INITIAL DECISION RELEASE NO. 739
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16050

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

In the Matter of JESSE C. LITVAK	INITIAL DECISION January 22, 2015

APPEARANCES: Rachel E. Hershfang and Kerry Dakin for the Division of Enforcement, Securities and Exchange Commission

Patrick J. Smith and Sarah B. Zimmer, DLA Piper LLP (US), for Jesse C. Litvak

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition (Motion) and permanently bars Respondent Jesse C. Litvak (Litvak) from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, full associational bar).

Procedural Background

On September 2, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Litvak, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that on March 7, 2014, a jury found Litvak guilty of securities fraud, Troubled Asset Relief Program (TARP) fraud, and making false official statements. OIP at 2. The OIP further alleges that Litvak was sentenced to a twenty-four month prison term followed by three years of supervised release, and ordered to pay a $1.75 million fine and restitution in an amount to be determined, in *United States v. Litvak*, Case No. 3:13-cr-00019-JCH (D. Conn.) (*Litvak*). *Id.*

At a prehearing conference held on October 6, 2014, I found service of the OIP to have occurred on September 4, 2014. *Jesse C. Litvak*, Admin. Proc. Rulings Release No. 1887, 2014 SEC LEXIS 3757 (Oct. 6, 2014). I also granted the parties leave to file motions for summary disposition pursuant to Commission Rule of Practice (Rule) 250. *See id.*; 17 C.F.R. § 201.250.

In November 2014, the Division filed its Motion, with a Memorandum in Support of the Motion (Div. Mem.), along with a set of Stipulated Facts (Stipulated Facts) and supporting exhibits; thereafter, Litvak timely filed a Memorandum in Opposition to the Motion (Opp'n), with a Declaration of Patrick J. Smith and one supporting exhibit, and the Division timely filed a Reply in Support of the Motion (Reply), with a Declaration of Rachel E. Hershfang and two supporting exhibits. The following exhibits were attached to the Stipulated Facts: the indictment filed in *Litvak* (indictment) (Ex. 1); the jury verdict form filed in *Litvak* (Ex. 2); the district court's ruling in *Litvak*, denying Litvak's motions for judgment of acquittal and for a new trial (Court Order) (Ex. 3); the transcript of the sentencing hearing in *Litvak* (Ex. 4); the judgment in *Litvak* (Ex. 5); and an order granting Litvak's motion for release pending appeal in *Litvak*, issued by the United States Court of Appeals for the Second Circuit (Second Circuit) on October 3, 2014 (Ex. 6). Attached to the Declaration of Patrick J. Smith was the transcript of a telephonic status conference held on October 14, 2014, in *SEC v. Litvak*, 3:13-cv-132(JCH) (D. Conn.) (*SEC v. Litvak*) (Ex. A), a civil case based on the same misconduct adjudicated in *Litvak*. Ex. A at 6. Attached to the Declaration of Rachel E. Hershfang were two filings in *SEC v. Litvak*: the Commission's Response to Litvak's Motion for a Continued Stay (Reply Ex. A) and Litvak's Memorandum of Law in Support of his Motion for a Continued Stay of this Action (Reply Ex. B).

Summary Disposition Standard

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See 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); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & n.21 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *John S. Brownson*, 55 S.E.C. 1023, 1028 n.12 (2002), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323.[1] *See* 17 C.F.R. § 201.323. The parties' filings and all

[1] Pursuant to Rule 323, I take official notice of the proceedings, docket sheets, and records in *Litvak* and *SEC v. Litvak*. *See* 17 C.F.R. § 201.323. In particular, the sentencing hearing transcript (Ex. 4) attached to the Stipulated Facts was incomplete, and I have relied on, and take official notice of, the complete version (available on PACER as Document 273 in *Litvak*), which the Division provided to the Commission's Office of the Secretary electronically.

documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

Findings of Fact and Conclusions of Law

Section 15(b)(6) of the Exchange Act permits the Commission to sanction any person who, at the time of the misconduct, was associated with a broker or dealer, if the Commission finds that the sanction is in the public interest and the person has been convicted of any offense specified in Section 15(b)(4)(B) within ten years of the commencement of proceedings. 15 U.S.C. § 78*o*(b)(4)(B), (6)(A)(ii). Litvak does not dispute that during the relevant time period, he was an associated person of Jefferies & Co. (Jefferies), a broker-dealer registered with the Commission. Opp'n at 2; Ex. 1 at 1. Nor does he dispute that within the past ten years he was found guilty of felonies involving the purchase or sale of securities and arising out of the conduct of the business of a broker or dealer, within the meaning of Section 15(b)(4)(B) of the Exchange Act. Stipulated Facts at 1; Exs. 2, 5. A jury verdict of guilty is a conviction within the meaning of Exchange Act Section 15(b)(4). *Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *8 (Mar. 7, 2014). Accordingly, there is no genuine issue of material fact and this proceeding may be resolved without a hearing. *See Kornman v. SEC*, 592 F.3d 173 (D.C. Cir. 2010) (summary proceedings are appropriate in follow-on cases after a criminal conviction).

Litvak nonetheless argues that resolution of this proceeding should be deferred pending resolution of Litvak's appeal before the Second Circuit. Opp'n at 3-5, 8 (citing 17 C.F.R. § 201.250(b)). But the pendency of an appeal is neither grounds to postpone resolution of a follow-on proceeding, nor a mitigating factor in determining sanctions, even where the respondent has been granted bail pending appeal. *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *21 n.28 (Mar. 7, 2014); *see also Ira William Scott*, 53 S.E.C. 862, 865 n.8 (1998) ("We need not await the outcome of any post-conviction proceeding in order to proceed."); *Charles Phillip Elliott*, 50 S.E.C. 1273, 1277 n.17 (1992), *aff'd*, 36 F.3d 86, 87 (11th Cir. 1994) ("Nothing in the statute's language prevents a bar to be entered if a criminal conviction is on appeal"). Deferral is especially inappropriate here, because appellate briefing will not even be complete until March 2015, just weeks before this Initial Decision is due. Opp'n at 5. The remedy, if Litvak's appeal is ultimately successful and the statutory basis for the bar is no longer present, is to petition the Commission for reconsideration of this proceeding. *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 (Securities Act) Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013); *Jon Edelman*, 52 S.E.C. 789, 790 (1996) ("If [Respondent] succeeds in having his conviction vacated, he can then apply to us for reconsideration of any sanctions imposed in the administrative proceeding."). Accordingly, the Division's Motion is granted and a sanction will be imposed on Litvak if it is in the public interest.

Sanctions

The Division seeks a full associational bar against Litvak. Div. Mem. at 1, 7-8. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: 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 (*Steadman* factors). 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission has also considered the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003).

In *Ross Mandell*, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and that the law judge's decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." 2014 SEC LEXIS 849, at *7-8 (internal quotation marks omitted). In a follow-on administrative proceeding after a criminal conviction based on a general guilty verdict, all of the indictment's factual allegations may be taken into account in determining the appropriate sanction, without reference to whether such allegations were necessarily put in issue and determined in the criminal case. *See id.* at *10 n.13. Thus, a particularized collateral-estoppel analysis, as might be required in other contexts, is unnecessary. *See, e.g.*, *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 307 (2d Cir. 1999) ("[E]stoppel does not apply to a finding that was not legally necessary to the final sentence."); *SEC v. Bilzerian*, 29 F.3d 689, 694 (D.C. Cir. 1994) ("Our review of the record indicates that Bilzerian's criminal convictions conclusively established all of the facts the [Commission] was required to prove with respect to the specified claims."); *Demitrios Julius Shiva*, 52 S.E.C. 1247, 1249 (1997) (finding that "factual issues that were actually litigated and necessary to the Court's decision to issue [an] injunction" may not be relitigated).

