Jr., Exchange Act Rel. No. 52858 (Nov. 30, 2005), 86 SEC Docket 2494, 2498; Frank Kufrovich, 55 S.E.C. 616, 627 (2002); Lincoln, 53 S.E.C. at 465; Adrian Antoniu, 48 S.E.C. 909, 915 (1987); Philip S. Wilson, 48 S.E.C. 511, 517 (1986); Seager, 47 S.E.C. at 1043.

43/ Batterman, 84 SEC Docket at 1359. See also Melton, 56 S.E.C. at 713 ("Based on our experience enforcing the federal securities laws, we believe that ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions.").

44/ Batterman, 84 SEC Docket at 1359 (footnotes omitted) (quoting Capital Gains Research Bureau v. SEC, 375 U.S. 180, 194 (1963)). See also SEC v. Washington Inv. Network, 475 F.3d 392, 404 (D.C. Cir. 2007) ("[W]e think the better reading of section 206 [of the Adviser's Act] is that it prohibits failures to disclose material information, not just affirmative frauds. This reading is consistent with the fiduciary status of investment advisers in relation to their clients and it is also more likely to fulfill Congress's general policy of promoting "full disclosure" in the securities industry . . . .") (citations omitted).

September 2001 ranged from 47% to 77% above the Funds' actual value. In his July 13, 2001 letter to investors, Seghers again violated his fiduciary obligations by misrepresenting the status of the Funds to investors, reporting only "positive developments" and that "amidst the volatility in the markets we have continued to post respectable returns," despite the fact that Seghers knew the Funds' assets were overstated. Seghers's conduct had serious implications for each of the Funds' investors, whom Seghers denied complete and accurate information regarding the performance of their investments. Seghers's behavior "represents a serious abuse of the trust placed in [him] by the Funds' investors and by the securities industry." 45/

Seghers's conduct was ongoing, not isolated, and committed with a high degree of scienter. After confirming on June 6, 2001 that the statement values for the Funds had been incorrect since February 2001, Seghers continued to furnish Olympia Capital with inaccurate information for the next four consecutive months. 46/ Seghers gave Olympia Capital overstated values for the August 31, 2001 and September 30, 2001 statements, even after acknowledging to his attorney on August 1, 2001 that the Funds were "in the toilet." 47/ Seghers's acts -- in furnishing Olympia Capital with information that he knew to be incorrect -- were incompatible with the affirmative fiduciary obligations of an investment adviser.

We further find that Seghers will be presented with opportunities to violate the securities laws in the future. Seghers testified in the injunctive action that, since receiving his Ph.D. in microbiology, he has exclusively devoted himself to investing, largely on behalf of others. In one of the declarations that he submitted, Seghers stated he has not been in the securities industry in any capacity since 2002 and asserted that he "will not in the future serve as an investment adviser." However, in that same declaration, Seghers also stated that he "should not be precluded from the opportunity to resume my career," and that he continues to engage with his former clients -- the Funds' investors, which "include friends and family." In an affidavit originally submitted in the injunctive action, Seghers stated that he "communicate[s] with the investors of the Funds far more than the Receiver [assigned to manage the Funds] or the SEC,

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45/ Abraham and Sons Capital, Inc., 55 S.E.C. 252, 272 (2001).

46/ Thus, subsequent to June 6, 2001, Seghers was aware not only that the investors were receiving incorrect investor statements from June through September 2001, but also that the four statements dated from June to September 2001 would perpetuate the ongoing overstated values that investors had received from June through November 2000, and from March 2001 through May 2001.

47/ In one of his declarations Seghers asserts, "I provided as much information as I could during this very uncertain time, and I sent out numerous letters to investors which the U.S. District Court is not acknowledging." However, Seghers does not assert, and nothing in the record establishes, that Seghers attempted to inform the investors that the statements were inaccurate. Seghers admitted that his "investor communications were not related to investor account statements. . . ."

even today after all of the frivolous allegations have been made against me. . .” and there are a “large number of investors who still communicate with me on a weekly basis.” His occupation and current involvement with the Funds’ investors present opportunities for future violations. A bar is necessary to protect the public interest because, absent a bar, there would be nothing to prevent Seghers from becoming an investment adviser to the Funds’ investors or others in the future. 48/

Consistent with a vigorous defense of the District Court’s injunction, Seghers denies that his conduct was wrongful in nature. 49/ However, Seghers continues to demonstrate either a misunderstanding or a lack of recognition of an investment adviser’s affirmative duties and regulatory obligations. 50/ For example, Seghers attempts to minimize the gravity of his conduct by characterizing his behavior as an “alleged delay in reporting the wrongs of his Funds’ brokerage firm to the Funds’ investors” and an “alleged non-disclosure of the [accurate] values in monthly statements.” Moreover, Seghers neglects to address his conduct in failing to notify investors of the inaccurate fund values and instead representing only positive developments in his July 13, 2001 letter. Seghers’s arguments reflect a misunderstanding of the fundamental duty that an investment adviser has to provide a “full and fair disclosure of all material facts.” 51/

48/ See Bradley T. Smith, Exchange Act Rel. No. 55771 (May 16, 2007), __ SEC Docket __ (“Absent a bar, there would no obstacle to Smith’s associating with another investment adviser or broker dealer.”); Schield Mgmt. Co., 87 SEC Docket at 865 (“[A]bsent a bar, there would be no obstacle to [the respondent] being an investment adviser at [his current investment advisory firm] or some other firm.”).

