INITIAL DECISION RELEASE NO. 1018
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946

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

In the Matter of GEORGE CHARLES CODY PRICE	INITIAL DECISION June 3, 2016

APPEARANCES: Lynn M. Dean for the Division of Enforcement, Securities and Exchange Commission

John E. Dolkart, Jr., for Respondent George Charles Cody Price

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

SUMMARY

A district court enjoined Respondent George Charles Cody Price from violating the antifraud provisions of the federal securities laws. Based on such an injunction, Section 203(f) of the Investment Advisers Act of 1940 authorizes barring Price from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, industry bar) if it is in the public interest. Doing so is in the public interest here, and I grant the Division of Enforcement's summary disposition motion and impose an industry bar against Price.

I. PROCEDURAL BACKGROUND

On November 5, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Price pursuant to Section 203(f) of the Advisers Act. The OIP alleges that in June 2015, a final judgment was entered by consent against Price in the civil action *SEC v. ABS Manager, LLC*, No. 13-cv-319 (S.D. Cal.), permanently enjoining him from future violations of the antifraud provisions of the federal securities laws. Price was served with the OIP on November 16, 2015, and he filed an answer on December 7, 2015. *George Charles Cody Price*, Admin. Proc. Rulings Release No. 3337, 2015 SEC LEXIS 4816 (ALJ Nov. 23, 2015).

At a November 30, 2015, prehearing conference, I granted Price's request for a settlement conference. Tr. 9-12. I also permitted the Division to file a motion for summary disposition and set related due dates in the event no settlement occurred. *George Charles Cody*

Price, Admin. Proc. Rulings Release No. 3366, 2015 SEC LEXIS 4921, at *4 (ALJ Dec. 2, 2015). Administrative Law Judge Cameron Elliot conducted a settlement conference on December 16, 2015, but no offer of settlement resulted. Thereafter:

- The Division filed a motion for summary disposition on December 21, 2015, requesting that Price be permanently barred from the securities industry. Accompanying the motion was a declaration of Division counsel Lynn M. Dean, attaching the following filings from the underlying civil action as exhibits: the Commission's complaint filed in *SEC v. ABS Manager, LLC*, on February 8, 2013 (Div. Ex. 1); Price's consent to final judgment, dated April 30, 2015 (Div. Ex. 2); and the final judgment, dated July 16, 2015 (Div. Ex. 3).

- Price filed an opposition on January 28, 2016, arguing for a "less than permanent" bar and a waiver from the "bad actor" disqualifications under Regulations A and D of the Securities Act of 1933. Price Opp. at 6. The opposition attached exhibits A–C, as well as Price's declaration, which included its own exhibit A (a copy of Price's declaration in support of summary judgment in the civil action with exhibits).

- The Division filed a reply on February 1, 2016, with a supplemental declaration of Dean.

- Price requested leave to file a surreply on February 11, 2016, which I granted over the Division's objection. *George Charles Cody Price*, Admin. Proc. Rulings Release No. 3650, 2016 SEC LEXIS 744 (ALJ Feb. 26, 2016). Accompanying the surreply was a supplemental declaration from Price with three exhibits.

I admit into evidence the exhibits attached to these filings and take official notice of the record in the underlying civil action. 17 C.F.R. §§ 201.111(c), .323. I apply preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The findings and conclusions herein are based on the entire record. I have considered and rejected all arguments and proposed findings and conclusions inconsistent with this initial decision.

II. SUMMARY DISPOSITION STANDARD

Summary disposition under Rule of Practice 250, 17 C.F.R. § 201.250, is appropriate here. Its application is generally proper in "follow-on" proceedings like this one, where the administrative proceeding is based on a criminal conviction or a civil injunction. *See, e.g.*, *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40-41 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). Rule 250(b) specifies that a motion for summary disposition may be granted if there is no genuine issue of material fact and the moving party is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b).

III. FINDINGS OF FACT

On July 16, 2015, a final judgment in the civil action was entered by consent against Price, permanently enjoining him from future violations of the antifraud provisions of the federal securities laws, namely Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Section 206(4) of the Advisers Act and Rule

206(4)-8 thereunder. Div. Ex. 2 at 2; Div. Ex. 3 at 2-4. He was also ordered to pay disgorgement of $339,900, plus prejudgment interest, and a civil penalty of $150,000. Div. Ex. 3 at 4. Although Price neither admitted nor denied the complaint's allegations, he agreed in consenting to the judgment that "entry of a permanent injunction may have collateral consequences under federal or state law," and "that he shall not be permitted to contest the factual allegations of the complaint" in "any disciplinary proceeding before the [Commission] based on entry of the injunction in this action." Div. Ex. 2 at 5. And despite "generally den[ying] the allegations contained in the . . . complaint for purposes of [his] Answer," Price subsequently conceded those allegations "[f]or purposes of this Proceeding." Answer at 1; Price Opp. at 4. Based on that complaint,[1] I find the following facts:

A. The Funds and Their Investments

From 2009 to February 2013, Price, age thirty-four at the time, solely owned, operated, and controlled an Arizona company called ABS Manager, LLC, an unregistered investment adviser located in Tempe, Arizona, and La Jolla, California. Div. Ex. 1 at 4-5; OIP at 1; Answer at 1; Price Opp. at 2, 4. From 2009 to at least 2012, Price raised through ABS $18.8 million from thirty-five investors in three separate offerings and put the money into the three funds that ABS and Price managed and were investment advisers to: ABS Fund, Platinum Fund, and Capital Access Fund. Div. Ex. 1 at 1-2, 4, 5, 14. Investors received ownership interests in the funds. *Id.* at 5.

Price invested the three funds' assets in mortgage-backed securities called collateralized mortgage obligations (CMOs). *Id.* at 2, 6. Typically, CMO investors receive payouts flowing from principal and interest payments on underlying mortgages that have been pooled and securitized. *Id.* at 2. The payouts depend on the particular class or "tranche" of security that the investor holds. *Id.* Price invested almost exclusively in two complex tranches of agency CMOs that were among the riskiest types of CMOs because they were "interest-only," meaning their payouts flowed entirely from borrowers' payments on interest rather than principal. *Id.* at 2, 6. The interest-only feature increased the risk of investor losses because the interest stream was more likely to decrease or stop as mortgages were retired, were redeemed (via borrower refinancing or prepayment, for example), or entered into default. *Id.*

Though agency CMOs are "government backed" securities in a sense, having been issued or guaranteed by a government agency or government-sponsored entity, such backing extended only to interest payments on non-retired and non-redeemed mortgages, not to "interest rate risk, prepayment risk, [or] market risk." *Id.* at 7, 9. That is, if underlying mortgages were retired or redeemed, then "interest income for the [interest-only] or Inverse [interest-only] tranches is

[1] The Commission relies "on the factual allegations of the injunctive complaint in a civil action settled on consent in determining the appropriate remedial action." *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *28 (July 25, 2003). Because I am able to resolve the Division's motion on the facts of the civil complaint, the parties' arguments concerning certain additional misconduct alleged in the Division's supplemental declaration are immaterial. *See* Supp. Dean Decl. at ¶¶ 3-7; Price Surreply (attaching a declaration of Price and exhibits as Ex. B); *see also George Charles Cody Price*, 2016 SEC LEXIS 744.

permanently lost." *Id.* at 7. Government backing did "not guarantee that investors [would] recoup their original investment or receive the interest income on the mortgage loans." *Id.*

B. Price's Fraudulent Conduct

Price, through his ABS advisory business, created private placement memoranda (PPMs) for the three funds and distributed them to investors, and he solicited investors for the three funds in person and "through newspaper advertisements, radio spots, websites, mass-mailers, and referrals from accountants." Div. Ex. 1 at 7, 8.

In his solicitations to investors, Price misrepresented the funds as "safe [and] reliable" and failed to disclose the risks of the funds' investments. *Id.* at 8. The PPMs said the funds would invest in mortgage-backed securities and outlined some general risks of doing so, but did not disclose that the investments were in interest-only tranches or discuss the "exceptionally risky and . . . unpredictable" nature of those tranches. *Id.* at 8-9. In radio shows and website promotions, Price "repeatedly stated" that the funds' investments were "government backed bonds" that were "very safe and secure investments," and on the radio claimed they were "government bonds." *Id.* at 8. Price further promoted them as "safe & reliable" and "the perfect fit for your retirement funds." *Id.* These misrepresentations were materially false and misleading, deceptively promoting the benefits of generic mortgage-backed securities inapplicable to the much riskier interest-only tranches in which the funds invested. *Id.* at 8-9.

Price also misrepresented the funds' performance and asset amounts. Monthly statements, as well as one of the fund's PPM and website, claimed annualized returns of 18% and/or 12.5% from 2009 and 2010 through mid-2012. *Id.* at 9-10. Likewise, Price wrote in a 2010 email newsletter that "[a]ll of the bonds" were making "well over 18% and will continue to do so for quite some time," and said over the radio that such returns were "extraordinary" and in the "high, double-digit[s]." *Id.* at 9 (first alteration in original). In fact, from 2010 to 2012, the underlying value of the securities decreased significantly and the actual return for the funds was negative over the three-year period, losing 2% overall. *Id.* at 10. Price knew this. *Id.* He internally admitted in April 2010 that one of the funds was "upside down 5% in principal value" but contemporaneously stated to investors that the fund was performing at 18%. *Id.* He also overstated the funds' assets by claiming that two funds were worth $62.4 million and $72 million, respectively, when records reflect that they had no more than $18.8 million in assets at any time. *Id.* at 11.