After engaging in the analysis mandated by *Ross Mandell*, I have determined that it is appropriate and in the public interest to bar Litvak from participation in the securities industry to the fullest extent possible. I have principally relied on the allegations of the indictment (Ex. 1), the district court's findings in denying Litvak's motions for judgment of acquittal and for a new trial (Ex. 3), and the district court's remarks at the sentencing hearing (Ex. 4).

A. Background of Litvak's Misconduct

Litvak was a senior trader and managing director at Jefferies, specializing in trading residential mortgage-backed securities (RMBS). Ex. 1 at 1. Litvak's customers included entities established pursuant to TARP and funded largely by the U.S. government, as well as private entities. *Id.* at 2-4. Jefferies earned profits from trading RMBS in two ways: when a bond was sold out of Jefferies' inventory (inventory trade), its profit was normally the difference between sale price and purchase price, and the purchaser normally did not pay any commission; and when a bond sold off a list of bonds offered for sale (bid list trade), its profit was normally a commission added to the cost of the bond. *Id.* at 4-6. These two forms of compensation to the

broker-dealer are called "all-in" and "on-top," respectively. *Id.* at 6. Jefferies also did "order trades," where a buyer or seller commissions the broker-dealer to find a counterparty for the trade, in which case the broker-dealer's compensation is negotiated, and can be either all-in or on-top. *Id.* at 4, 6. In on-top arrangements, Litvak's scheme involved misrepresenting to buyers the price Jefferies had agreed to pay sellers, and misrepresenting to sellers the price Jefferies had agreed to pay buyers; these misrepresentations increased Jefferies' profits. *Id.* at 9. In inventory trades, Litvak misrepresented to buyers that the transaction was an order or bid list trade requiring on-top compensation, which also increased Jefferies' profits. *Id.*

B. An Industry-Wide Bar Is in the Public Interest

1. Litvak's misconduct was egregious and recurrent

Litvak's misconduct was unquestionably recurrent. Litvak was found guilty of trading ten different RMBS pursuant to his fraudulent scheme between May 2009 and June 2011, in violation of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 (Count 7 of the indictment, pertaining to an eleventh RMBS, was dismissed before trial). Ex. 1 at 17; Ex. 2; Stipulated Facts at 1. Five of those RMBS were sold to TARP-funded entities, and Litvak was accordingly found guilty of one count of TARP fraud, in violation of 18 U.S.C. § 1031. Ex. 1 at 18-19; Ex. 2; Stipulated Facts at 1. Litvak was also found guilty of making four distinct false official statements to three different managers of TARP-funded entities between December 2009 and June 2010, in violation of 18 U.S.C. § 1001. Ex. 1 at 19-20; Ex. 2; Stipulated Facts at 1. At sentencing, the district court noted that "things like how often you do it and how long you do it . . . those factors aren't in Mr. Litvak's favor." Ex. 4 at 80-81; *see also* Ex. 4 at 138.

That Litvak's misconduct was egregious is amply demonstrated by multiple strands of evidence. First, the Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *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); *see also Marshall E. Melton*, 56 S.E.C. at 713. Absent extraordinary mitigating circumstances, an individual who has been criminally convicted of misconduct specified in Exchange Act Section 15(b)(4)(B) cannot be permitted to remain in the securities industry. *See Joseph Contorinis*, Initial Decision Release No. 503, 2013 WL 4478642, at *5 (Aug. 22, 2013) (citing *John S. Brownson*, 55 S.E.C. 1023, 1027 (2002), *pet. denied*, 66 Fed. App'x 687 (9th Cir. 2003)), *summarily aff'd*, Exchange Act Release No. 72031, 2014 WL 1665995 (Apr. 25, 2014). Indeed, "the importance of honesty for a securities professional is so paramount that [the Commission has] barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business." *Kornman*, 2009 SEC LEXIS 367, at *23.