49/ See also text accompanying note 18, supra .

50/ Cf. Schield Mgmt. Co., 87 SEC Docket at 866; Barr Fin. Group, Inc., 56 S.E.C. 1243, 1261-62 (2003) (“[R]espondents’ misconduct [in failing to provide the Commission with truthful disclosure in filings and cooperate with Commission examinations]. . . demonstrates either that they fundamentally misunderstand the regulatory obligations to which they are subject or they hold these obligations in contempt.”); C.R. Richmond & Co., 46 S.E.C. at 415 (stating that the “[r]espondents thus showed a marked insensitivity to the obligation of fair-dealing borne by professionals in the securities business” by violating securities laws involving reporting, customer-disclosure, and record-keeping; selling unregistered securities; and violating the anti-fraud provisions of the Advisers’ Act by using fraudulent advisory publications “to arouse illusory hopes of substantial profits with virtually no risk”).

51/ Batterman, 84 SEC Docket at 1359 (quoting Capital Gains, 375 U.S. at 194). See also SEC v. Washington Inv. Network, 475 F.3d 392, 404 (D.C. Cir. 2007) (noting the Investment Adviser’s Act “prohibits failures to disclose material information, not just affirmative frauds”).

Seghers also contends that, because he has "learned the securities laws well and will take every step at all times to make certain that [he] operate[s] in conformity with them," he "will absolutely not ever violate the securities laws in the future." However, we find this assurance against future violations is outweighed by Seghers's behavior in conducting his fiduciary duties as an investment adviser.

Seghers presents various mitigating circumstances to support his argument for a lesser sanction than a permanent bar. Seghers contends that he did not earn any profit or receive any gains from the Funds during the time period of June 6, 2001 to September 30, 2001. Accepting arguendo that Seghers did not profit from his violations, this fact does not negate his conduct of his fiduciary duties, and therefore does not justify a reduced sanction in the public interest. 52/

Seghers further states, "I have lost a greater percentage of my assets than any other party or investor touched by this litigation," and suggests that the Commission should consider "all of the financial circumstances and hardship suffered by Seghers and his family" in determining a remedial sanction. However, the sanctions that we impose are not intended to punish, but "to protect the public interest from future harm at his hands." 53/ A bar from association with any investment adviser will protect the public interest by deterring Seghers and others from violating the provisions of the federal securities laws and their fiduciary duties as investment advisers. 54/

Seghers also submitted the declarations and affidavits of investors who maintain that they do not personally believe that Seghers defrauded them, despite the jury's findings and the District Court injunction. We have continually held that in determining remedial sanctions in the public interest, we evaluate the "welfare of investors as a class" 55/ and not the interests of a particular set of investors. 56/ We find that the mitigating circumstances that Seghers raises do not outweigh the need to protect the public interest given Seghers's misconduct.

52/ Cf. Howard R. Perles, 55 S.E.C. 686, 707 n.31 (2002) (noting "the absence of profit from manipulative conduct does not negate that conduct").

53/ Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

54/ See Steadman, 603 F.2d at 1142 ("[T]he Commission may consider the likely deterrent effect its sanctions will have on others in the industry."). Cf. PAZ Secs., Inc. v. SEC, No. 05-1467, 2007 U.S. App. LEXIS 17412, at *18 (D.C. Cir. July 20, 2007) (stating that "[a]lthough general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry") (quoting McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005)).

55/ Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975).

56/ See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2003).

Accordingly, we have determined that it is in the public interest to bar Seghers permanently from association with any investment adviser.

An appropriate order will issue. 57/

By the Commission (Commissioners ATKINS, NAZARETH, and CASEY); Chairman COX not participating.

Nancy M. Morris
Secretary

57/ We have considered all of the arguments advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISES ACT OF 1940
Rel. No. 2656 / September 26, 2007

Admin. Proc. File No. 3-12433

In the Matter of

CONRAD P. SEGHERS

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Manuel & Rosenfeld, L.L.P.
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New York, NY 10119

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ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Conrad P. Seghers be, and he hereby is, barred from association with any investment adviser.

By the Commission.

Nancy M. Morris
Secretary