

Initial Decision Release No. 1251  
Administrative Proceeding  
File No. 3-17645

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

In the Matter of  
**Gary C. Snisky**

**Initial Decision**  
May 14, 2018

Appearances: Polly Atkinson for the Division of Enforcement,  
Securities and Exchange Commission

Gary C. Snisky, *pro se*

Before: Brenda P. Murray, Chief Administrative Law Judge

**Background**

This proceeding, which began with an order instituting proceedings (OIP) issued on October 27, 2016, is based on *SEC v. Snisky*, No. 13-cv-3149 (D. Colo. Aug. 12, 2016) (civil action), in which Gary C. Snisky is alleged to have been permanently enjoined from violating the registration and antifraud provisions of the federal securities laws. The OIP was issued pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. Snisky filed an answer to the OIP on November 21, 2016.

At and following a December 14, 2016, prehearing conference, I denied Snisky's motions to stay the proceeding to the extent they were directed to me, granted the Division of Enforcement's motion for a protective order, and ordered a procedural schedule for the Division to file a motion for summary

disposition.<sup>1</sup> *Gary C. Snisky*, Admin. Proc. Rulings Release No. 4478, 2016 SEC LEXIS 4758 (ALJ Dec. 22, 2016). The Division filed a summary disposition motion on February 13, 2017, with five exhibits.<sup>2</sup> Based on Snisky's representations, I extended the time for him to file his opposition to the motion to April 10, 2017, with the Division's reply due April 26, 2017. *Gary C. Snisky*, Admin. Proc. Rulings Release No. 4711, 2017 SEC LEXIS 945 (ALJ Mar. 27, 2017). Nevertheless, Snisky did not file an opposition at that time.

The proceeding was stayed from May 22, 2017, until November 30, 2017, because of litigation concerning the status of administrative law judges. See *Gary C. Snisky*, Admin. Proc. Rulings Release No. 4838, 2017 SEC LEXIS 1591 (ALJ May 30, 2017). On December 15, 2017, after the Commission lifted the stay and directed that I reconsider the record in the proceeding, I ordered the parties to file any new evidence that they considered relevant to my reexamination of the record. *Gary C. Snisky*, Admin. Proc. Rulings Release No. 5393, 2017 SEC LEXIS 4114; *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 WL 5969234, at \*2 (Nov. 30, 2017).

In response to my December 2017 order, Snisky did not submit new evidence, but submitted an opposition dated January 29, 2018, which among other things, responded to the Division's motion for summary disposition. Although his opposition brief was submitted out of time, in consideration of Snisky's pro se status, I have accepted it and considered its arguments. *Gary C. Snisky*, Admin. Proc. Rulings Release No. 5658, 2018 SEC LEXIS 789, at \*5 (Mar. 26, 2018). Among other things, Snisky challenges the Commission's conclusion that he committed securities fraud, and he argues that the civil action was improperly brought under Section 15(b) of the Exchange Act because he is neither a broker nor person associated with a broker. Opp'n Br. at 4-5. The Division's reply filed March 19, 2018, responds to these arguments. The Division states that in its summary disposition motion, it cited Snisky's plea agreement in the criminal case as support for its position that Snisky's activities satisfied the definition of a broker during the relevant

---

<sup>1</sup> As I noted in my order, Snisky's motion dated December 5, 2016, was largely directed toward the district court and it addressed issues before the court in the civil action.

<sup>2</sup> Ex. 1 is Snisky's plea agreement in *United States v. Snisky*, No. 13-cr-473 (D. Colo. Feb. 5, 2015) (criminal case); Ex. 2 is the amended judgment in the criminal case filed July 8, 2015; Ex. 3 is the default judgment in the civil case; Ex. 4 is the complaint in the civil case; and Ex. 5 is the Form ADV for Arete, Ltd., which appears to have been filed on November 27, 2012.

time period, and notes—contrary to Snisky’s position—that plea agreements are admissible as statements against interest. Reply at 4-5. The Division considers Snisky’s arguments that Section 206(1) of the Advisers Act requires scienter irrelevant since it does not seek a finding that there was a Section 206(1) violation. *Id.* at 5.

