UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72031 / April 25, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3824 / April 25, 2014

Admin. Proc. File No. 3-15308

In the Matter of

JOSEPH CONTORINIS
c/o Roberto Finzi
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

ORDER GRANTING MOTION FOR SUMMARY AFFIRMANCE OF INITIAL DECISION

Joseph Contorinis appeals from the decision of an administrative law judge barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock. The law judge's decision was based on Contorinis's being convicted in federal district court of securities fraud, as well as his being enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The Division of Enforcement moves for summary affirmance of the law judge's initial decision. Based on our *de novo* review of the record before the law judge and our consideration of the petition for review and the parties' submissions on the motion for summary affirmance, we have determined to grant the Division's motion.

Contorinis was the former co-portfolio manager of the Jeffries Paragon Fund. In late 2005 and early 2006, Nicos Stephanou, Contorinis's friend, and an investment banker at UBS, provided material, non-public information to Contorinis about the status of negotiations to purchase the Albertsons grocery store chain, and Contorinis used this information to trade in Albertsons stock on behalf of the Paragon Fund. In October 2010, a jury found Contorinis guilty of one count of conspiracy to commit securities fraud and seven counts of insider trading related

to Contorinis's trades in Albertsons stock on December 22, 2005 and January 11, 2006.[1] Contorinis was sentenced to 72 months of imprisonment, and his conviction and sentence were upheld on appeal.[2] In February 2012, the district court, in a separate action, found Contorinis civilly liable for the same conduct based on collateral estoppel, ordered Contorinis to disgorge $7,260,604 in ill-gotten gains and pay a civil penalty of $1 million, and permanently enjoined Contorinis from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[3]

This proceeding was instituted on April 30, 2013, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Investment Advisers Act, which authorize us to impose an industry-wide associational bar on any person who, at the time of the alleged misconduct, was associated with a broker or dealer or investment adviser, if the person has been enjoined from any conduct or practice in connection with the purchase or sale of a security or has been convicted of a crime involving the purchase or sale of any security or arising out of the conduct of the business of a broker or dealer or investment adviser, if it is in the public interest.[4] The Division and Contorinis filed cross-motions for summary disposition. In an order dated July 3, 2013, the law judge denied Contorinis's motion. On August 22, 2013, the law judge issued an initial decision granting the Division's motion.

Following Contorinis's appeal, the Division filed the present motion for summary affirmance, which Contorinis has opposed. The standard for granting summary affirmance has been met in this case. We find that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument, that no prejudicial error was committed in the conduct of the proceeding, and that the decision embodies no exercise of discretion or decision of law or policy that is important and that the Commission should review.[5] Accordingly, we adopt the initial decision's factual and legal findings. In light of Contorinis's criminal conviction for conspiracy and insider trading and the lack of creditably mitigating

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[1] *See SEC v. Contorinis*, No. 09 Civ. 1043, 2012 WL 512626, at *1 (S.D.N.Y. Feb. 3, 2012) (summarizing results of criminal trial), *aff'd*, No. 12-1723-CV, 743 F.3d 296, 2014 WL 593484 (2d Cir. Feb. 18, 2014). Contorinis was found not guilty on two other counts of insider trading related to trades occurring on December 7, 2005. *Id.* at *1 n.4.

[2] *See United States v. Contorinis*, 692 F.3d 136, 138 (2d Cir. 2012). The court of appeals reversed a criminal forfeiture order of $12.65 million against Contorinis, *id.* at 145-48, and on remand the forfeiture amount was reduced to $427,875.

[3] *See SEC v. Contorinis*, 2012 WL 512626, at *2-6.

[4] 15 U.S.C. § 78*o*(b)(6); 15 U.S.C. § 80b-3(f). Exchange Act Section 15(b)(6) authorizes a bar from participating in an offering of penny stock based on the same considerations.

[5] *See* 17 C.F.R. § 201.411(e)(2); *Eric S. Butler*, Securities Exchange Act Release No. 64204, 2011 WL 3792730, at *1 n.2 (Aug. 26, 2011) (noting in a follow-on proceeding based on a criminal conviction that the Commission may apply the summary affirmance rule "in the future where, as here, the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission").

circumstances, the law judge's application of the public interest factors here amply demonstrates that an industry-wide bar is appropriate.[6]

Although we find no issue warranting our review in the law judge's initial decision, we briefly address issues raised by Contorinis in his petition for review.[7] Contorinis contends that the law judge erred when he stated that a five-year bar "would be no bar at all, because it would run essentially concurrently with his imprisonment." We disagree. Based on the evidence in the record, the law judge's observation that Contorinis's six-year prison sentence imposed in December 2010 would "run essentially concurrently" with a five-year bar was substantially correct when the initial decision was issued in 2013. Assuming Contorinis would not have appealed an initial decision imposing a five-year bar, over three years of such a bar would overlap with Contorinis's incarceration based on his serving his full sentence. More importantly, even if Contorinis is correct that he will be released in 2015, this fact does nothing to undermine the law judge's ultimate conclusion that a permanent bar is in the public interest.

