INITIAL DECISION RELEASE NO. 1072
ADMINISTRATIVE PROCEEDING
File No. 3-17210

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

In the Matter of PAUL LEON WHITE, II	INITIAL DECISION OF DEFAULT October 27, 2016

APPEARANCES: Alexander Janghorbani and Margaret Spillane for the Division of Enforcement, Securities and Exchange Commission

Paul Leon White, II, *pro se*

BEFORE: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for summary disposition, which I have construed as a motion for sanctions. Respondent Paul Leon White, II, is barred from associating with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent, or from participating in an offering of penny stock.

Procedural Background

The Securities and Exchange Commission initiated this proceeding in April 2016, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. OIP at 1; *see* 15 U.S.C. §§ 78*o*(b), 80b-3(f). This proceeding is a follow-on proceeding based on White's conviction in New York state court. The Division alleges the following in the OIP. From June 2005 through September 2009, White was associated with a broker-dealer registered with the Commission. OIP at 1. At the same time, White held himself out as an investment adviser. *Id.* White owned and controlled Professional Investment Advisors, Inc., "an unregistered investment adviser, through which White solicited clients, provided investment advice, and obtained compensation." *Id.*

In 2012, White was indicted in New York state court on charges of grand larceny in the second degree and a scheme to defraud in the first degree. OIP at 2; *see* N.Y. Penal Law §§ 155.40(1) (grand larceny), 190.65(1) (scheme to defraud) (McKinney 2008). White was convicted in December 2015 of seven counts of grand larceny in the second degree and one

count of a scheme to defraud in the first degree. OIP at 2. He was sentenced the following month to an indeterminate term of twenty-one to sixty-three years' imprisonment and ordered to pay $2,975,000 in restitution. *Id.*

White was served with the OIP in April 2016. *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3841, 2016 SEC LEXIS 1732, at *1 (ALJ May 13, 2016). During a telephonic prehearing conference held in May, I set a schedule for filing motions for summary disposition and granted White an extension of time in which to file an answer to the OIP. *Id.* at *2-3. I also explained to White that "I do not have the authority to review the trial court's guilty verdict in [his] case" and that he could not collaterally "attack the trial court's judgment" in this proceeding. Tr. 7; *see also* Tr. at 9-10.

White submitted a swarm of other filings but did not file an answer to the OIP.[1] I therefore ordered him to show cause why he should not be found in default for failing to answer the OIP. *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3902, 2016 SEC LEXIS 2031, at *4-5 (ALJ June 8, 2016). After he failed to show cause, I entered an order finding White in default. *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3967, 2016 SEC LEXIS 2361 (ALJ July 7, 2016). In that order, I reviewed the host of filings White had submitted and noted his concurrent refusal to answer the OIP. *Id.* at *1-4.

The Division filed a timely motion for summary disposition supported by seventeen exhibits (cited herein as "Ex. _"). Given White's default, I have construed the Division's motion as a motion for sanctions. *See Paul Leon White, II*, 2016 SEC LEXIS 2031, at *5 ("In the event White fails to show cause, I will construe the Division's motion for summary disposition . . . as a motion for sanctions."). On July 27, 2016, I granted White's motion for additional time in which to respond to the Division's motion and set August 8, 2016, as the deadline for White to file an opposition.[2] *Paul Leon White, II*, Admin. Proc. Rulings Release No. 4025, 2016 SEC LEXIS 2604, at *2.

White later moved for an extension of time until September 1, 2016, to file a motion to set aside the order finding him in default. He also moved for an extension until August 23, 2016, to respond to two letters submitted by the Division. On August 24, he filed a motion that covers a lot of ground but which concludes by asking that I "vacate," *i.e.*, set aside, the default order so that he can answer the OIP and respond to the Division's motion for summary disposition and the order to show cause. White further asks that I issue various subpoenas expressly related to

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[1] Among other things, White asked that I issue various subpoenas. *See Paul Leon White, II*, Admin. Proc. Rulings Release No. 3894, 2016 SEC LEXIS 1990 (ALJ June 6, 2016). I denied without prejudice this request because White sought irrelevant evidence "to show that other individuals, but 'not Respondent, actually committed" the offenses of which he was convicted. *Id*. at *6.