Second, specific examples of Litvak's misconduct demonstrate its egregiousness and recurrence. For example, on March 31, 2010, Litvak sold two RMBS bonds, the "HarborView Bond" and the "Lehman Bond," to AllianceBernstein Legacy Securities Master Fund, L.P. (ABLS), which had received TARP funds. Ex. 1 at 10, 18. The transaction was an order trade, and the seller initially offered $58 for the HarborView Bond and $57 for the Lehman Bond. *Id.*

at 10. Litvak falsely informed the ABLS manager that the seller had offered $59 for the HarborView Bond and $58.50 for the Lehman Bond.[2] *Id.* About two hours later, at approximately the same time that Jefferies agreed to purchase the HarborView Bond for $57.50 and the Lehman Bond for $56.50, Litvak falsely told the ABLS manager that the seller had agreed to $58 for the HarborView Bond and $58.25 for the Lehman Bond. *Id.* at 11. When the ABLS manager inquired about how Jefferies would be compensated, Litvak replied that "[I] will work for whatever you want on these." *Id.* at 11-12. Ultimately, the ABLS manager and Litvak agreed to a trade of $7 million worth of the HarborView Bond at $58, that is, with seemingly no profit to Jefferies, and a trade of $20 million worth of the Lehman Bond at $58.25, plus five ticks as Jefferies' compensation. *Id.* at 12. The result was an actual profit to Jefferies of sixteen ticks on the HarborView Bond trade, or approximately $60,000, and sixty-one ticks on the Lehman Bond trade, or approximately $650,000. *Id.* at 13.

As another example, on December 23, 2009, Litvak sold the "Wells Fargo Bond" to Wellington Management Legacy Securities PPIF Master Fund, LP (WMLS), which had also received TARP funds. Ex. 1 at 14, 19. Litvak had purchased the Wells Fargo Bond for Jefferies' inventory at a price of $70 on December 14, 2009. *Id.* at 14. On December 18, 2009, Litvak falsely told the WMLS manager that a seller had offered $77 for over $6 million of the Wells Fargo Bond. *Id.* In response to a counteroffer of $74 from WMLS, Litvak conveyed to the WMLS manager the substance of fictitious communications Litvak claimed to have had with the seller. *Id.* at 15. On December 23, 2009, Litvak and the WMLS manager had further negotiations where Litvak again conveyed the substance of fictitious communications, including the false representation that the seller had agreed to a price to Jefferies of "75-28." *Id.* at 15-16. The WMLS manager agreed to a trade of $2.3 million worth of the Wells Fargo Bond at $76, which purportedly would have resulted in a profit to Jefferies of four ticks, or about $3,800. *Id.* at 15-16. In fact, Jefferies' actual profit was 192 ticks, or about $185,000. *Id.* at 16.

Third, the sentencing hearing transcript demonstrates the egregiousness and recurrence of Litvak's misconduct. The district court found a fraud loss for sentencing purposes in the range of $2.5 million to $7 million, of which Litvak personally received $700,000 to $1 million, based on dozens of fraudulent bond sales. Ex. 4 at 42, 48, 128, 138, 141. The district court summarized Litvak's misconduct as follows:

> [T]he nature of the fraud here was there were occasions when you told the buyer that they could get the bond they wanted and that the seller would sell it at X when, in fact, the price the seller had told you they would take was less than X. There were situations where you told a seller that a buyer would pay X when, in fact, the buyer would pay X plus, but you induced the seller to sell based upon that lower price represented. And there were times, as I recall, where you said to the buyer that there was a third-party seller with whom you were vigorously negotiating and had finally worked out a price when, in fact, it was a bond that was in the inventory of Jefferies, there was no other seller.

[2] Prices were quoted in dollars and 1/32s of a dollar, a fraction referred to as a "tick." Ex. 1 at 5. Thus, a price quote of "58-16" is equivalent to 58 and 16/32 dollars, or $58.50. *See id.*

Id. at 140. In short, "the nature and circumstances of [Litvak's] crime was a crime of fraud, lies, repeated lies." *Id.* The district court's views on the seriousness of Litvak's misconduct are underscored by the imposition of a twenty-four month prison term and a $1.75 million fine. Div. Ex. 5.

