

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

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In the Matter of :  
: SUPPLEMENTAL INITIAL DECISION  
DON WARNER REINHARD : June 1, 2010

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APPEARANCES: Brian K. Barry for the Division of Enforcement,  
Securities and Exchange Commission

Don Warner Reinhard, pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

### SUMMARY

This Decision bars Don Warner Reinhard (Reinhard) from association with any broker or dealer or investment adviser. He was previously enjoined from violating the antifraud provisions of the federal securities laws, based on his wrongdoing while associated with a registered investment adviser and a registered broker-dealer in trading collateralized mortgage obligations. Additionally, he was convicted of several federal crimes involving dishonest conduct.

### I. INTRODUCTION

#### A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on October 27, 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). The proceeding is a “follow-on” proceeding, based on Reinhard’s permanent injunction from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Advisers Act, as well as from aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, in SEC v. Reinhard, No. 4:07-CV-529-RH-WCS (N.D. Fla. Oct. 3, 2008). The undersigned issued an Initial Decision barring Reinhard from association with any broker or dealer or investment adviser. Don Warner Reinhard, 95 SEC Docket 14,218 (A.L.J. Feb. 12, 2009) (ID). Reinhard petitioned for review of the ID, and the

Commission remanded the proceeding for further proceedings. Don Warner Reinhard, Exchange Act Release No. 61506 (Feb. 4, 2010) (Remand Order).

The Remand Order noted the statutory basis for the imposition of sanctions was satisfied, in that Reinhard was enjoined from violating the antifraud and other provisions of the securities laws while associated with an investment adviser and a broker-dealer. However, it stated that the ID failed to articulate the need for assessment of sanctions in the public interest in light of the so-called Steadman<sup>1</sup> factors, in view of the fact that the injunction was entered by default with no litigated or agreed upon findings of fact. As the ID recounts, Reinhard filed numerous motions and participated in a prehearing conference but never answered the Complaint before the injunction was entered.<sup>2</sup>

On March 22, 2010, a prehearing conference was held. Reinhard, who is serving a fifty-one month sentence of incarceration, requested a stay of this proceeding pending his release. The undersigned denied his request. Also discussed was the fact that additional material, Reinhard's conviction in United States v. Reinhard, No. 4:08-CR-49-RH-WCS (N.D. Fla. Oct. 5, 2009), of which official notice can be taken pursuant to 17 C.F.R. § 201.323 in rendering a decision in this proceeding, had appeared since the date of the ID. Reinhard was given the opportunity to state, by May 6, 2010, why his conviction should not be considered in evaluating whether sanctions should be imposed in the public interest in light of the Steadman factors. This was memorialized in an Order to Show Cause. Don Warner Reinhard, Admin. Proc. No. 3-13280 (A.L.J. Mar. 23, 2010) (unpublished). At the prehearing conference, Reinhard opined that the conviction was not relevant to this proceeding, but never filed a pleading or any correspondence to this effect. Previously, in his December 1, 2008, Answer to the OIP, Reinhard

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<sup>1</sup> The Steadman factors include:

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

<sup>2</sup> Subsequently, the Court of Appeals affirmed the District Court's judgment against Reinhard, rejecting his arguments that he was not properly served with the Complaint and was given insufficient time to answer it. SEC v. Reinhard, No. 09-10213-CC (11th Cir. Oct. 28, 2009).

discussed the facts underlying his injunction and argued that he had been the victim, not the perpetrator of wrongdoing.

### **B. Additional Exhibits Admitted into Evidence**

The following items, of which official notice is taken pursuant to 17 C.F.R. § 201.323, are admitted into evidence:

United States v. Reinhard, No. 4:08-CR-49-RH-WCS (N.D. Fla. Oct. 5, 2009) (Judgment);

United States v. Reinhard, Plea Agreement filed May 13, 2009 (Plea Agreement); and

United States v. Reinhard, Factual Basis for Plea filed May 13, 2009 (Factual Basis for Plea).

