SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2926 / September 17, 2009

Admin. Proc. File No. 3-13121

In the Matter of

MARTIN A. ARMSTRONG

Inmate Register Number 12518-050
FCI Fort Dix
Federal Correctional Institution
5735 Hartford & Pointeville Road
Fort Dix, New Jersey 08460

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Injunction

Former associated person with an investment adviser was convicted of conspiracy to commit securities fraud, wire fraud, and commodities fraud and permanently enjoined from violating antifraud provisions of the federal securities laws. *Held*, it is in the public interest to bar Respondent from association with any investment adviser.

APPEARANCES:

Martin A. Armstrong, pro se.

David Stoelting, and *Jill Slansky*, for the Division of Enforcement.

Appeal filed: March 26, 2009
Last brief received: September 8, 2009

I.

Martin A. Armstrong, the founder, chairman, and owner of Princeton Economics International Ltd ("Princeton Economics"), an unregistered investment adviser, appeals from the decision of an administrative law judge. The law judge barred Armstrong from association with any investment adviser based on Armstrong's conviction on a single count of conspiracy to commit securities fraud, wire fraud, and commodities fraud and his injunction from violation of antifraud provisions of the federal securities laws. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

On August 17, 2006, Armstrong, then fifty-six years old, pled guilty to one count of conspiracy to commit securities fraud, wire fraud, and commodities fraud.[1] The district court sentenced Armstrong to sixty months' imprisonment and three years supervised release, and ordered him to pay $80,000,001 in restitution to sixty defrauded customers.[2]

As part of his guilty plea, Armstrong entered a sworn allocution admitting to and describing his crime. In his allocution, Armstrong admitted that between 1992 and 1999, he sold promissory notes issued by Princeton Economics subsidiaries ("Princeton Notes") to investors, mostly Japanese corporations. Armstrong, through his agents, represented to the investors that the proceeds from the sale of the Princeton Notes would be held in accounts at Republic New York Securities ("Republic") and that those accounts "would be separate and segregated from Republic's own accounts and would not be available to Republic for its own benefit."

According to Armstrong's allocution, after he suffered "some millions of dollars of trading losses," he decided "not to disclose to investors that . . . substantial losses had been experienced in this trading of futures. And we did not disclose it." Armstrong also admitted that his concealment of his losses went beyond non-disclosure: "letters were sent by my company to investors concerning how much money was in fact in the accounts assigned to them. I . . . did send out those letters, even though . . . I knew the amounts in the accounts were less than the letters stated."

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[1] *United States v. Armstrong*, No. 99 CR 00997 (S.D.N.Y. Aug. 17, 2006) (transcript of plea proceeding).

[2] *United States v. Armstrong*, No. 99 CR 00997 (S.D.N.Y. Apr. 17, 2007) ("Judgment in a Criminal Case" adjudicating guilt and imposing sentence). Investor losses totaled more than $737 million. Armstrong is currently incarcerated and due to be released on September 2, 2011.

Armstrong then described how the segregation of the investors' accounts came under pressure from Republic:

> [I]n about August 1999, Republic requested that I merge the [] investors' segregated accounts with trading accounts in which I sustained . . . substantial trading losses. And Republic further requested that monies in the investor accounts be used to offset trading losses in the trading accounts. I agreed to these requests . . . . This was contrary to the promises I had made and the representations I . . . continued to make to investors that the accounts pertaining to the Princeton Notes were [not] and would not be accessible by Republic itself for any purposes.

Armstrong further stated "I did not inform investors that I had agreed to Republic's request to merge the funds . . . nor did I inform the investors that the merger had in fact occurred, nor . . . [did I] disclose . . . [to] the investors that funds in their accounts had been used to pay for the [trading] losses . . . ."

Armstrong stated that he was aware at the time he made them that "[his] representations to investors that the accounts would be kept separate was an important factor in the investors' decision to hold the Princeton Notes." Armstrong "understood at that time that by falsely representing the situation of Republic with respect to segregation of investors' funds [and] by falsely representing to the investors that my trading performance was better than it actually was . . . what I was doing was wrong and improper." Finally, Armstrong admitted, "[i]n taking these actions and agreeing with others to do so, I knew at the time that I was deceiving the investors in connection with the purchase of Princeton Notes . . . ."

