INITIAL DECISION RELEASE NO. 446
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14509

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	
PETER EMRICH,	:	
ALBERTO FERREIRAS,	:	INITIAL DECISION AS TO
JAMES FRANKFURTH,	:	JAMES FRANKFURTH
FRANK ROSSI, and	:	December 30, 2011
DANA VALENSKY	:	

APPEARANCES: Nancy A. Brown and Peter A. Pizzani for the Division of Enforcement, Securities and Exchange Commission.

James Frankfurth, pro se.

BEFORE: Robert G. Mahony, Administrative Law Judge.

Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on August 18, 2011, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Respondent James Frankfurth (Frankfurth or Respondent) was served with the OIP pursuant to Rule 141(a)(2)(i) of the Commission's Rules of Practice on October 3, 2011.[1] The OIP alleges that on May 9, 2005, Respondent pled guilty to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371 before the United States District Court for the Eastern District of New York in United States v. Kozak, 02-CR-879 (Kozak Case). On June 21, 2010, a criminal judgment was entered against Respondent in the Kozak Case, and he was sentenced to five years probation including six months home detention and ordered to pay restitution of $338,338.

The Commission instituted this administrative proceeding to determine whether the allegations in the OIP are true and, if so, to decide whether remedial action is appropriate in the

[1] This proceeding has been stayed as to Respondents Peter Emrich, Alberto Ferreiras, Frank Rossi, and Dana Valensky pending Commission approval of a settlement.

public interest. The Division of Enforcement (Division) seeks a collateral bar under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and seeks to bar Respondent from participating in any penny stock offering.

In a Scheduling Order issued on October 28, 2011, the Division was granted leave to file a Motion for Summary Disposition (Motion) by November 21, 2011. Respondent's Opposition to the Motion was due by December 5, 2011, and the Division's Reply to the Opposition was due by December 12, 2011.

On November 17, 2011, the Division filed its Motion and Supporting Memorandum of Law along with a Declaration of Nancy A. Brown In Support of the Motion (Brown Declaration), which includes twelve exhibits. Exhibit A is the Indictment against Respondent in the Kozak Case. Exhibit B is the Complaint filed in SEC v. Heritage Film Group, LLC, No. 02-CIV-4363 (E.D.N.Y) (Heritage Film Case). Exhibit C is Frankfurth's registration report as maintained in the FINRA Central Registration Depository. Exhibit D is the plea form from the Kozak Case. Exhibit E is the transcript of the May 9, 2005, Kozak Case hearing. Exhibit F is the June 17, 2010, sentencing hearing transcript in the Kozak Case. Exhibit G is the minute entry for the June 17, 2010, sentencing hearing. Exhibit H is the Kozak Case Judgment against Frankfurth entered on June 21, 2010. Exhibit I is the Case Inquiry Report showing that Frankfurth has failed to make any restitution payments as of October 18, 2011. Exhibit J is the affidavit of service of the OIP. Exhibit K is an October 3, 2011, Division letter notifying Respondent of the availability of the investigative file. Exhibit L is Respondent's Answer to the OIP. With the exception of Exhibit B[2], all other exhibits are entered into evidence. [3]

Frankfurth filed an Opposition to the Motion on December 13, 2011, and the Division filed its Reply on December 14, 2011.

Standards for Summary Disposition

After a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. 17 C.F.R. § 201.250(a). 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. 17 C.F.R. § 201.250(b). The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. See 17 C.F.R. § 201.323.

[2] Exhibit B has no bearing on this administrative proceeding. Pending resolution of the Kozak Case, the Heritage Film Case was stayed, and no judgments have been entered in that case.

[3] References to the Exhibits will be cited as "(Exhibit _ at _.)".

The Division maintains that it is entitled to a grant of its Motion because Respondent was indicted, pled guilty to one count[4] of conspiracy to commit securities fraud, and a Judgment was entered against him in the Kozak Case. (Motion at 5-6.) The Commission has repeatedly upheld use of the summary disposition procedure in cases such as this one where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 (collecting cases); Jeffrey L. Gibson v. SEC, 561 F.3d 548, 553-54 (6th Cir. 2009) (petition for review denied).