2. Scienter

In committing securities fraud, Litvak acted with a high degree of scienter – "willfully, knowingly, and with the intent to defraud," the element the district court required the jury to find in order to convict him of securities fraud. Ex. 3 at 4; *see United States v. Vilar*, 729 F.3d 62, 88-89 (2d Cir. 2013) (scienter is an element of securities fraud under Exchange Act Section 10(b)). The district court's findings on this point are unequivocal: Litvak's "lies were the product of a conscious objective and had the purpose of inducing victims into accepting his made-up prices." Ex. 3 at 10. Similarly, in committing TARP fraud, the jury necessarily found that Litvak acted "knowingly, willfully, and with specific intent to defraud." *Id.* at 17. In his motion for judgment of acquittal on the false official statement charges, "Litvak [did] not challenge the proof that he knew his statements were false." *Id.* at 21. Litvak's high degree of scienter weighs heavily in favor of a severe sanction.

3. Lack of assurances against future violations and recognition of the wrongful nature of his conduct

Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference 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) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). Failure to make assurances against future violations and to recognize wrongdoing demonstrates the threat of future violations. *See Christopher A. Lowry*, 55 S.E.C. 1133, 1144 (2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003). Litvak does not attempt to rebut that inference by offering a straightforward assurance against future violations. *E.g.*, *Toby G. Scammell*, Investment Advisers Act of 1940 (Advisers Act) Release No. 3961, 2014 WL 5493265, at *6 & n.47 (Oct. 29, 2014) (reciting "some assurances against future violations"). Instead, Litvak relies almost entirely on the district court's remarks at sentencing: "I don't see you as committing any other crimes." Opp'n at 6-8 & n.4 (quoting Ex. 4 at 147).

To be sure, the district court clearly did not consider Litvak likely to recidivate. Ex. 4 at 147. But such a finding is entitled to little weight in this proceeding. *See Joseph Contorinis*, 2014 WL 1665995, at *2. Moreover, assurances against future violations may be found insufficiently sincere when other public interest factors – especially scienter – cast doubt on them. *See Toby G. Scammell*, 2014 WL 5493265, at *6 (high degree of scienter and intentional acts of concealment "cause us concern about the sincerity of his assurances"); *Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *82 (May 16, 2014) ("We have concerns, however, about the sincerity of their assurances given the degree of scienter involved."); *Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *23 (past criminal history, degree of scienter, and concealment efforts "cause us concern about the sincerity of

Korem's assurances"). Litvak's scienter was high, so much so that it seriously erodes any assurances against future misconduct.

Litvak's assurances against future misconduct are further eroded by his total failure to recognize the wrongfulness of his conduct. The record is devoid of any sign of contrition on Litvak's part. *Cf. Lawrence Maxwell McCoy*, Initial Decision Release No. 569, 2014 WL 720787, at *6 (Feb. 26, 2014) (imposing ten year associational bar based in part on the respondent's plea of guilty to a charge of wire fraud), *finality order*, Exchange Act Release No. 71922, 2014 WL 1381421 (Apr. 9, 2014); *John Jantzen*, Initial Decision Release No. 472, 2012 WL 5422022, at *6 (Nov. 6, 2012) (imposing five year associational bar based in part on the respondent's recognition of the wrongfulness of his conduct), *finality order*, Exchange Act Release No. 68396, 2012 WL 6101866 (Dec. 10, 2012). The district court found that Litvak had not accepted responsibility. Ex. 4 at 60-61. Litvak's counsel agreed with the district court that "[Litvak's] position is that he did not commit a crime." *Id*. at 59.

The finding that Litvak has not recognized the wrongfulness of his conduct is bolstered by his complete mischaracterization, both in this proceeding and in proceedings before the district court, of the nature of the charges of which he was convicted. Litvak's counsel stated to the district court, in arguing that Litvak had accepted responsibility:

> He defended the case on, yes, we made these misrepresentations on these days, but we stopped short of saying that that constituted criminal fraud under the circumstances because materiality and intent to defraud don't arise from the circumstances.