We likewise reject Contorinis's contention that the law judge's application of the final *Steadman* factor demonstrated that he failed to consider "any *actual* likelihood that Mr. Contorinis would commit future violations if given the opportunity." To the contrary, the law judge's application of all the *Steadman* factors—including whether Contorinis's occupation would present opportunities for future violations—involved an assessment of the risk of Contorinis's potential future harm to the public. We fully agree with the law judge that, based on such an assessment, an industry-wide bar is in the public interest.

Contorinis makes too much of a statement by the district judge at Contorinis's sentencing hearing that he did not "think there is any chance" that Contorinis was "going to commit crimes in the future." The statement was unsubstantiated and neither the law judge nor the Commission is bound by it in our independent assessment of the public interest. The Court of Appeals for the Second Circuit, in affirming the district court's decision to permanently enjoin Contorinis from future violations of the securities laws recently rejected a similar argument made by Contorinis, stating that "these statements must be read in the context of a criminal sentencing proceeding in which the court was considering possible grounds for leniency in sentencing, not the need to impose a civil injunction."[8] The court noted that "Contorinis continues to deny having engaged in insider trading, suggesting a lack of remorse and supporting further measures to deter future wrongdoing of a like type."[9]

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[6] *See John S. Brownson*, Exchange Act Release No. 46161, 2002 WL 1438186, at *2 (July 3, 2002) (holding that "[a]bsent extraordinary mitigating circumstances," an individual who has been criminally convicted of securities fraud "cannot be permitted to remain in the securities industry"), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

[7] *See Andover Holdings, Inc.*, Exchange Act Release No. 68966, 2013 WL 653011, at *1 (Feb. 21, 2013) (summarily affirming law judge's decision but addressing issues raised on appeal).

[8] *SEC v. Contorinis*, 2014 WL 593484, at *12 n.7.

[9] *Id.* at *9 (internal citation omitted).

Contorinis also seeks review of the law judge's denial of his motion for summary disposition. In that motion, Contorinis argued that this action is barred by the five-year statute of limitations in 28 U.S.C. § 2462,[10] specifically contending that the Supreme Court's recent decision in *Gabelli v. SEC*[11] supports his statute of limitations defense. *Gabelli* held that the § 2462 limitations period begins when the underlying cause of action comes into effect and that the common law fraud "discovery rule" does not apply in Commission enforcement actions. But *Gabelli* did not purport to address—let alone overturn—established precedent concerning the applicable statute of limitations in Commission follow-on proceedings or when, in such proceedings, a cause of action based on a criminal conviction or injunction comes into effect.[12] Accordingly, we agree with the law judge that the arguments raised in Contorinis's motion for summary disposition are "utterly meritless," and we affirm the law judge's denial of Contorinis's motion.[13]

As the law judge correctly noted, any applicable statute of limitations for a follow-on proceeding such as this one runs from either the date of the criminal conviction or the injunction upon which the action is based, not from the date of the underlying conduct.[14] This proceeding was instituted less than three years after Contorinis's criminal conviction and less than two years after the entry of the injunction against him—well within any applicable statute of limitations.

Indeed, with regard to a proceeding based upon Contorinis's criminal conviction, the relevant statute of limitations is ten years from the date of the conviction, as expressly provided

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[10] This section provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . .

[11] 133 S. Ct. 1216 (2013).

[12] *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *10 (March 7, 2014) (rejecting a statute of limitations argument based on *Gabelli* in a follow-on proceeding).

[13] In his petition for review, Contorinis drops the argument from his motion for summary disposition that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), bars any sanction in this proceeding because a jury did not find the additional facts necessary to impose such a sanction. We agree with the law judge that this argument is without merit.