Findings of fact and conclusions of law made in the underlying action are immune from attack in a follow-on administrative proceeding. Ted Harold Westerfield, Exchange Act Release No. 41126 (Mar. 1, 1999), 54 S.E.C. 25, 32 n.22 (collecting cases). The Commission does not permit a respondent to relitigate issues that were addressed in previous proceedings against the respondent. William F. Lincoln, Exchange Act Release No. 39629 (Feb. 9, 1998), 53 S.E.C. 452, 455-56. To the extent that Frankfurth's Answer raises such challenges, his collateral attack provides no basis for denying the Motion.

There is no genuine issue with regard to any fact that is material to this proceeding. There is no dispute that Respondent was indicted and pled guilty to conspiracy to commit securities fraud resulting in a Judgment against him in the Kozak Case. Accordingly, I GRANT the Division's Motion. See 17 C.F.R. § 201.250.

Findings of Fact

Both the Kozak Case and the Heritage Film Case were brought based on Frankfurth's participation in a fraudulent and unregistered offering of Out of the Black Partners, LLC (Out of the Black) securities. (Exhibits A, B.) Frankfurth pled guilty to Count One of the Indictment in the Kozak Case and is not permitted to contest the factual allegations set forth therein during this follow-on proceeding. (Exhibits D, E.) The relevant allegations are as follows:

- Frankfurth was the executive director of American Cinema Services, LLC (ACS), a Delaware limited liability company operating from an office in San Diego, California. Subsequently, Frankfurth operated Aetna Venture Capital (AVC), a telephone marketing company operated from San Diego, California. (Exhibit A at 3.)

- At the time of the underlying misconduct, Frankfurth's Series 7 and 24 licenses had expired, or were withdrawn, and he was not associated with any registered broker-dealer. (Exhibit C.)

- From approximately April 1999 through May 2001, Frankfurth knowingly and willfully conspired to employ manipulative and deceptive devices to violate securities laws. Frankfurth sold Out of the Black securities through ACS, an independent sales office (ISO) that he operated. Sales agents used cold-calling and high-pressure techniques to solicit investors to buy Out of the Black securities. Frankfurth and his co-conspirators sold Out of

[4] The Second Count in the Kozak Case, alleging fraudulent securities laws violations, was dismissed on a Motion by AUSA Charles Kelly. (Exhibits G, H.)

the Black securities to ninety-five investors and raised approximately $3.1 million in the unregistered offering of securities. (Exhibit A at 6, 9-10; Exhibit H at 6-10 (listing the investors).)

- Respondent and his co-conspirators circulated Private Placement Memorandums (PPM) that materially misrepresented how investor proceeds would be used and stated that between ten and fifteen percent of the proceeds would be paid as commissions to the ISOs, including ACS and Frankfurth. Instead, the commissions were between thirty and forty-five percent of investor proceeds, which Frankfurth and his co-conspirators concealed. (Exhibit A at 8, 10-12.)

- On July 6, 2000, Respondent and a co-conspirator sold three units of Out of the Black securities for $10,000 each to an investor located in Center Moriches, New York, and they caused Out of the Black to pay them $11,700 in commissions. (Exhibit A at 13.)

- On or about January 10, 2011, Frankfurth sold one unit of Out of the Black securities for $10,000 to an investor in Hastings, Florida. On or about January 12, 2011, Frankfurth caused Out of the Black to pay him $3,900 in commissions. (Exhibit A at 14.)

- Between March 2000 and February 2001, Frankfurth raised $1,389,744 from sales of Out of the Black securities and received $542,000 in commissions; representing a commission of approximately thirty-eight percent. Based on the figures disclosed in the PPM, Frankfurth should have only received between $138,974 and $208,462 in commissions, or between ten and fifteen percent commission. (Exhibit A at 11-12.)

- Between approximately April 1999 and July 2002, Out of the Black investors did not receive any returns on their investments. (Exhibit A at 11.)

Discussion and Conclusions

The Division requests that a collateral bar under Dodd-Frank be imposed on Frankfurth, barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO). (Motion at 1, 15.) Additionally, the Division requests that Frankfurth be barred from participating in any penny stock offering. (Id.)

In response, Frankfurth raises several defenses. Frankfurth asserts: (1) this proceeding is barred on the grounds of laches, (2) this proceeding is barred on the grounds of double jeopardy, (3) he was deprived of counsel because he received ineffective counsel during the Kozak Case, and (4) the OIP contains factual errors. (Answer at 1; Opposition at 1.) Each of Respondent's defenses were considered and rejected.