Ex. 4 at 58. Litvak apparently contends that there was no materiality or intent to defraud because his "counterparties paid a price they were willing to pay for precisely the securities they expected to, and did, receive." Opp'n at 2; *see also* Ex. 3 at 5-10; Ex. 4 at 171-72. But the counterparties were willing to pay the prices they did only because of Litvak's fraud. Ex. 4 at 22. Litvak was not convicted of quoting one price but charging another, he was convicted of misrepresenting the prices at which third parties had offered or bid on illiquid RMBS in an opaque market, and of misrepresenting whether there was a third party at all. Ex. 1 at 8-16; *see* Ex. 3 at 9 ("Litvak misrepresented price information characteristically unavailable in the RMBS market.").

This is not to say that Litvak has attempted to relitigate his criminal case in this proceeding; he clearly has not. But his persistence in misstating the nature of his misconduct further demonstrates that he has not recognized the wrongfulness of it, and such lack of recognition, along with his high scienter, fatally undermines any assurances against future misconduct.

4. Opportunities for future violations

The final *Steadman* factor is the "likelihood that the [respondent]'s occupation will present opportunities for future violations." *Steadman*, 603 F.2d at 1140; *see also Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *13; *Johnny Clifton*, Securities Act Release No. 9417, 2013 SEC LEXIS 2022, at *53 (July 12, 2013); *Alfred Clay Ludlum, III*, Advisers Act

Release No. 3628, 2013 SEC LEXIS 2024, at *17 (July 11, 2013). The entirety of Litvak's argument on this point is: "Mr. Litvak has not worked in the securities industry since his termination from Jefferies in December 2011 nor does he have any plans to seek such employment. In fact, Mr. Litvak is pursuing work in an entirely unrelated field." Opp'n at 5. Litvak does not identify what he has been doing since December 2011, nor does he identify the "entirely unrelated field" in which he has been pursuing work, but he was apparently unemployed at the time of sentencing. Ex. 4 at 91 ("[Litvak] hasn't worked for two and a half years."). Although he is not currently working in the securities industry, a bar is a prospective remedy, and Litvak has provided no assurance that he will never return to work in the securities industry. If Litvak were to reenter the securities industry upon the expiration of his prison sentence, his occupation would present the opportunity for future violations, notwithstanding his current work status. Under the circumstances, I agree with the Division that this factor weighs in favor of a bar. *See* Reply at 3-4 (collecting cases).

5. Other considerations

Although Litvak's violations were neither particularly remote nor particularly recent, the degree of harm to investors and the marketplace, which is measured in this case by Jefferies' gains, was substantial. *See Toby G. Scammell*, 2014 WL 5493265, at *6 n.44. Also, industry bars have long been considered effective deterrence. *See Guy P. Riordan*, Securities Act Release No. 9085, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases).

In addition, I have considered Litvak's current competence and the degree of risk he poses to public investors and the securities markets in each of the industry segments covered by a full associational bar. *See Gregory Bartko*, 2014 WL 896758, at *10 (citing *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *7 n.34 (Dec. 13, 2012)). Litvak's failure to recognize the wrongful nature of his misconduct indicates a significant risk of future misconduct, if given the opportunity to commit it. *See Toby G. Scammell*, 2014 WL 5493265, at *6. The nature and egregiousness of Litvak's misconduct also indicate a significant risk of future misconduct. A full associational bar, as opposed to a more limited direct bar, "will prevent [Litvak] 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 WL 1744130, at *20 (May 2, 2014). This is because

> [t]he proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors. . . . We have long held that a history of egregious fraudulent conduct demonstrates unfitness for future participation in the securities industry even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. The industry relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants.

John W. Lawton, 2012 WL 6208750, at *11.

On balance, the public interest factors clearly weigh in favor of a permanent and full associational bar against Litvak.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition against Respondent Jesse C. Litvak is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Jesse C. Litvak is permanently BARRED from associating 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 Rule 360. *See* 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. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or 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.

_____

Cameron Elliot
Administrative Law Judge