INITIAL DECISION RELEASE NO. 845
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16491

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

In the Matter of ERIC W. JOHNSON	INITIAL DECISION ON DEFAULT July 30, 2015

APPEARANCES: Andrew P. O'Brien and Charles J. Kerstetter for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission instituted this proceeding on April 15, 2015, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. The Order Instituting Proceedings (OIP) alleges that in early 2015, Eric W. Johnson was permanently enjoined from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act (antifraud provisions), in *SEC v. Johnson*, 14-cv-8825 (N.D. Ill.). OIP at 2.

By Order issued May 15, I notified the parties that a prehearing conference would be held on June 2 and warned Johnson that I would default him if he did not file an answer, participate in the prehearing conference, or otherwise defend the proceeding. *Eric W. Johnson*, Admin. Proc. Rulings Release No. 2678, 2015 SEC LEXIS 1919. At the June 2 conference, the Division appeared, but Johnson did not. I inquired about service, as the OIP was sent to an attorney named Thomas M. Leinenweber, Esq. Tr. 4.[1] The Division stated that Leinenweber had confirmed by email that he represented Johnson and accepted service on Johnson's behalf, but was busy with representing Johnson in an ongoing criminal case. Tr. 4-6. I granted the Division leave to move for summary disposition and directed the Division to provide material establishing Leinenweber's representation of Johnson. *Eric W. Johnson*, Admin. Proc. Rulings Release No. 2754, 2015 SEC LEXIS 2212, at *2 (June 2, 2015); Tr. 5, 7-8.

On June 22, the Division moved for summary disposition, attaching four exhibits in support (Div. Exs. 1-4). Johnson did not respond to the motion.

[1] Citation is to prehearing conference transcript (Tr.).

Commission records and U.S. Postal Service confirmation of receipt show that Leinenweber received the OIP on April 20. As established by the Division, Leinenweber confirmed by email that Johnson was his client and that he would accept service. Div. Ex. 4. Further, the Division furnished Leinenweber with a copy of the May 15 Order and thus he was on notice of the June 2 prehearing conference. *Id.*

FINDINGS OF FACT

Johnson is in default for failing to file an answer, appear at the prehearing conference, respond to the Division's dispositive motion, or otherwise defend this proceeding. *See* 17 C.F.R. §§ 201.155(a), .220(f), .221(f). Thus, I deem the OIP's allegations to be true. *See* 17 C.F.R. § 201.155(a).

My findings and conclusions are based on the record and on facts officially noticed. *See* 17 C.F.R. §§ 201.155(a) (hearing officer may determine default proceeding upon consideration of the record, including the OIP), .323 (official notice rule). I admit into evidence the Division's exhibits. I take official notice of the record in *SEC v. Johnson*, 14-cv-8825 (N.D. Ill.) (*Johnson Civil Case*), the related criminal proceeding in *United States v. Johnson*, 15-cr-8 (N.D. Ill.) (*Johnson Criminal Case*), and Johnson's FINRA BrokerCheck Report as of June 18, 2015 (CRD# 2142522) (BrokerCheck Report).

Background

From 2005 through 2014, Johnson stole money from clients by fraudulently wiring funds from his clients' accounts into his own bank account and, over the course of at least 115 fraudulent wire transfers, Johnson fraudulently obtained at least $1.15 million to which he was not entitled from his clients. Div. Ex. 2 at 2-5. During this time period, Johnson was an associated person and registered representative of Redridge Securities, Inc., a registered broker-dealer and investment adviser. OIP at 1; Div. Ex. 2 at 2; BrokerCheck Report at 1, 4. In October 2014, FINRA sanctioned Johnson and entered a permanent bar against him. BrokerCheck Report at 8-9.