On July 22, 2008, in a related injunctive action, Armstrong consented to the entry of a permanent injunction from future violations of antifraud provisions of the securities laws.[3]

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[3] *SEC v. Princeton Econ. Int'l Ltd.*, No. 99 Civ. 9667 (S.D.N.Y. July 22, 2008). Notwithstanding his consent to the entry of the injunction, Armstrong appealed the injunction to the United States Court of Appeals for the Second Circuit. *Princeton Econ. Int'l Ltd. v. SEC* , *appeal docketed*, No. 08-5902-CV (2d Cir. Dec. 2, 2008). The Second Circuit dismissed the appeal on the grounds that "any challenge to the civil proceedings are precluded by the terms of the consent judgment which includes an explicit waiver of the right to appeal." *SEC v. Princeton Econ. Int'l Ltd.*, No. 08-5902-CV (2d Cir. Apr. 10, 2009). The Division has moved that the Second Circuit's order, issued after the Initial Decision, be admitted to the record pursuant to Rule 452 of the Rules of Practice, 17 C.F.R. § 201.452. We hereby grant the Division's motion. Other challenges by Armstrong to the district court's finding that he was in civil contempt and his subsequent confinement have been denied. *Armstrong v. Guccione*, 470 F.3d 89, 113 (2d Cir. 2006), *cert. denied*, 128 S. Ct. 486 (2007) (denying habeas corpus petition and approving civil

(continued...)

Among the allegations of the complaint in that action were that Armstrong owned Princeton Economics; he controlled "all of Princeton Economics' subsidiaries;" among Princeton Economics' subsidiaries were "special purpose entities," which "issued the Princeton Notes and managed the funds derived from the sale of the Princeton Notes;" and "Princeton Economics acted as an unregistered investment adviser to each of the special-purpose entities . . . ."[4]

Following the entry of the consent injunction against Armstrong, the Commission issued an Order Instituting Proceedings ("OIP") pursuant to Section 203(f) of the Investment Advisers Act of 1940 on August 6, 2008. On February 25, 2009, the law judge, acting on the Division of Enforcement's motion for summary disposition pursuant to Rule of Practice 250(a),[5] found that Armstrong had been convicted of conspiracy to commit securities fraud, wire fraud, and commodities fraud while he was acting as an investment adviser and was enjoined. The law judge barred Armstrong from association with any investment adviser. This appeal followed.

III.

Advisers Act Sections 203(e) and (f) allow for imposition of sanctions on a person associated with an investment adviser, consistent with the public interest, if the person 1) has been convicted of any felony involving the purchase or sale of a security or a felony arising out of the conduct of the business of an investment adviser, or 2) has been permanently enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities.[6] We find that Armstrong was convicted of conspiracy to commit securities fraud, wire fraud, and commodities fraud, a felony arising out of Armstrong's operation of Princeton Economics; and was permanently enjoined in connection with the purchase or sale of securities.

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[3] (...continued)
contempt findings); *Armstrong v. Grondolsky*, 290 Fed. Appx. 451 (3d. Cir. 2008) (affirming district court's denial of a habeas corpus petition and denying criminal-sentence credit for period of civil-contempt confinement).

[4] *SEC v. Princeton Econ. Int'l Ltd.*, No. 99 CR 00997 (S.D.N.Y. Sep. 13, 1999) (Complaint). The complaint was not in the record. Accordingly, on June 12, 2009, we directed the Division to supplement the record by providing a copy of the injunctive complaint, and the Division did so.

[5] 17 C.F.R. § 201.250(a).

[6] 15 U.S.C. §§ 80b-3(e) and (f).

We also find that Armstrong was associated with Princeton Economics at the time of the conduct addressed in the criminal and injunctive proceedings and that Princeton Economics was an investment adviser.[7] Armstrong has denied before the law judge and before us on appeal that he acted as an investment adviser. Armstrong's denial conflicts with the facts alleged in the complaint underlying the settlement agreement in which he consented to the entry of the injunction against him.[8] The complaint alleged that Princeton Economics acted as an unregistered investment adviser, that Armstrong controlled all of Princeton Economics' subsidiaries, and that the subsidiaries managed the funds derived from the Princeton Notes.[9] We have repeatedly held that a party may not collaterally attack the factual allegations in an injunctive complaint brought by the Commission when, as is the case here, the party has consented to the entry of an injunction on the basis of such allegations.[10] Consequently, we find that Armstrong satisfies the statutory requirements for imposition of sanctions.

To determine the appropriate remedial sanction we evaluate the following factors: the egregiousness of respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that

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[7] Advisers Act Section 203(f) covers all investment advisers, registered or not. *Teicher v. SEC*, 177 F.3d 1016, 1017 (D.C. Cir. 1999).

[8] *See* discussion *supra* p. 4; *see also Marshall E. Melton*, 56 S.E.C. 695, 712 (2003) (stating that, "[d]efendants in Commission injunctive actions must understand that, if the Commission institutes an administrative proceeding against them based on an injunction to which they consented after issuance of this opinion, they may not dispute the factual allegations of the injunctive complaint in the administrative proceeding"); 17 C.F.R. § 202.5(e) (stating that respondent who consents to judgment may not deny allegations of the complaint).

[9] *See* 15 U.S.C. § 80b-2(a)(11) (defining an "investment adviser" as "any person who, for compensation, engages in the business of advising others, . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities").