[2] In a letter filed September 7, 2016, White says he never received the Division's motion for sanctions. But given that he asked for and was granted additional time to respond the Division's motion and then repeatedly asserted that I lack the authority to construe it as a motion for sanctions, it is clear that he did receive the motion.

obtaining evidence supporting an attack on his conviction. More recently, White filed a forty-page motion that I disqualify myself and a second motion to set aside the default I entered. Finally, on October 24, 2016, he submitted a filing in excess of 100 pages, discussed below.

White's motions are denied.

White's motion for an extension of time to file a motion to set aside the default order is moot. And there is no need to respond to the Division's letters.

White's untimely motions to set aside the default offer no valid basis to do so. Rule of Practice 155(b) provides that in order to set aside a default, a respondent must do two things: "state the reasons for the failure to appear or defend, *and* specify the nature of the proposed defense in the proceeding." 17 C.F.R. § 201.155(b) (emphasis added). White fails to adequately meet either requirement. Rather than explaining why he failed or refused to answer the OIP, White raises procedural challenges that are both mistaken and irrelevant to the question of why he has refused to answer the OIP.[3]

Although he specifies the nature of his proposed defenses in this proceeding, *see* Aug. 24 Mot. at 8, his defenses are legally meritless. First, because he cannot attack his conviction in this proceeding, his "actual innocence" defense is irrelevant.[4] Second, whether or not his conviction involved securities does not matter. *See David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016) ("Our authority to institute these proceedings is not dependent on whether the underlying instruments involved in the misconduct were securities."). Exchange Act Section 15(b), the relevant statutory provision, is implicated because White's offense of conviction "involves the larceny [or] theft . . . of funds"; the Division need not show

[3] For example, White cites nothing to support his assertion that I lack the authority to construe the Division's motion for summary disposition as a motion for sanctions. *See* Aug. 24 Mot. at 2-3. To the contrary, I have the authority to do so. *See* 17 C.F.R. § 201.111. His complaint that ordering him to show cause was "highly irregular," Aug. 24 Mot. at 3, not only comes far too late, but ignores the fact that the Commission has directed its administrative law judges to give respondents a chance to show cause before finding them in default, *David Mura*, Exchange Act Release No. 72080, 2014 WL 1744129, at *3 (May 2, 2014). White's second motion to set aside the default largely consists of complaints about the facility in which he is imprisoned and about rulings I have issued. Even if this motion had been "made within a reasonable time," which it was not, it does not address the reason White failed to answer the OIP. The motion, therefore, provides no basis to set aside the default. *See* 17 C.F.R. § 201.155(b).

[4] For this reason, White's request that I issue subpoenas to a number of private and governmental entities is rejected. In an "affirmation in support of judicial subpoenas duces tecum," White makes plain that he is attempting to prove his innocence. As I have previously explained to White, he cannot collaterally attack his conviction in this proceeding. Tr. 7; *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3894, 2016 SEC LEXIS 1990, at *7 (ALJ June 6, 2016); *see Gary M. Kornman*, Advisers Act Release No. 2840, 2009 WL 367635, at *8 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

that his offense involved securities. 15 U.S.C. § 78*o*(b)(4)(B)(iii), (6)(A)(ii). Third, the Commission has rejected White's Appointments Clause argument. *optionsXpress, Inc.*, Securities Act of 1933 Release No. 10125, 2016 WL 4413227, at *47-49 (Aug. 18, 2016) (Appointments Clause); *see Raymond J. Lucia Cos.*, 832 F.3d 277, 283-89 (D.C. Cir. 2016). Fourth, White's separation of powers argument is meritless.[5] *See Porter Cty. Chapter of Izaak Walton League of Am., Inc. v. Nuclear Regulatory Comm'n*, 606 F.2d 1363, 1371 (D.C. Cir. 1979); *see also The Stuart-James Co.*, Exchange Act Release No. 28810, 1991 WL 291802 (Jan. 23, 1991) (opinion and concurring opinion discuss combined administrative and adjudicatory functions of the Commission). In any event, his argument is based on the mistaken premise that administrative law judges are simultaneously part of the judicial branch while being employed by the executive branch. *See* Aug. 24 Mot. at 8. This argument appears to be animated by the further mistaken premises that the Commission controls its administrative law judges' "employment status, salary[,] raises, bonuses . . . , [and] promotions." *Id.* at 3. Outside of the possibility of removal from office for good cause shown before the Merits Systems Protection Board, none of White's premises are correct. *See* 5 U.S.C. §§ 3105, 5372(b)(3)(A), 7521(a); 5 C.F.R. §§ 930.206(a)-(b), 930.211; *see also Butz v. Economou*, 438 U.S. 478, 514 (1978).