1. Doctrine of Laches

The Doctrine of Laches is defined as "[t]he equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting the claim, when

that delay or negligence has prejudiced the party against whom relief is sought." Black's Law Dictionary 879 (7th ed. 1999). Respondent contends that the doctrine of laches bars the Commission from bringing this proceeding because the "case dates back to before 1999." (Answer at 1.) However, the court in U.S. v. Popovich, 820 F.2d 134 (5th Cir. 1987), states that "laches may not be asserted as a defense against the United States when it is acting in its sovereign capacity to enforce a public right or protect the public interest." Id. at 136. This proceeding was instituted against Respondent by the Commission, acting in its sovereign capacity, to protect the public interest. For these reasons, the doctrine of laches is rejected as a defense to this follow-on proceeding.

2. Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. Respondent states that this proceeding is "nothing more than double jeopardy as [his] trial was years ago." (Opposition at 1.) In other words, Respondent argues that this proceeding seeks to impose a second criminal punishment on him, in a successive proceeding, that jeopardy attached in the Kozak Case and therefore, this proceeding is precluded. The Division relies on Gary M. Korman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, and states that, "Double Jeopardy is not a cognizable defense to civil administrative proceedings initiated after a criminal judgment." (Reply at 2.)

In Korman, the Commission relied on Hudson v. United States, 522 U.S. 93, 98-99 (1997), in finding that "Double Jeopardy does not protect against all additional sanctions 'that could, in common parlance, be described as punishment,' but 'only against . . . multiple criminal punishments for the same offense." 95 SEC Docket at 14266-67. Further, the Commission stated that neither a broker-dealer bar nor an investment adviser bar is a criminal penalty, as evidenced by the fact "that Congress confers authority solely on the Commission to institute follow-on administrative proceedings under Exchange Act Section 15(b)." Id. at 14267 (relying on William F. Lincoln, Exchange Act Release No. 39629 (Feb. 1998), 59 SEC Docket 1493). Accordingly, the Commission has the authority to institute this proceeding against Respondent, and the sanctions sought by the Division are not criminal penalties. Therefore, Double Jeopardy does not preclude this proceeding.

3. Ineffective Assistance of Counsel

Respondent asserts that he was deprived of effective counsel in the Kozak Case because his attorney suffers from both Parkinson's Disease and Alzheimer's. (Answer at 1; Opposition at 1.) Respondent states that he was not made immediately aware of his attorney's illnesses. (Answer at 1; Opposition at 1.) The Division maintains that Respondent's assertion that he was not provided with effective counsel in the Kozak Case does not give him grounds to avoid the collateral estoppel effect of the Kozak Case Judgment. (Motion at 6-7.)

Collateral estoppel bars "a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one." Black's Law Dictionary 256 (7th ed. 1999). It is well established that in these follow-on proceedings, the

Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. James E. Franklin, 91 SEC Docket 2708, 2713 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). Additionally, "'[i]t is well-settled that a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case.'" In the Matter of David G. Ghysels, Initial Decision Release No. 391 (Dec. 11, 2009), 97 SEC Docket 23911, 23913 (quoting United States v. Podell, 572 F.2d. 31, 35 (2d Cir. 1978)), aff'd, Exchange Act Release No. 62937 (Sept. 20, 2010), 99 SEC Docket 32610.

Respondent did not raise the issue of the effectiveness of his attorney at any time during the Kozak Case. In fact, Respondent was specifically asked by the Court in the Kozak Case, when he pled guilty, whether he was "satisfied with the legal representation [he had] received up to that point?" to which Respondent replied, "Yes, sir." (Exhibit E at 10-11.) The Court in the Kozak Case further inquired whether Respondent thought his attorney did a good job, to which Respondent again replied, "Yes, sir." (Id. at 11.) Because Respondent's claim of ineffective counsel during the Kozak Case cannot be litigated now, it fails as a defense in this proceeding.