[10] *See, e.g.*, *Schield Mgmt. Co.*, Securities Exchange Act Rel. No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 859 (precluding respondents from disputing allegations in injunctive complaint after consenting to entry of injunction); *see also Gary M. Kornman*, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14257 (finding criminal conviction based on guilty plea has collateral estoppel effect precluding relitigation of issues in Commission proceedings).

respondent's occupation will present opportunities for future violations.[11] No single factor is dispositive.[12]

We have consistently found that antifraud violations, such as those committed by Armstrong, are "especially serious and subject to the severest sanctions."[13] We are responsible for protecting the public interest, and "[f]idelity to the public interest" requires severe sanctions for fraudulent conduct because the "securities business is one in which opportunities for dishonesty recur constantly."[14] In fact, "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions."[15] We have found that "an antifraud injunction can, in the first instance, indicate the appropriateness in the public interest of . . . [a] bar from participation in the securities industry."[16]

In this case, Armstrong's actions were egregious and recurrent. He conspired to defraud sixty investors to whom he has been required to pay approximately $80 million in restitution. Armstrong was also sentenced to sixty months' imprisonment for his crime, a sentence that reflected the district court judge's view of the seriousness of Armstrong's misconduct. Armstrong's conduct was not a brief, isolated, event; his fraudulent activity lasted from 1992 until 1999 involving multiple misrepresentation to numerous clients.

Armstrong's actions show a high degree of scienter. At the time he conspired to commingle investors' accounts with other accounts to cover trading losses and to conceal the account commingling, he "knew . . . that [he] was deceiving the investors in connection with the purchase of Princeton Notes" and knew that "[t]his was contrary to the promises [he] had made and the representations [he] . . . continued to make to investors . . . ." Armstrong admitted that he "understood at that time that by falsely representing the situation of Republic . . . [and] by falsely representing to the investors that my trading performance was better than it actually was . . . what [he] was doing was wrong and improper."

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[11] *Scott B. Gann*, Exchange Act Rel. No. 59729 (Apr. 8, 2009), 95 SEC Docket 15818, 15823 (citing *SEC v. Steadman*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)), *appeal filed*, No. 09-60435 (5th Cir. June 5, 2009).

[12] *Gann*, 95 SEC Docket at 15823.

[13] *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2608; *Melton*, 56 S.E.C. at 713.

[14] *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976).

[15] *Melton*, 56 S.E.C. at 713.

[16] *Id.* at 710.

Not only has Armstrong given no assurances against future violations, he denies that he has engaged in any wrongful conduct; he stated in his answer to the OIP that "what I pled to was still not a crime." Armstrong devotes his extensive briefs before the law judge and us exclusively to arguments addressing issues in the criminal, injunctive, and civil contempt proceedings. He argues, for example, that the district courts lacked subject-matter jurisdiction over the disputes and alleges that federal prosecutors, Commission staff, and the receiver engaged in misconduct. Armstrong also argues that his conduct was neither criminal nor fraudulent. He is precluded from relitigating these issues before us.[17] As we have clearly stated in multiple contexts, a follow-on proceeding is not the proper forum to contest the factual and legal findings of the underlying proceedings.[18] Indeed, Armstrong has availed himself of the opportunity to raise these issues in the courts that heard his criminal and injunctive cases.[19]

We further find that there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again.[20] Upon his release from prison he would be in his early sixties and must pay approximately $80 million in restitution.

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[17] *See, e.g., Kornman*, 95 SEC Docket at 14257 (precluding collateral attacks on criminal conviction); *Melton*, 56 S.E.C. at 712 (precluding relitigation of injunctive action).

[18] *See, e.g., James E. Franklin*, Exchange Act Rel. No. 56,649 (Oct. 12, 2007), 91 SEC Docket 2708 ("It is well established that [respondents are] collaterally estopped from challenging in [follow-on] administrative proceeding the decisions of the district court in the injunctive proceeding."); *Melton*, 56 S.E.C. at 712 (stating that defendants in Commission injunctive actions may not dispute the factual allegations of the injunctive complaint in the administrative proceeding after consenting to the entry on an injunction in that proceeding); *see also* 17 C.F.R. § 202.5(e) ("announc[ing Commission] policy not to permit a defendant . . . to consent to a judgment . . . or order that imposes a sanction while denying the allegations in the complaint . . . .").

[19] *See* cases cited *supra*, note 3.

[20] *Spangler*, 46 S.E.C. at 252 (stating that "securities business is one in which opportunities for dishonesty recur constantly").

Based on a consideration of the relevant factors, and all of the circumstances in this case, we find that barring Armstrong from association with any investment adviser serves the public interest and is remedial because, as discussed, it will protect the investing public from the likelihood that Armstrong will commit future violations of the federal securities laws.

An appropriate order will issue.[21]

By the Commission (Chairman SHAPIRO and Commissioners WALTER, PAREDES, and AGUILAR); Commissioner CASEY not participating.

Elizabeth M. Murphy
Secretary

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[21] We have considered all of the parties' contentions. 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

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MARTIN A. ARMSTRONG
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ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Martin A. Armstrong be, and he hereby is, barred from association with any investment adviser.

By the Commission.

Elizabeth M. Murphy
Secretary