White separately argues that I am biased and that his due process rights have been violated, apparently because I directed the parties to file motions for summary disposition and, once White failed to answer the OIP, construed the Division's motion as one for sanctions. These arguments border on being frivolous. White ignores the presumption of impartiality that applies to my decisions, *see Schweiker v. McClure*, 456 U.S. 188, 195 (1982), *Timbervest, LLC*, Advisers Act Release No. 4197, 2015 WL 5472520, at *22 (Sept. 17, 2015), and the fact that an administrative law judge's "'rulings alone' almost 'never constitute a valid basis for a bias [claim],'" *Moshe Marc Cohen*, Securities Act Release No. 10205, 2016 WL 4727517, at *10 (Sept. 9, 2016) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). And White further ignores the fact that he was afforded notice and an opportunity to be heard, which is exactly what the Due Process Clause requires. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). The fact White failed to avail himself of the opportunities given him is not evidence of a due process violation. White finally fails to explain how proceeding by motion, as is typical in follow-on cases, deprived him of due process. *Cf. Kornman v. SEC*, 592 F.3d 173, 181-83 (D.C. Cir. 2010) (holding that a statutory right to an "opportunity for [a] hearing" did not necessarily require an evidentiary hearing); Henry J. Friendly, *"Some Kind of Hearing"*, 123 U. Pa. L. Rev. 1267, 1281 (1975) (noting that a "hearing" may include a proceeding based on written, rather than oral, presentations).

White submitted an over 100-page filing on October 24, 2016. This filing largely consists of arguments that (1) the instruments he sold were not securities; (2) his conviction is invalid and resulted from various violations of his constitutional rights, and (3) the doctrine of unclean hands bars this proceeding. Because these arguments are either irrelevant or plainly mistaken, or both, they do not merit additional discussion.

[5] Likewise, White's disqualification motion is denied because his Appointments Clause, tenure protection, and separation of powers arguments have all been rejected. *See optionsXpress, Inc.*, 2016 WL 4413227, at *47-52.

In the October 24, 2016 filing, White belatedly attempts to partially answer the OIP. This self-styled "partial answer," filed months after White was found in default, comes far too late. Moreover, White persists in refusing to answer all the allegations in the OIP.[6]

Finally, White purports to respond to the Division's motion for sanctions by engaging in an analysis of the public interest factors related to whether he should be barred from the securities industry. His arguments are rejected. First, White's response to the Division's motion was due, after an extension, in August. Second, even if White's response were timely, which it is not, and even if he asked for leave to file it late, which he did not, by failing to accept responsibility for his actions, deflecting blame, and minimizing his conduct, White only succeeds in showing that he is ill-suited to remain in the securities industry.

In the light of the foregoing, White's most recent motions are denied.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule 323, 17 C.F.R. § 201.323. As a result of White's default, I have accepted as true the factual allegations in the OIP. *See* 17 C.F.R. § 201.155(a). In making the findings below, I have applied preponderance of the evidence as the standard of proof. *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998) ("preponderance of the evidence . . . is the standard of proof in [Commission] administrative proceedings").