Now that Snisky has submitted an opposition and the Division has had the opportunity to respond to those arguments, I consider this case fully briefed and ripe for decision.<sup>3</sup>

### **Summary Disposition Standard**

Rule 250(b) governs summary disposition in cases designated by the Commission as 75-day proceedings. See 17 C.F.R. § 201.250(b). Rule 250(b) specifies that a motion for summary disposition may be granted if “there is no genuine issue with regard to any material fact” and “the movant is entitled to summary disposition as a matter of law.” *Id.* The facts on summary disposition must be viewed in the light most favorable to the non-moving party. *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 WL 4160054, at \*2 (Aug. 21, 2014). A motion for summary disposition is generally proper in “follow-on” proceedings like this one, where the administrative proceeding is based on a criminal conviction or civil injunction because relitigation of “the factual findings or the legal conclusions” of the underlying proceeding is precluded. *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at \*8, 10 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

Although Snisky disputes facts, *see, e.g.*, Answer at 1-7; Prehr’s Tr. 14-15, he raises no genuine dispute, because he challenges matters already decided in the criminal case, which he cannot do. *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at \*7 & nn.32-33 (Jan. 14, 2011) (a respondent is bound by the facts in a plea agreement). Therefore, summary disposition is appropriate.

### **Factual Findings**

The findings and conclusions below are based on the record consisting of exhibits attached to the Division’s motion, Snisky’s answer and other submissions, and records of the underlying federal court proceedings of which I take official notice. 17 C.F.R. §§ 201.111(c), .250(b), .323. I apply

---

<sup>3</sup> On March 26, 2018, I ratified all the actions I took in this proceeding before the Commission ratified my appointment as an administrative law judge on November 30, 2017. *Snisky*, 2018 SEC LEXIS 789.

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 inconsistent with this initial decision. The facts that follow are largely drawn from Snisky's plea agreement in the criminal case against him. I have adopted the facts recited by Snisky in his answer only to the extent they do not contradict his plea agreement and are relevant to this proceeding. *Reinhard*, 2011 WL 121451, at \*7 & nn.32-33.<sup>4</sup>

#### *Entities involved*

Snisky operated Colony Capital, LLC, a purported private equity firm, in Colorado between 2009 and 2011. Div. Ex. 1 at 7-8. In 2011, Snisky shut down Colony Capital and formed Arete, LLC (or Ltd.), a Longmont, Colorado, company that purported to be a private equity firm offering investments in bonds, futures transactions, and other offerings. *Id.*; see Div. Ex. 5. Snisky was Arete's president and chief compliance officer when it registered to become an investment adviser. Div. Ex. 5.<sup>5</sup> Arete's registration became effective on or about January 7, 2013. Answer at 2. As detailed below, Snisky, Colony Capital, and Arete were involved in several different frauds.

#### *False representations – futures trading*

Richard Greeott did information technology work for Colony Capital and Arete as an independent contractor. Div. Ex. 1 at 7-8. In mid-2010, Snisky requested that Greeott develop an automated system for trading futures. *Id.* at 8. Greeott developed an algorithm, but traded mostly in a simulated environment only. *Id.* Nonetheless, beginning in at least 2010, Snisky led investors, potential investors, and financial advisors to believe his false representations that his companies were profitably trading futures and making "real money" using the algorithm Greeott had developed. *Id.* at 8-9. Between at least July 2011 and January 17, 2013, Snisky took investors,

---

<sup>4</sup> Snisky argues that I cannot use his plea agreement against him, Opp'n Br. at 6, but he misstates the law. The Federal Rules of Evidence only exclude withdrawn plea agreements and discussions about plea bargains from evidence. Fed. R. Evid. 410. To the contrary, Snisky is estopped from challenging the issues and facts to which he pled guilty.