## **II. PUBLIC INTEREST – STEADMAN FACTORS**

As set forth in the Judgment, on October 5, 2009, Reinhard was convicted, on his plea of guilty, of violations of 18 U.S.C. § 1014 (Making False Statements on Loan Application), 18 U.S.C. §§ 152(3) and 2 (Making False Statements to Bankruptcy Trustee, Aiding and Abetting), 18 U.S.C. §§ 1001 and 2 (Making False Statements, Aiding and Abetting), 18 U.S.C. § 152(7) (Transferring and Concealing Assets from the Bankruptcy Trustee) (two counts), 26 U.S.C. § 7206(1) (Making False Statements on Income Tax Return), and 26 U.S.C. § 7206(2) (Procuring False Statements on Income Tax Return). His May 13, 2009, Plea Agreement includes a Factual Basis for Plea that describes Reinhard's conduct that violated each of the above provisions. Reinhard was sentenced to fifty-one months of imprisonment and ordered to pay restitution of \$667,890.28 and a special assessment of \$700.<sup>3</sup>

As set forth in the Factual Basis for Plea, Reinhard committed numerous dishonest acts. For example, in order to obtain a \$223,245 boat loan in 2003 to fund a \$265,394 purchase of a boat, Reinhard submitted financial documents to a bank that included a copy of his purported income tax return that grossly inflated his income as compared with the income stated on the return that he actually filed. In 2006, he filed a voluntary petition for bankruptcy and failed to disclose numerous significant assets, such as the boat, other objects, and investment accounts. Additionally, Reinhard falsely represented that he had made no gifts of \$200 or more during the preceding year, when in fact he had paid \$20,240 for plastic surgery for his girlfriend, paid off \$7,554 of her car loan, and paid \$11,200 into her bank account during that timeframe. While the bankruptcy proceeding was pending, he transferred unreported assets, and deposited most of the approximately \$40,000 in proceeds in his girlfriend's bank account. Additionally, he filed materially false tax returns for 2001, 2002, and 2005, that included false representations including overstating expenses and understating income. The amount of intended loss involved in the bank, bankruptcy, and tax fraud was approximately \$995,874.

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<sup>3</sup> Reinhard's appeal of the sentence imposed by the District Court was dismissed. United States v. Reinhard, No. 09-15151-JJ (11th Cir. Feb. 3, 2010).

Reinhard's conviction in United States v. Reinhard, on several counts involving dishonesty, is based on facts that are relevant to the Steadman factors. See Kornman v. SEC, 592 F.3d 173, 180 (D.C. Cir. 2010) (citing with approval the Commission's policy that "the importance of honesty for a securities professional is so paramount that [the Commission has] barred individuals even when [a respondent's] conviction was based on dishonest conduct unrelated to securities transactions or securities business") (quoting Gary M. Kornman, 95 SEC Docket 14,246, 14,256 (Feb. 13, 2009)). See also, Ahmed Mohamed Soliman, 52 S.E.C. 227, 230-31 (1995) (revoking registration and imposing broker-dealer and investment adviser bars for submitting false documents to the Internal Revenue Service, a misdemeanor conviction); Bruce Paul, 48 S.E.C. 126, 128-29 (1985) (imposing broker-dealer bar with right to reapply for conviction of making false statements on income tax returns); Benjamin Levy Sec., Inc., 46 S.E.C. 1145, 1146-47 (1978) (imposing broker-dealer and investment adviser bars and other sanctions based on conviction for making false statements in a loan application).

Reinhard will be barred from association with a broker-dealer or an investment adviser. His criminal conduct was egregious, involved a high degree of scienter, and was recurrent, extending over a period of three years. His occupation, if he were allowed to continue it, would present opportunities for future violations of the securities laws. The degree of harm to investors and the marketplace from the conduct underlying Reinhard's antifraud injunction is quantified in his ill-gotten gains of \$5,857,241.09 plus prejudgment interest of \$2,258,940.58 that the court ordered disgorged.<sup>4</sup> Even disregarding the injunction entered by default or assuming arguendo that Reinhard was the victim, not the perpetrator, of conduct referenced in the injunctive complaint, as he has suggested in this proceeding, his criminal conduct shows a lack of honesty and indicates that he is unsuited to function in the securities industry. The degree of harm to the public from the conduct underlying his criminal conviction was approximately \$995,874. Bars are also necessary for the purpose of deterrence.

### III. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), DON WARNER REINHARD IS BARRED from associating with any broker or dealer.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), DON WARNER REINHARD IS BARRED from association with any investment adviser.

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

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<sup>4</sup> While, as the Commission noted in the Remand Order, the October 3, 2008, injunction against Reinhard was entered by default, he participated in the December 8, 2008, bench trial in his injunctive proceeding that addressed the issues of disgorgement, prejudgment interest, and civil penalties.

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