[14] *See Michael J. Markowski*, Exchange Act Release No. 44086, 2001 WL 267660, at *2 (Mar. 20, 2001), *pet. denied*, No. 01-1181, 2002 WL 1932001 (D.C. Cir. Apr. 25, 2002); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 WL 80228, at *3 (Feb. 9. 1998) (holding that because "Section 15(b)(6)(A)(ii) of the Exchange Act authorizes us to proceed . . . on the basis of [respondent's] conviction . . . it is the date of [the] conviction, not the conduct underlying the conviction, which is relevant" for statute of limitations purposes).

by Exchange Act Section 15(b)(6)(A)(ii) and Advisers Act Section 203(f).[15] Furthermore, the five-year statute of limitations of § 2462 does not apply in this case because a follow-on proceeding seeking an industry-wide bar is not "for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise" within the meaning of § 2462.[16] And even if § 2462 were deemed to apply to a follow-on proceeding based on an injunction, the proceeding here, as noted, was brought less than two years after the injunction against Contorinis was entered.[17]

Contorinis insists that "the Commission could have initiated an administrative proceeding against [him] in January 2006" after he engaged in insider trading and therefore the statute of limitations for the present action began to run from the date of his underlying misconduct. But this ignores the relevant statutory provisions. Although Exchange Act Section 15(b)(6)(C) and Advisers Act Section 203(f) authorize us to bring an administrative proceeding based on the commission of a securities law violation itself, they also authorize such proceedings based on either a conviction for a securities law violation or an injunction from committing future violations.[18] As we have held, each of these alternatives provides an "independent basis" for instituting proceedings to determine whether a bar is in the public interest.[19] Accordingly, because "Congress provided three alternative grounds for Commission action under [Exchange Act] Section 15(b)(6)(A) [and Advisers Act Section 203(f)] . . . the same misconduct can result

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15 15 U.S.C. § 78*o*(b)(6)(A)(ii) (authorizing an administrative proceeding if, among other things, a person "has been convicted . . . within 10 years of the commencement of the proceedings under this paragraph"); 15 U.S.C. § 80b-3(f) (same). The five-year limitation of 28 U.S.C. § 2462 does not apply when the period for commencing proceedings has been "otherwise provided by Act of Congress." *Bartko*, 2014 WL 896758, at *9 (holding that the ten-year limitations period of Section 15(b)(6)(A)(ii), not the five-year period of § 2462, applies in a follow-on proceeding based on a criminal conviction); *Frederick W. Wall*, Exchange Act Rel. No. 52467, 2005 WL 2291407, at *3 (Sept. 19, 2005) (same).

16 *See Bartko*, 2014 WL 896758, at *9 ("[T]he remedies analysis is not driven by the need to punish respondents; rather the analysis is prospective and focuses on [the respondent's] 'current competence' and the 'degree of risk' he poses to public investors and the securities markets in each of the areas covered by the remedies." (quoting *John W. Lawton*, Investment Advisers Act Release No. 3513, 2012 WL 6208750, at *10 n.34 (Dec. 13, 2012))).

17 *See Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *4 (Dec. 2, 2005) (holding that § 2462 did not apply in a follow-on proceeding assessing the public interest of imposing a bar, but even if it did, "the basis for this administrative proceeding is the injunction, which was entered less than five years before proceedings were instituted, and therefore within the limitations period").

18 *See* 15 U.S.C. § 78*o*(b)(6)(A)(i), (ii), and (iii); 15 U.S.C. § 80b-3(f). As noted above, Exchange Act Section 15(b)(6)(A)(ii) and Advisers Act Section 203(f) specifically authorize a proceeding if a person "has been convicted of" a securities law violation "within 10 years of the commencement of the proceeding," which wholly undermines Contorinis's argument that this proceeding had to have been brought within five years of his underlying misconduct.

19 *See Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 WL 258850, at *1 (Sept. 17, 1992).

in separate claims, each with its own accrual date."[20] To hold otherwise—as Contorinis urges—would contravene Congressional intent to allow the Commission to initiate proceedings on any of the three alternative bases.[21] The present action is jurisdictionally grounded on Contorinis's criminal conviction and injunction, and thus it is the date of those events that is salient for statute of limitations purposes.

The law judge correctly rejected Contorinis's statute of limitations defense and correctly determined that an industry-wide bar is in the public interest.

Accordingly, it is ORDERED that the Division's motion for summary affirmance is granted.

By the Commission (Chair WHITE and Commissioners AGUILAR and STEIN); Commissioners GALLAGHER and PIWOWAR concurring in part and dissenting with respect to the bars from association with municipal advisors and nationally recognized statistical rating organizations.

Lynn M. Powalski
Deputy Secretary

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[20] *Markowski*, 2001 WL 267660, at *2.

[21] *See id.* ("Congress' clear intent was to allow us separate means—with separate accrual dates—to bring administrative proceedings under Section 15(b)(6)."); *cf. Proffitt v. FDIC*, 200 F.3d 855, 862-65 (D.C. Cir. 2000) ("Separate accrual for each alternative [statutory prerequisite] gives meaning to all of the statutory language.").