4. Factual Errors

Lastly, Respondent contends that this proceeding is based on factual errors. Specifically, Respondent asserts that he "has never done any business with Peter Emrich, Alberto Ferreiras, Frank Rossi or Dana Valensky." Additionally, he asserts that he "never received $540,000 in commissions" and that he "never lived in Los Angeles." (Opposition at 2.) The Division correctly states that the Respondent is precluded from now contesting the factual allegations of the Indictment in the Kozak Case. As previously stated, Respondent is not permitted to challenge findings of fact and conclusions of law made in an underlying action. Further, Respondent is not permitted to relitigate the issues that were addressed in the previous proceeding. This is exactly what Respondent seeks to do. Accordingly, Respondent's defense that this proceeding is based on factual errors is rejected.

Sanctions in the Public Interest

The Division seeks to bar Frankfurth from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. (Motion at 15; Reply at 3.) Additionally, the Division requests that Frankfurth be barred from participating in any penny stock offering. (Id.) Section 15(b)(6) of the Exchange Act authorizes the Commission to bar from associating with a broker or dealer, a person associated with a broker or dealer at the time of the misconduct, consistent with the public interest, if the person is convicted in the past ten years of a felony or misdemeanor involving the purchase or sale of a security while associated with a broker or dealer. 15 U.S.C. §§ 78o(b)(4)(B), (b)(6)(A)(ii). Respondent was indicted and pled guilty to conspiracy to commit securities fraud resulting in a Judgment against him in the Kozak Case. Therefore, he is subject to Section 15(b)(6) of the Exchange Act, and may be barred from associating with a broker or dealer, if such sanctions are in the public interest.

To determine whether sanctions under Section 15(b) of the Exchange Act are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. See KPMG Peat Marwick LLP, Exchange Act Release No. 43862 (Jan. 19, 2001), 74 SEC Docket 384, 436, motion for reconsideration denied, Exchange Act Release No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, petition denied, 289 F.3d 109 (D.C. Cir. 2002); Conrad P. Seghers, Advisers Act Release No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2303-04 (quoting Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979)). No one factor is controlling. Conrad P. Seghers, Investment Advisers Act of 1940 (Advisers Act) Release No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2298. Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Frankfurth's actions were egregious and recurrent. Frankfurth sold unregistered securities from approximately April 1999 through May 2001 to ninety-five investors and raised approximately $3.1 million in the unregistered offering. Further, he repeatedly misrepresented his commissions to investors. His misconduct resulted in an order by the court in the Kozak Case to pay restitution of more than $300,000. Frankfurth acted with scienter by knowingly and willfully circulating the materially misleading PPMs to potential investors.

Frankfurth has not admitted the wrongful nature of his conduct. Although he pled guilty to conspiracy to commit securities fraud in the Kozak Case, Frankfurth now seeks to challenge the facts surrounding his misconduct. In fact, in his Answer, he raises several defenses to the administrative proceeding, including challenges to the factual allegations to which he pled guilty in the Kozak Case and the suggestion that he was provided with ineffective counsel. (Answer at 1.) Likewise, he has made no assurances against future violations. Additionally, although his securities licenses have lapsed, without the imposition of a bar, Frankfurth can retake the licensing examinations and return to the securities industry, which would present opportunities for future violations.

The Commission has often emphasized that the public interest determination extends 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, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1145, aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., Exchange Act Release No. 11773 (Oct. 24, 1975), 46 S.E.C. 78, 100. In view of the Steadman factors in their entirety, imposing associational bars is necessary and appropriate in the public interest in this proceeding.

1. Collateral Bar Under Dodd-Frank

The Division requests that Frankfurth be barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and NRSRO. (Motion at 15; Reply at 3.) The requested sanction will be granted as to all of the above except municipal advisor and NRSRO.

Dodd-Frank, enacted July 21, 2010, added collateral bar sanctions to Section 15(b)(6)(A). The new sanctions authorize the Commission to simultaneously suspend or bar an individual who has engaged in certain unlawful conduct from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Prior to Dodd-Frank, such sanctions were generally authorized only on a piecemeal basis, i.e., only when an individual sought association with that particular branch of the securities industry at issue. Teicher v. SEC, 177 F.3d 1016, 1020-21 (D.C. Cir. 1999) (the Commission could not impose sanctions as to any specific branch until it could "show the nexus matching that branch"). The issue here is whether Dodd-Frank's broader collateral bar can be applied to Frankfurth, whose misconduct occurred prior to Dodd-Frank's enactment. The Commission has not yet ruled on this issue. [5]

The Division takes the position that the collateral bars under Dodd-Frank "constitute prospective relief only, and are clearly in the public interest" and, therefore, should be imposed on Frankfurth despite the fact that his misconduct predates Dodd-Frank. (Motion at 9-10.) Specifically, the Division asserts that the Commission's authority to impose a collateral bar under Dodd-Frank would "limit the scope of Respondent's conduct only *in futuro*." (Motion at 11.) The Division contends that all of the Steadman factors are satisfied and, therefore, the imposition of Dodd-Frank collateral bar is appropriate. (Motion at 12-14.) Frankfurth does not specifically address the imposition of a collateral bar under Dodd-Frank or the issue of retroactivity.