From July to November 2003 and March 2004 to July 2010, White was associated with various broker-dealers. Ex. 3 at 4. From June 2005 through September 2009, White held himself out as an investment adviser. OIP at 1. Through Professional Investment Advisors, Inc., the unregistered investment adviser he owned and controlled, White "solicited clients, provided investment advice, and obtained compensation." *Id.*

The circumstances that led to White's indictment and conviction concerned White's involvement with John Cline Reservoir, LLC, a company he owned. *See Spota v. White*, 997 N.Y.S.2d 101, 2014 WL 2931068, at *1-2 (N.Y. Sup. Ct. 2014); Ex. 15 at 5. Through John Cline, White agreed to purchase a tract of land in North Carolina, which he proposed to develop. *See* Ex. 5 at 3-5; Ex. 15 at 5. According to White, the local government planned to create a reservoir on land adjoining the tract. Ex. 5 at 3. Through John Cline, White offered investors

[6] In his untimely, partial answer, White inexplicably says that without subpoenas, he cannot answer the charge that he held himself out as an investment adviser, solicited clients, provided investment advice, and obtained compensation. Putting aside the question of whether a subpoena could be necessary in order to answer an OIP, White ignores the fact that the only subpoenas he sought before he missed the deadline for answering the OIP, were subpoena through which he sought evidence to attack his conviction. *See Paul Leon White, II*, 2016 SEC LEXIS 1990, at *7 (denying a request to issue subpoenas "seek[ing] evidence to show that other individuals, but 'not Respondent, actually committed fraud, tax evasion and perjury'").

undivided fractional interests as tenants-in-common in the tract of land.[7] *Spota*, 2014 WL 2931068, at *2; Ex. 5 at 4-5; Ex. 15 at 5.

In 2012, White was indicted on nine counts in Suffolk County, New York. Ex. 10; OIP at 1-2. The first eight counts of the indictment concerned allegations that between August 2008 and April 2009, White committed grand larceny in the second degree in violation of New York Penal Law § 155.40(1). Ex. 10 at 1-5; Ex. 11 at 4. Each count contained the allegation that White "took, obtained, or withheld United States currency" valued in excess of $50,000. Ex. 10 at 3-5; Ex. 11 at 4. The ninth count alleged that between July 2008 and April 2009, White engaged in a scheme to defraud, in violation of New York Penal Law § 190.65(1)(b). Ex. 10 at 6.

In December 2014, a jury convicted White of seven counts of grand larceny in the second degree and one count of engaging in a scheme to defraud in the first degree. Ex. 12 at 1; OIP at 2. Before sentencing White, the trial court noted evidence presented from White's victims and observed that "together" their remarks presented:

> a sad litany of confidence betrayed[,] of honest, hard-working people who saved their entire lives only to see it snatched away by a man who truly cared nothing for the consequences. A man who reduced some of them to poverty. All their hopes and dreams of a comfortable retirement gone.

Ex. 2 at 1-2. The court also addressed White and said that:

> although you fired no pistol, you wielded no knife, but with pen, paper and a personal computer you caused more havoc and disrupted more lives and victimized more people than most of the defendants who ever passed before me through my courtroom. So many innocent people punished because they were taken in by you.

[7] In 2010, FINRA's Department of Enforcement initiated disciplinary proceedings against White related to his sale of tenants-in-common interests in John Cline. *See* Ex. 14. White settled that proceeding by consenting—"without admitting or denying the allegations" against him—"to the entry of findings and violations consistent with the allegations." Ex. 15 at 1-2. "The Commission has 'long recognized that [a respondent's] prior disciplinary history is to be considered in fashioning a sanction. In reviewing that history, [the Commission] ha[s] considered orders in both settled and litigated proceedings." *Gregory O. Trautman*, Exchange Act Release No. 61167A, 2009 WL 6761741, at*20 n.85 (Dec. 15, 2009) (internal citations omitted). The Commission does not, however, consider settled proceedings in which the "plain language of the consent order unequivocally states that it may not be used in another proceeding." *R.B. Webster Invs., Inc.*, Exchange Act Release No. 34659, 1994 WL 512475, at *6 n.37 (Sept. 13, 1994). Because White's order contains such language, Ex. 15 at 1-2, I have not considered evidence related to his FINRA disciplinary proceeding.

Id. at 2. The court then ordered restitution to White's seven victims in the aggregate amount of $2,975,000. *Id.* Among White's victims were the Little Shelter Animal Adoption Center, from which White stole $350,000, and a widow who was retired and who lost $500,000. *Id.* Finally, the court sentenced White to an indeterminate term of imprisonment. It ordered that White be imprisoned three to nine years for each grand larceny count, to be served consecutively, and one-and-a-third to four years on the scheme to defraud count, to be served concurrently, for a total term of twenty-one to sixty-three years. *Id.* at 2-3.