Moreover, Price's biography in the PPMs and on ABS-run websites falsely stated that he "began dealing with the buying and selling of mortgage pools on the secondary market" at Wells Fargo and had worked as a consultant and contractor at Goldman Sachs "where he was responsible for the buying and selling of mortgage pools worth hundreds of millions of dollars." *Id.* He said the same to investors over the radio, during phone calls, and in seminar presentations. *Id.* But Price never worked at Goldman Sachs in any capacity, and at Wells Fargo he only worked in mortgage origination and never in mortgage securitization or trading. *Id.*

Lastly, the PPMs for the funds stated that ABS would be compensated "only after" investors received the promised maximum annual return of either 12.5% or 18%. *Id.* But the

funds' returns never exceeded 3% from 2010 to 2012, so ABS and Price were not entitled to any payments during that time. *Id.* at 11-12. Yet, Price withdrew cash from the funds each month, "without regard for the [f]unds' actual performance." *Id.* at 12. Over those three years, Price misappropriated a total of $578,402 in undeserved payments made to ABS, himself (including for his travel, entertainment, and personal expenses), his brothers, and two other companies owned by him and his wife, respectively. *Id.*

Price acted knowingly or recklessly. As the sole manager of ABS who operated the firm, Price knew the amount and nature of the securities held in the funds, and received monthly statements from the funds' brokerage firms. *Id.* He therefore knew or was reckless in not knowing that the above misstatements and omissions concerning the investments' risks and performance were false and misleading and that any payments from the funds to Price or ABS were "improper and misappropriated." *Id.* at 12-13. Further, he plainly knew or was reckless in not knowing that his statements about his own professional background were false and misleading. *Id.* at 13.

IV. LEGAL CONCLUSIONS

A. Statutory Criteria

Under Section 203(f) of the Advisers Act, the Commission has authority to bar Price from the securities industry if: (1) he was associated with an investment adviser at the time of the alleged misconduct; (2) he was enjoined "from engaging in or continuing any conduct or practice in connection with . . . activity" as a broker, dealer, or investment adviser, or "in connection with the purchase or sale of any security"; and (3) a bar is in the public interest. 15 U.S.C. § 80b-3(e)(4), (f).

Price was associated with ABS, an investment adviser, and acted as one, satisfying the first requirement. That ABS and Price were unregistered is irrelevant. *See Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999). The second requirement is met because a district court enjoined Price from violating the antifraud provisions of the Exchange Act, the Securities Act, and the Advisers Act, and therefore "from engaging in or continuing any conduct or practice in connection with [his] activity" as an investment adviser or "in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4), (f). I analyze the third requirement below.

B. Public Interest

Whether an industry bar is in the public interest depends on the factors set forth in *Steadman v. SEC*: (1) the egregiousness of the respondent's actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the respondent's assurances against future violations, (5) the respondent's recognition of the wrongful nature of his conduct, and (6) the likelihood that the respondent's occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the harm caused to investors and the deterrent effect of sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5. Each case

should be reviewed "on its own facts" to determine the respondent's fitness to participate in the relevant industry capacities before imposing a bar. *See Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014).

Price is "willing to accept" an industry bar but only if it is "for a period of time less than permanent (3 to 10 years)" and "a bad-actor waiver (or partial bad-actor waiver) [is] incorporated into the settlement agreement resolving this proceeding." Price Opp. at 5-6. I construe this as a request that such relief be granted by my initial decision. In support of his position, Price mainly disputes the allegations of the civil complaint "to the extent it warrants the punishment requested," despite acknowledging that he cannot do so. *See* Price Opp. at 1, 4, 7-10. I reject these arguments because Price consented to the injunction in the civil action and agreed not "to contest the factual allegations of the complaint" in "any disciplinary proceeding before the [Commission] based on entry of the injunction." Div. Ex. 2 at 5. He is therefore precluded from contesting those allegations here.[2]

I now turn to the *Steadman* factors, which support imposing an industry bar, without any time limit.