The leading case on retroactivity is Landgraf v. USI Film Products, 511 U.S. 244, 280 (1994), where the Court stated:

> when a case implicates a federal statute enacted after the events giving rise to the suit, a court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that the statute does not govern absent clear congressional intent favoring such a result.

"The presumption against statutory retroactivity is founded upon elementary considerations of fairness dictating that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." Id. See also Sacks v. SEC, 2011 WL 590308 (9th Cir. 2011), amended, 2011 WL 3437088 (9th Cir. 2011); Koch v. SEC, 177 F.3d 784 (9th

[5] See e.g., Petitions for Review (Petitions) in John W. Lawton, Initial Decision Release No. 419 (April 29, 2011); Evelyn Litwok, Initial Decision Release No. 426 (Aug. 4, 2011). These Petitions are pending before the Commission.

Cir. 1999). Under Landgraf, a statute is impermissibly retroactive when it "attaches new legal consequences to events completed before [the statute's] enactment." 511 U.S. at 269-70.

Frankfurth's willful violation of Section 15(b) of the Exchange Act clearly subjects him to a bar from associating with brokers and dealers. 15 U.S.C. §§ 78o(b)(4)(B), 78o(b)(6)(A)(ii). Thus, a broker and dealer associational bar on Frankfurth is appropriate.

The question, however, is whether Frankfurth had a reasonable expectation that his misconduct would not affect his ability to associate with industry segments other than brokers or dealers. Before Dodd-Frank, willful violation like those of Frankfurth, while associated with a broker or dealer, subjected a person to a collateral bar from associating with investment advisers, municipal securities dealers, and transfer agents, even though the bar could not be imposed until the person actually sought such association. 15 U.S.C. §§ 78o-4(c)(4), 78q-1(c)(4)(C), 80b-3(e)(5) & (f); Teicher, 177 F.3d at 1020-21. Therefore, as to these collateral bars, Frankfurth had no pre-existing right to associate with investment advisers, municipal securities dealers, or transfer agents, and such collateral bars do not attach new legal consequences to pre Dodd-Frank conduct.

Dodd-Frank amended Section 15(b) of the Exchange Act to include two newly-created associational bars: municipal advisors and NRSROs. Because such bars did not exist at the time of Respondent's conduct, I find that they attach new legal consequences to Respondent's conduct and are impermissibly retroactive.[6]

Based on the foregoing, Frankfurth is subject to Section 15(b) of the Exchange Act, and grounds exist to impose remedial sanctions, including a collateral bar under Dodd-Frank. Therefore, barring Frankfurth from associating with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent is warranted.

Order

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, James Frankfurth is barred from association with any broker, dealer, investment adviser, municipal securities dealer, transfer agent; and from participating in any penny stock offering.

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[6] Landgraf provides an exception to statutory retroactivity: "[w]hen the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive." Landgraf, 511 U.S. at 273. Application of the Landgraf exception requires determining whether a Commission bar is a form of prospective remedial relief or a punitive sanction. Such a determination is fact-specific and the case law is ambiguous. See e.g., Commissioner Kathleen L. Casey, Address to Practising Law Institute's SEC Speaks in 2011 Program (Feb. 4, 2011); SEC v. Johnson, 87 F.3d 484 (D.C. Cir. 1996) (vacating the Commission's order imposing a six-month suspension of a securities industry supervisor as time barred under 28 U.S.C. § 2462 because the sanction sought operated as a penalty and was not remedial). I therefore decline to apply the Landgraf exception with respect to the municipal advisor and NRSRO industry bars.

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 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(h) of the Commission's Rules of Practice. 17 C.F.R. § 201.111(h). 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.

Robert G. Mahony
Administrative Law Judge