Conclusions of Law

The Exchange Act gives the Commission authority to impose a collateral bar[8] against White if, as is relevant here, (1) he was associated with or seeking to become associated with broker or dealer at the time of the misconduct at issue; (2) he was convicted within ten years before the issuance of the OIP of "any felony or misdemeanor" that "*involves* the larceny [or] theft . . . of funds"; and (3) imposing a bar is in the public interest. 15 U.S.C. § 78*o*(b)(4)(B)(iii) (emphasis added), (6)(A)(ii). The Advisers Act gives the Commission similar authority with respect to a person associated with or seeking to be associated with an investment adviser. 15 U.S.C. § 80b-3(e)(2)(C), (f). In addition, the Advisers Act permits imposition of a bar for any conviction, so long as the offense in question "is punishable by imprisonment for 1 or more years."[9] 15 U.S.C. § 80b-3(e)(3)(A), (f)

The first factor is met in this case. During the relevant period, White was associated with a broker-dealer and was associated with an investment adviser.[10] OIP at 1; Ex. 3 at 4.

The second factor is also met. White was convicted in December 2014, less than ten years before the Commission issued the OIP in this case.[11] *See* Ex. 12 at 1. And seven of the

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[8] A collateral bar is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014).

[9] Unlike the Exchange Act, the Advisers Act does not authorize the imposition of bar from participating in the offering of a penny stock. *Compare* 15 U.S.C. § 78*o*(b)(6)(A), *with* 15 U.S.C. § 80b-3(f).

[10] The fact that White never registered himself or Professional Investment Advisors, Inc., as an investment adviser is irrelevant to the determination that he was, in fact, an investment adviser and associated with an investment adviser. *Dennis J. Malouf*, Securities Act Release No. 10115, 2016 WL 4035575, at *13 (July 27, 2016); *see Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999); *Anthony J. Benincasa*, Investment Company Act of 1940 Release No. 24854, 2001 WL 99813, at *1 (Feb. 7, 2001).

[11] For purposes of the Advisers Act, the term "convicted" is defined to include a verdict. *See* 15 U.S.C. § 80b-2(a)(6). The Commission applies this definition for purposes of the

counts of which White was convicted "*involve*[*d*] the larceny [or] theft . . . of funds[]"—in the aggregate, $2,975,000—thus meeting the requirements of both Exchange Act Section 15(b) and Advisers Act Section 203. *See* 15 U.S.C. §§ 78*o*(b)(4)(B)(iii) (emphasis added), (6)(A)(ii), 80b-3(e)(2)(C), (f).

In this latter regard, although neither the Exchange Act nor the Advisers Act defines the term "larceny," each act requires, as a predicate to imposing a collateral bar and as is relevant to this matter, proof that a respondent has been "convicted" of an offense "involv[ing] larceny [or] theft." In a different administrative context, the Supreme Court has held that when "Congress predicate[s]" a penalty on a conviction, one must consider "the statutory definition of the offense of conviction" to determine whether the predicate has been established. *Mellouli v. Lynch*, 135 S. Ct. 1980, 1986 (2015). In that context, a "state conviction triggers" the penalty contemplated in a federal statute "only if, by definition, the underlying crime falls within a category of [predicate] offenses defined by federal law." *Id.* Determining whether a generically defined offense, such as larceny, includes a particular state-law conviction, requires comparison of the elements of the generic federal offense with the elements of the state-law offense of conviction.[12]

In the securities context, however, the Congress has provided that a state-law conviction could support a bar if the conviction merely "*involves*" larceny or theft. 15 U.S.C. §§ 78*o*(b)(4)(B)(iii) (emphasis added), (6)(A)(ii), 80b-3(e)(2)(C), (f). The term "'involv[e]' is an exceedingly broad term for a statute."[13] And the term "theft" is also broad. Indeed, it is "broader than 'commonlaw larceny,'" "'applying to all cases of depriving another of his property whether by removing or withholding it, and includes larceny, robbery, cheating, embezzlement, breach of trust, etc.'" *United States v. Turley*, 352 U.S. 407, 412-14 & n.8 (1957) (quoting 13 Encyclopedia Britannica 720 (1953)).