Egregiousness and Recurrence

Price's misconduct was egregious. As an investment adviser, he had a fiduciary duty to disclose all material facts to his clients. *E.g.*, *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194, (1963). But instead, he invested millions of dollars of his clients' money into interest-only tranches of mortgage-backed securities without disclosing how "exceptionally risky and . . . unpredictable" they were. Div. Ex. 1 at 8-9. Worse, Price falsely promoted the investments as "government bonds" that were "very safe and secure" and the perfect fit for retirement funds. *Id.* at 8. He overstated fund assets by tens of millions of dollars and claimed high annual returns when in fact, the funds' values decreased significantly and actual returns were negative. *Id.* at 9-11. Moreover, Price represented that he would be compensated "only after" investors received the advertised returns; but because the funds never achieved those returns, the $578,402 of investor money that Price withdrew and distributed to himself and his family was misappropriated. *Id.* at 11-12. Lastly, Price touted a background in mortgage investing that he did not have. *Id.* at 11.

Price argues that the Division "does not allege . . . a Ponzi scheme or that the [f]unds' assets do not exist." Price Opp. at 8. But just because his fraudulent conduct could have been worse does "not mitigate [its] seriousness." *ACAP Fin., Inc.*, Exchange Act Release No. 70046, 2013 SEC LEXIS 2156, at *55 (July 26, 2013), *pet. denied*, 783 F.3d 763 (10th Cir. 2015).

[2] *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *33 & n.57 (Oct. 29, 2014) (noting the Commission's "well-established policy" that "a respondent in a follow-on proceeding . . . is not permitted to contest the allegations of the complaint to which he consented," and collecting cases); *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *28 (where an administrative proceeding is "based on an injunction to which [the respondent] consented," the respondent "may not dispute the factual allegations of the injunctive complaint" regardless of whether the consent was on a "neither admit nor deny" basis).

Indeed, the Commission considers fraudulent conduct to be "especially serious and subject to the severest of sanctions." *E.g.*, *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Where a respondent has been enjoined from violating antifraud provisions of the securities laws, the Commission "typically" imposes a permanent bar. *Toby G. Scammell*, 2014 SEC LEXIS 4193, at *37.

The misconduct was also recurrent, occurring over multiple years. Div. Ex. 1 at 5, 9-10. Price's misrepresentations were numerous and made repeatedly in PPMs, monthly statements, emails, seminar presentations, as well as on phone calls, websites, and over the radio. *Id.* at 8, 9-11. Further, his withdrawals of undeserved compensation occurred monthly. *Id.* at 12.

Scienter

Price acted with a high degree of scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (internal quotation marks omitted). As the sole manager of the funds, he was aware of their holdings and performance. Div. Ex. 1 at 12. Thus, he knew or was reckless in not knowing that his misstatements and omissions concerning risks, assets, and performance were misleading and that the compensation he was withdrawing was "improper and misappropriated." *Id.* at 12-13. He also knew or was reckless in not knowing that his claims about his own investing background were false and misleading. *Id.* at 13.

Sincerity of assurances against future violations

Price says he would "not commit future violations," arguing he "has complied" and "will hereafter continue to comply" with the civil judgment. Price Opp. at 5, 6. He also touts a "lack of any prior violations." *Id.* at 6. But compliance with the district court's judgment is expected, and the same goes for Price's asserted lack of prior violations, which is not mitigating because "securities professionals should not be rewarded [simply] for complying with securities laws." *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *42 & n.39 (May 15, 2009). Moreover, he does not refute the Division's claim that he has failed to pay any of the court-ordered disgorgement or civil penalty. *Compare* Div. Reply at 7, *with* Price Surreply at 2, *and* Price Supp. Decl. at 2. Price's offer to furnish copies of various court documents "to any interested persons for the next ten (10) years," Price Opp. at 6, likewise carries little weight given that, for example, investment advisers must disclose similar information as a matter of course. *See* 17 C.F.R. §275.203-1; Amendments to Form ADV, 75 Fed. Reg. 49,234, 49,240 (Aug. 12, 2010). Lastly, by welshing on his promise not to contest the civil complaint's allegations, Price undercuts the credibility of his assurances against future violations. Therefore, he has not rebutted the inference that "the existence of [his] violation" makes it likely that "it will be repeated." *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (internal quotation marks and alterations omitted).

Recognition of wrongful conduct

Price says he has "cooperated extensively in this proceeding and in the Division's investigation in the underlying civil case," pointing to his voluntary "participation in a one-day settlement conference" and entry "into the Consent Decree and Final Judgment to resolve the underlying civil case." Price Opp. at 2, 5; *see id.* at 6 (noting "Price's record of working fully and cooperatively with the Commission"). Yet, despite agreeing not to dispute the civil complaint's allegations (*see* Div. Ex. 2 at 5; Price Opp. at 4), he devotes most of his argument to doing just that. For example, he:

- Challenges "assertions that he engaged in conduct amounting to violations" insofar as it would merit sanctions beyond what he previously has consented to. Price Opp. at 1.