<sup>5</sup> The Division did not provide a declaration of counsel explaining the provenance of the Form ADV in Exhibit 5. It is dated November 27, 2012, and although it is likely that this is the date on which Snisky first registered, it is not completely clear.

potential investors, and financial advisers to Greeott's workstation where he was usually trading in a simulated environment. *Id.* at 9. Although Snisky knew this, he made statements falsely suggesting that Greeott was trading live in futures and that he had a history of profitably trading futures. *Id.*

For example, during one on-site visit in approximately July 2011, Snisky provided three potential investors with a document that falsely represented that Colony Capital had achieved an approximate twenty-two percent return in trading futures over the past two years. *Id.* at 10. Snisky also showed the three potential investors Greeott's workstation and gave the impression that Greeott was trading live in futures when, in fact, Greeott was trading in a simulated environment and did not believe that his algorithm was even close to working successfully. *Id.* Within the next three months, one of the three potential investor invested \$178,164.99 with Colony Capital for trading in futures and a second invested \$48,912.44. *Id.* Later, the first investor and the third investor's wife invested additional funds with Arete for trading in the futures market. *Id.* Even though neither Colony Capital nor Arete ever had a futures trading program that was operational or profitable, Snisky sent these investors false account statements indicating that their funds were being used to trade futures and that their accounts showed a profit. *Id.*

Snisky received \$321,346.26 from investors between July 2011 and March 2012, but he did not invest the vast majority of these funds in the futures market as he promised the investors he would do. *Id.* at 10-11.

#### *False representations – Ginnie Mae investments*

Between approximately July 2011 and January 2013, Snisky offered investors, potential investors, and financial advisors an opportunity to invest in Arete's "proprietary value model," a bond program that purported to use investor funds to purchase Ginnie Mae bonds, which Snisky falsely described as a safe investment backed by the "full faith and credit of the United States." *Id.* at 11. Snisky offered a ten-year investment in the bond program that promised a ten year upfront bonus and an annual return of seven percent. *Id.* Later, Snisky also offered a five-year investment which promised a six percent annual return on the investment funds. *Id.* Snisky made false assurances about the safety of the bond program throughout 2012, although he had not actually purchased any bonds. *Id.*

In fact, Snisky never purchased any Ginnie Mae bonds, yet he caused false account statements to be sent to investors showing their Ginnie Mae bonds were making a profit. *Id.* at 12-13. For example, on January 11, 2012, Snisky sent one bond program investor a welcome letter and a false account statement titled "Contributor Information & Data" showing that her

investment was earning interest as promised. *Id.* at 13. Between approximately August 2011 and January 2013, Snisky received a net of approximately \$4,180,540.81 from investors who believed Snisky was investing their funds in Ginnie Mae bonds. *Id.* at 12.

#### *False representations – credentials*

Snisky represented to investors, potential investors, and financial advisers that he was an “institutional trader” who was “on Bloomberg,” which made him part of an elite group who could “make markets,” and that he had access to exclusive investment opportunities not available to ordinary investors.<sup>6</sup> *Id.* at 11-12. Snisky also represented that he was able to make additional funds for bond program investors by participating in an “overnight lending program.” *Id.* at 12. Snisky’s claims were false. He was not an institutional trader, and although he had a Bloomberg terminal, he never used it to purchase, trade, or make markets. *Id.* Likewise, Snisky never participated in an overnight lending program nor did he have the ability to do so. *Id.*

#### *The criminal judgment*

On February 5, 2015, Snisky pleaded guilty to committing mail fraud and to engaging in monetary transactions in property derived from mail fraud. *Id.* at 1; Div. Ex. 2 at 1. Mail fraud requires a scheme to defraud and the specific intent to defraud or obtain money by means of false or fraudulent pretenses, among other elements. Div. Ex. 1 at 5; *see* 18 U.S.C. § 1341. The total loss to investors attributed to Snisky is \$5,226,965.93. Div. Ex. 1 at 2 n.1, 13. Snisky was sentenced to two concurrent eighty-four month terms of imprisonment. Div. Ex. 2 at 2. He was also ordered to pay \$2,531,032.22 in restitution—the losses he caused that had not already been recovered through asset forfeiture. Div. Ex. 1 at 2 & n.1; Div. Ex. 2 at 5.