Exchange Act. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *8 n.40 (Mar. 7, 2014).

[12] *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684-85 (2013); *see Descamps v. United States*, 133 S. Ct. 2276, 2281 (2013) (courts "compare the elements of the statute forming the basis of the defendant's conviction with the elements of the 'generic' crime—*i.e.*, the offense as commonly understood"). The Supreme Court presumes that, absent some indication that Congress intended to incorporate various state-law definitions into a generally applicable federal statute, the meaning of a federal statute will not be "dependent on state law." *Jerome v. United States*, 318 U.S. 101, 104 (1943).

[13] *United States v. Vickers*, 540 F.3d 356, 365 (5th Cir. 2008); *see United States v. Bryant*, 619 F. App'x 212, 215 (4th Cir. 2015) (noting that dictionaries define the term as "[t]o have as a necessary feature or consequence; entail . . . [t]o relate to or affect" and to "engage," "entail," "imply," and "implicate"); *cf. Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273-74 (1995) ("the word 'involving' is broad and is indeed the functional equivalent of 'affecting'").

The trial court instructed the jurors during White's trial that they could convict under either a theory of larceny by false pretenses or larceny by embezzlement.[14] Either theory *involves* an offense that falls within the broad ambit of the term "theft." *See Turley*, 352 U.S. at 412-17 & n.8 (equating "theft" with "steal" or "stolen," terms which include embezzlement and false pretenses). White's conviction thus meets the requirements of both the Exchange Act and the Advisers Act.[15] *See* 15 U.S.C. §§ 78*o*(b)(4)(B)(iii), (6)(A)(ii), 80b-3(e)(2)(C), (f).

Determining whether imposition of a collateral bar would be in the public interest requires consideration of the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *Toby G. Scammell*, 2014 WL 5493265, at *5; *see David F. Bandimere*, Securities Act Release No. 9972, 2015 WL 6575665, at *27 (Oct. 29, 2015). The public interest factors include:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

David R. Wulf, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016). The Commission also considers the deterrent effect of administrative sanctions.[16] *Id.* The public interest inquiry is "flexible" and "no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

Before imposing a collateral bar, an administrative law judge must determine, based on the evidence presented, "whether such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (internal quotation marks omitted), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016). I must therefore "'review [White's] case on its own facts' to make findings regarding [his] fitness to participate in the industry in the barred capacities." *Id.* (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). A

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[14] Ex. 11 at 3; *see* N.Y. Penal Law § 155.05(2)(a) ("Larceny includes . . . conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses.").

[15] White's offenses were each "punishable by imprisonment for 1 or more years," and thus meet the alternative requirement in the Advisers Act. *See* 15 U.S.C. § 80b-3(e)(3)(A), (f).

[16] General deterrence is a relevant but not determinative consideration in assessing whether the public interest weighs in favor of imposing an industry bar. *See Peter Siris*, Advisers Act Release No. 3736, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *see also PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

decision to impose a collateral bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'" *Id.* (quoting *McCarthy*, 406 F.3d at 189-90).[17]

In deciding whether to impose a bar, I bear in mind the Commission's caution that "[t]he securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence." *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) (internal quotation marks and citation omitted). This dependence on the integrity of industry participants is especially the case for investment advisers, who owe their clients "an 'affirmative [fiduciary] duty of utmost good faith.'" *Timbervest*, 2015 WL 5472520, at *5 (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963)).

Turning to the public-interest factors, White's conduct was egregious. The trial court made clear that White stole nearly $3 million by "betray[ing]" the "confidence . . . of honest, hard-working people who saved their entire lives only to see [their savings] snatched away," thereby "reduc[ing] some of [his victims] to poverty." Ex. 2 at 1. The court emphasized that he had "caused more havoc and disrupted more lives and victimized more people than most of the defendants" the court had ever seen. *Id.* at 2. The court then underscored the egregiousness of White's conduct by sentencing him to an indeterminate term lasting between twenty-one and sixty-three *years*. *Id.* at 2-3. Finally, it is evident that, at least in part, White preyed on vulnerable victims. He stole $350,000 from an animal shelter and $500,000 from a widow who was retired but, because of White's conduct, would "never [be able to] enjoy[] . . . [her] retirement." *Id.* at 2. These facts show both that White is not fit to remain in the securities industry and that excluding him from it would best serve the Commission's interest in protecting the investing public.