- Argues his disclosures were sufficient (attaching certain investor declarations as support) and that the civil complaint's allegations "do not support the notion that [Price] was in any way involved with the principal acts of fraud and deceit." *Id.* at 4, 9, Ex. C.

- Asserts, among other things, that the complaint's allegations lack evidence, are "plainly wrong," center on a "technical dispute," and largely cannot be determined until a pending FINRA arbitration is resolved. *Id.* at 7-10.

Price's stance demonstrates that he does not recognize the wrongful nature of his conduct, and weighs in favor of a bar with no time limit.

Opportunity for future violations and other considerations

Price successfully solicited investors in connection with his misconduct and, more tellingly, still shows no remorse or understanding that such misconduct was violative. *See supra*. Further, at age thirty-seven, Price has spent "his entire professional life" in the securities industry. Price Opp. at 6. These facts indicate a substantial possibility of future violations and weigh in favor of an industry bar with no time limit. Such a bar will also provide effective deterrence to others. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

Price's claim that the civil action has already ended his career in the securities industry "in perpetuity" belies his argument that imposing a bar with no time limit here will cause him additional professional and financial hardship. Price Opp. at 2, 5. But regardless, "the [f]inancial loss to a wrongdoer as a result of his wrongdoing does not mitigate the gravity of his conduct." *Gary M. Kornman*, 2009 SEC LEXIS 367, at *34 (internal quotation marks omitted). Likewise, Price's assertions that investors lost no money—or that such losses have yet to be determined in pending FINRA arbitration—do not mitigate sanctions because the Commission's focus "is on the welfare of investors generally and the threat one poses to investors and the markets in the future." *Id.* at *33. And, as the Division notes, "Price cannot deny[] that he misappropriated fund assets," causing harm to investors. Div. Reply at 6.

Finally, Price seemingly requests a waiver from the Securities Act "bad actor disqualification" provisions of Rule 262 of Regulation A and Rules 505 and 506 of Regulation D, which normally disqualify reliance on those regulations' offering exemptions when, for example, a person involved in such offering has been barred from the industry by the Commission. *See* 17 C.F.R. §§ 230.262(a)(4), .505(b)(2)(iii), .506(d)(1)(iv). But Price fails to explain why such waiver would be in the public interest here, instead focusing on how harm to himself should be minimized. Price Opp. at 5-6, 11-12. Given the "danger of fraud in private placements," 156 Cong. Rec. S3813 (May 17, 2010) (statement of Sen. Dodd), the need to disqualify persons like Price from engaging in such exempt offerings is plain. Therefore, I decline to grant Price the requested waiver.[3]

Each public interest factor supports imposing an industry bar with no time limit, which "will prevent [Price] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015); *see also, e.g.*, *Gary M. Kornman*, 2009 SEC LEXIS 367, at *23 (the securities industry "presents a great many opportunities for abuse" and depends heavily "on the integrity of its participants" such that the Commission has "barred individuals even [for] . . . dishonest conduct unrelated to securities transactions" (internal quotation marks and footnote omitted)).

V. ORDER

Under Commission Rule of Practice 250(b), I GRANT the Division's motion for summary disposition, and ORDER, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that George Charles Cody Price is BARRED from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

This initial decision shall become effective in accordance with and subject to the provisions of Commission Rule of Practice 360, 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 Commission Rule of Practice 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-

[3] In adopting Rule 506's bad actor disqualification, the Commission noted that the disqualification would result so long as the triggering event (e.g., an industry bar) occurred after the September 2013 effective date of the rule change, "even if the underlying conduct occurred before effectiveness." Disqualification of Felons and Other "Bad Actors" From Rule 506 Offerings, 78 Fed. Reg. 44730, 44749 & n.232 (July 24, 2013); *see* 17 C.F.R. § 230.506(d)(2)(i). Similarly here, Price's underlying misconduct occurred before the September 2013 effectiveness date but his bar (i.e., the triggering event) will fall after it. I do not address whether this poses a retroactivity concern, as neither party raised the issue. *See Lonny S. Bernath*, Initial Decision Release No. 993, 2016 SEC LEXIS 1222, at *16-18 (ALJ Apr. 4, 2016) (noting same issue, relevant law, and that issue is better directed to Commission or court of appeals).

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 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 occurs, the initial decision shall not become final as to that party.

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Brenda P. Murray
Chief Administrative Law Judge