#### *The civil judgment*

After the criminal case against Snisky concluded, the district court in the civil action entered a default final judgment against him on August 11, 2016,

---

<sup>6</sup> “There are two basic types of traders: retail and institutional. Retail traders, often referred to as individual traders, buy or sell securities for personal accounts. Institutional traders buy and sell securities for accounts they manage for a group or institution.” Kristina Zucchi, CFA, *Comparing Institutional and Retail Traders*, Investopedia (updated Jan. 2, 2018), <http://www.investopedia.com/articles/active-trading/030515/what-difference-between-institutional-traders-and-retail-traders.asp>.

permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, Section 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder, and Section 7(a) of the Investment Company Act of 1940. Div. Ex. 3 at 1, 3.

### **Legal Conclusions**

Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f) empower the Commission to bar Snisky from participating in the securities industry if: (1) he was associated with a broker or dealer or investment adviser at the time of his 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) the sanction is in the public interest. 15 U.S.C. §§ 78o(b)(4)(C), (6)(A)(iii), 80b-3(e)(4), (f).

There is no doubt that Snisky was enjoined from violating the antifraud provisions of several of the securities laws by the district court in the civil action. Div. Ex. 3 at 3. However, whether he was associated with a broker or dealer or investment adviser when he engaged in the misconduct for which he was enjoined requires further analysis.

The Division states that Snisky was associated with an investment adviser at the time of his misconduct because he was the president of Arete, which was an investment adviser registered with the Commission. Div. Mot. at 6. However, it is likely that Arete did not apply to become a registered investment adviser until November 27, 2012, and its registration did not become effective until January 7, 2013. *See* Div. Ex. 5; Answer at 2; *see also* 15 U.S.C. § 80b-3(c)(2) (the Commission shall grant an application or begin proceedings for its denial within forty-five days of its filing). The specific instances of misconduct recounted in Snisky’s plea agreement took place from July 2011 until early 2012, before he was associated or “seeking to become associated” with a registered investment adviser. Div. Ex. 1 at 9-13; 15 U.S.C. § 80b-3(f). Although the plea agreement states generally that Snisky’s misconduct persisted until January 17, 2013, Div. Ex. 1 at 9, 11, I base my consideration of sanctions on concrete instances of his illegal behavior. From the summary disposition record, it is unclear what, if any, specific instances of misconduct occurred while Arete was a registered investment adviser. Based on this uncertainty and the obligation to view the facts in the light most favorable to Snisky, I am unable to conclude that Snisky’s misconduct overlapped sufficiently with his period of association with a registered investment adviser.

I could still sanction Snisky if he acted as an investment adviser, even if he was not registered. *Alexander V. Stein*, Advisers Act Release No. 1497, 1995 WL 358127, at \*2 (June 8, 1995) (“[A]uthority to proceed under Section 203(f)” is not dependent on registration, but “rest[s] on whether or not an entity or individual in fact acted as an investment adviser.”). However, there is insufficient evidence, for the purposes of summary disposition at least, that Snisky regularly provided investment advice to clients. An investment adviser is “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.” 15 U.S.C. § 80b-2(a)(11). The Commission’s “staff considers a person to be ‘in the business’” of advising others if the person provides “specific investment advice,” including a “recommendation, analysis or report about specific securities or specific categories of securities” in “anything other than rare, isolated and non-periodic instances.” Applicability of the Investment Advisers Act, 52 Fed. Reg. 38400, 38402 (Oct. 16, 1987); see, e.g., *United States v. Miller*, 833 F.3d 274, 281-82 (3d Cir. 2016); *Thomas v. Metro. Life Ins. Co.*, 631 F.3d 1153, 1162-63 (10th Cir. 2011); *United States v. Elliott*, 62 F.3d 1304, 1309-11 & n.8 (11th Cir. 1995) (all relying on the Commission release for its persuasive value). Snisky counseled investors to invest in his bond program after vouching for its safety, and he showed other investors Greeott’s alleged futures trading work while informing them of supposed past performance. Div. Ex. 1 at 9-11. Although Snisky’s assertions could arguably be considered specific investment advice, it is unclear how frequently he did this, and the advice was really just part of his pitch to investors to purchase the products he claimed to be trading in. Thus, as I discuss directly below, it would be more appropriate to call Snisky a broker-dealer than an investment adviser. Cf. 15 U.S.C. § 80b-2(a)(11)(C) (excluding someone whose provision of investment advice is incidental to their work as a broker-dealer from the definition of investment adviser).