As to the remaining public-interest factors, given that he stole from seven victims as part of scheme lasting a number of months, White's conduct was not isolated. White also acted with a high degree of scienter. In sentencing White, the trial court stated that the evidence showed that he intentionally harmed his victims. Ex. 2 at 1. Indeed, to prove larceny, which is a specific intent crime, *People v. Gorton*, 304 N.Y.S.2d 69, 71 (N.Y. Sup. Ct., App. Term 1969), the prosecution had to show that White intended "to deprive [his victims] of [their] property or to appropriate" that property "to himself or to a third person," N.Y. Penal Law § 155.05(1). That White persisted in engaging in a months-long scheme involving multiple victims only adds weight to the determination that he acted with scienter.

White has neither made assurances against future misconduct nor demonstrated that he understands or recognizes the wrongfulness of his criminal acts. To the contrary, he told the trial court before he was sentenced that although he was "sorry" for having harmed his victims, he had not intended to harm them. Ex. 2 at 1. And during this proceeding, White has persisted in

[17] *See also John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012) ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors."), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016).

attempting to obtain evidence to shift responsibility for that which led to his convictions.[18] He has also repeatedly insisted that he was "convicted for a crime that he *truly* did *not* commit." Affirmation in Supp. of Mot. to Extend Time at 1 (filed July 18, 2016).

Allowing White to remain in the securities industry would present him with future opportunities for further misconduct and would put the investing public at risk. In this regard, the fact of White's criminal misconduct "raises an inference that" he will repeat it. *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). And that inference is strongly supported by White's noted inability or refusal to recognize the wrongful nature of his conduct[19] and by my determination that White's conduct was egregious.[20]

Finally, imposing a collateral bar will serve the Commission's interest in deterring others from engaging in similar misconduct.

In light of the factors discussed above, I find that it is in the public interest to impose a collateral bar against White.

Order

The Division of Enforcement's motion for sanctions is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Paul Leon White, II, is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent.[21]

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[18] *See Paul Leon White, II*, 2016 SEC LEXIS 1990, at *7 (denying a request to issue subpoenas "seek[ing] evidence to show that other individuals, but 'not Respondent, actually committed fraud, tax evasion and perjury'").

[19] *See Scott B. Gann*, Advisers Act Release No. 2684, 2009 WL 938033, at *6 (Apr. 8, 2009) ("Gann's claims that he will '[a]lways hold the belief that [he] did not have the intent to defraud any mutual fund company' and that '[he] cannot admit [his] personal actions were wrong' reveal a fundamental misunderstanding of the duties of a securities industry professional that presents a significant likelihood that he will commit similar violations in the future."), *aff'd*, 361 F. App'x 556 (5th Cir. 2010).

[20] *John A. Carley*, Securities Act Release No. 8888, 2008 WL 268598, at *22 (Jan. 31, 2008) (determining whether to impose a cease-and-desist order and holding that "[o]ur finding that a violation is egregious 'raises an inference that [the misconduct] will'" recur), *remanded on other grounds, Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).

[21] Because White's misconduct occurred before July 22, 2010, the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, he cannot be barred—based on that conduct—from associating with a municipal advisor or a nationally recognized statistical rating organization. *See Koch v. SEC*, 793 F.3d 147, 157-58

Under Section 15(b) of the Securities Exchange Act of 1934, Paul Leon White, II, is BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under 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. *See* 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-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.

White may move the Commission to set aside the default under Rule of Practice 155(b), which permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.* Such motion, if filed, should be directed to the Commission, as the hearing officer may only set aside a default "prior to the filing of the initial decision." *Id.*

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James E. Grimes
Administrative Law Judge

(D.C. Cir. 2015) (holding on retroactivity grounds that the Commission cannot apply the Dodd-Frank amendments to bar a respondent from associating with municipal advisors and rating organizations based on conduct predating Dodd-Frank).