The Division has not demonstrated Snisky’s association with an investment adviser, but it has provided sufficient evidence to show that Snisky was associated with a broker-dealer. Snisky correctly contends that he was never associated with a registered broker-dealer. Opp’n Br. at 5. However, he acted as an unregistered broker-dealer and was associated with two unregistered ones, which is sufficient to meet the statutory associational requirement. See *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at \*1 n.2 (Apr. 23, 2015). A broker is one “engaged in the business of effecting transactions in securities for the account of others.” 15 U.S.C. § 78c(a)(4)(A). The Commission has held that “activities that are indicative of being a broker include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and

securities, negotiating with issuers, and receiving transaction-based compensation.” *James S. Tagliaferri*, Securities Act Release No. 10308, 2017 WL 632134, at \*4 (Feb. 15, 2017) (quoting *Anthony Fields, CPA*, Advisers Act Release No. 4028, 2015 WL 728005, at \*18 (Feb. 20, 2015)). Holding one’s self out as broker-dealer is alone sufficient to meet the Exchange Act definition of a broker. *See Fields*, 2015 WL 728005, at \*18 & n.112. Repeated “attempt[s] to induce transactions in securities for other individuals by soliciting potential investors and arranging transactions on their behalf” also indicate that one is a broker. *Id.* at \*18 & n.113 (citing *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005)).

Although there is no evidence that Snisky received transaction-based compensation—and in fact there is little to no evidence that Snisky invested any of his clients’ money—it is unquestionable that he held himself out as a broker-dealer, recruited investors, and handled their money. He held himself out as an “institutional trader” who could “make markets” and was “on Bloomberg,” recruited several investors for his bond and futures trading programs, and received millions of dollars from them to invest. Div. Ex. 1 at 9-12. Moreover, he was associated with Colony Capital and Arete, companies that held themselves out as broker-dealers by purporting to be in the business of offering investment opportunities in bonds and futures trading. *Id.* at 7-8.

Snisky argues that he had no notice that he could be found to have associated with a broker-dealer because the OIP does not allege he was associated with one. Opp’n Br. at 4. However, the OIP effectively alleges that Snisky was so associated because it asks me to determine what relief is available under Section 15(b) of the Exchange Act, and to make that determination, I must consider whether he was associated with or acted as a broker-dealer. OIP at 2. Snisky therefore had notice.<sup>7</sup>

### Sanction

To determine whether a sanction is in the public interest, the Commission considers the *Steadman* factors: (1) the egregiousness of the respondent’s actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of

---

<sup>7</sup> Snisky makes other legal arguments in his filings, but they appear to challenge district court proceedings and rulings that are not at issue in this proceeding. *See, e.g.*, Opp’n Br. at 2 (challenging a purported finding that he violated the Advisers Act), 4 (arguing that no civil penalty can be imposed); Answer at 2, 3, 7 (claiming that he never received the judgment in the civil action); *see* Div. Reply at 6.

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. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission's inquiry regarding the appropriate sanction is flexible, and no one factor is dispositive. *Kornman*, 2009 WL 367635, at \*6. The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and deterrence. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at \*8 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at \*2 (July 25, 2003). 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. *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at \*2 (Mar. 7, 2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

Snisky's conduct was egregious and recurrent. Over the course of at least a year-and-a-half, he lied to investors and stole over five million dollars from them. Snisky roped in investors by falsely describing himself as an institutional trader on Bloomberg who could make markets and had access to select investment opportunities unavailable to others. Div. Ex. 1 at 11-12. He told investors that Greeott had created a successful algorithm for trading in the futures market when in fact he had not, and he falsely led them to believe that Greeott was trading live in the futures market when he was doing no such thing. *Id.* at 8-10. He claimed to offer a proprietary model for investing in Ginnie Mae bonds and made assurances about their safety as investments, even though he never invested any money in the bonds. *Id.* at 11. He also lied about participating in an overnight lending program that he claimed would make additional money for the bond investors. *Id.* at 12. And when Snisky received investor funds for investment in bonds or futures, he almost never actually made any investments. *Id.* at 10-11, 12-13. Instead, he pocketed the money and provided false documents to investors indicating that their accounts were earning profits. *Id.* Snisky's fraud harmed more than ten victims. *Id.* at 14.

Snisky's two fraud convictions and multi-million dollar restitution obligation are further evidence of the egregiousness of his conduct and show that investors were seriously harmed. The Commission has repeatedly held that, "absent 'extraordinary mitigating circumstances,' an individual who has been criminally convicted in connection with activities related to the purchase or sale of securities cannot be permitted to remain in the securities

industry.” *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at \*6 & n.34 (Jan. 16, 2007) (quoting *Frederick W. Wall*, Exchange Act Release No. 52467, 2005 WL 2291407, at \*4 (Sept. 19, 2005)). No mitigating circumstances are present here.

Snisky appears to argue that he did not act with scienter, *see* Opp’n Br. at 6, 7, but this is belied by his fraud conviction and by the facts of his plea agreement. He was convicted of mail fraud, which necessarily means he engaged in a scheme to defraud with specific intent to defraud. *See* 18 U.S.C. § 1341. And Snisky’s lies were calculated; he believed, for example, that investors were more likely to invest in Colony Capital’s and Arete’s offerings if they thought the companies were more profitable than they actually were. Div. Ex. 1 at 9. He knew that Greeott was trading in a simulated environment and had no history of profitable trading in the futures market. *Id.* And Snisky made false assurances about the safety of the Ginnie Mae bonds even though he knew he had not purchased any. *Id.* at 11.

Snisky pleaded guilty in the criminal case, which means he recognizes the wrongful nature of his conduct and accepts responsibility to some degree. *See* Div. Ex. 1 at 15. However, in his answer, he shifts blame to others and claims he acted in “good faith” and did not create a fraudulent scheme. Answer at 5-6. Throughout his filings, Snisky challenges the very facts to which he pleaded guilty. *See, e.g., id.* at 5-7. Snisky also has made no assurances against future violations. Finally, “the degree of intentional wrongdoing evident in a defendant’s past conduct” is an “important factor” in evaluating the likelihood of future violations. *Aaron v. SEC*, 446 U.S. 680, 701 (1980). If I do not impose a bar on Snisky, then he could return to the securities industry once he is released from prison, and “the existence of a violation raises an inference that it will be repeated.” *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)).

The Division asks for a full associational bar against Snisky, but does not ask for a penny stock bar. Div. Mot. at 10; Prehr’g Tr. 7. Because it is in the public interest to grant the Division’s request and the statutory requirements are met, I permanently bar Snisky from the securities industry.<sup>8</sup>

---

<sup>8</sup> Although I do not find that Snisky was associated with an investment adviser, I am still permitted to bar him from future association with an investment adviser because of the full associational bar available under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No.

(continued...)

## Order

Under Commission Rule of Practice 250(b), I GRANT the Division of Enforcement's motion for summary disposition and ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934, that Gary C. Snisky is BARRED from association with a broker, dealer, investment adviser, 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 Rule 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-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.

---

Brenda P. Murray  
Chief Administrative Law Judge

---

111-203, 124 Stat. 137. This finding does not run afoul of *Bartko v. SEC*, 845 F.3d 1217, 1222-23 (D.C. Cir. 2017), because Snisky's misconduct occurred in 2011 through 2013, which is after the July 22, 2010, effective date of the Dodd-Frank Act.