Civil Proceeding

In 2014, the Commission filed a civil complaint in federal court against Johnson, alleging that Johnson had stolen money from clients by fraudulently wiring funds from client accounts into his bank account and that over the course of more than 100 such fraudulent wire transfers, he stole more than $1 million. Div Ex. 1 at 1-2. The Commission alleged that through such misconduct, Johnson violated the antifraud provisions. *Id.* at 2, 5-6. Following Johnson's failure to appear or otherwise respond to the complaint, the court granted the Commission's motion for default, permanently enjoined Johnson from violations of the antifraud provisions, ordered Johnson to pay $1,150,000 in disgorgement plus prejudgment interest and a civil penalty of $150,000, and entered judgment. *See* Div. Ex. 3; Min. Entry dated Mar. 24, 2015, *Johnson Civil Case*. Johnson did not appeal. *See* Dkt. Sheet, *Johnson Civil Case*.

Criminal Proceeding

In January 2015, the U.S. Attorney for the Northern District of Illinois filed an information against Johnson, charging him with wire fraud in violation of 18 U.S.C. § 1343. Information (Jan. 7, 2015), *Johnson Criminal Case*, ECF No. 1. The charge arose from the same allegations and misconduct underlying the civil complaint. *Compare id. with* Div. Ex. 1. Johnson waived his right to an indictment and pled guilty to the wire-fraud charge contained in the information, which the court accepted. Div. Ex. 2; Waiver of Indictment (Jan. 29, 2015) & Order (Jan. 29, 2015), *Johnson Criminal Case*, ECF Nos. 10, 12. In his plea agreement, Johnson admitted to extensive facts regarding his misconduct, which I adopt below in assessing sanctions. *See infra* and Div. Ex. 2. The district court sentenced Johnson to a prison term of 60 months and one-year of supervised release, and ordered him to pay $1.2 million in restitution. Judgment (July 16, 2015), *Johnson Criminal Case*, ECF No. 37.

CONCLUSIONS OF LAW AND SANCTION

Summary Disposition

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). For the reasons that follow, I GRANT the Division's motion because these criteria and the statutory basis for a sanction have been satisfied.[2] *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40 (Feb. 13, 2009) ("courts have sustained Commission findings that sanctions were in the public interest following administrative hearings based on summary disposition"), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *John S. Brownson*, Exchange Act Release No. 46161, 2002 SEC LEXIS 3414, at *9 n.12 (July 3, 2002) (the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare"), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

Statutory Criteria

The Exchange and Advisers Acts empower the Commission to sanction Johnson, if it is in the public interest, because: at the time of the alleged misconduct, he was associated with a broker-dealer and investment adviser; and he was enjoined from violating the antifraud provisions. *See* 15 U.S.C. §§ 78*o*(b)(4)(C), (6)(A)(iii), 80b-3(e)(4), (f).

[2] Although Rule of Practice 250(a) contemplates summary disposition after a respondent's answer has been filed, the rule does not preclude a law judge from utilizing summary disposition in a matter where a respondent forfeits his right to file an answer and defaults. *See* 17 C.F.R. § 201.250(a); *Alchemy Ventures, Inc.*, Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *9-10 & n.20 (Oct. 17, 2013) (recognizing that the means for reaching an initial decision—namely a default, a hearing, or summary disposition—are "not mutually exclusive," and that "a law judge could conceivably use a combination of these procedures to develop the record and make the necessary findings").

The maximum sanctions authorized in this proceeding are barring Johnson from being associated with a 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, which I collectively refer to as a collateral bar. *See* 15 U.S.C. §§ 78*o*(b)(6)(A), 80b-3(f). Here, the imposition of a full collateral bar is not impermissibly retroactive because a portion of the misconduct for which Johnson was enjoined post-dated the July 22, 2010, effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* Pub. L. No. 111-203, §§ 4, 925(a), 124 Stat. 1376, 1390, 1850-51 (2010); *Koch v. SEC*, --- F.3d ---, 2015 WL 4216988, at *8-10 (D.C. Cir. July 14, 2015) (holding that the Commission cannot apply Dodd-Frank to bar a respondent from associating with municipal advisors and rating organizations based on conduct predating Dodd-Frank, because such an application is impermissibly retroactive).

Public Interest

The criteria to determine whether a sanction is in the public interest are the *Steadman* factors: 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. *Steadman v. SEC*, 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 flexible, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission also considers the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006).

Before imposing a collateral 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 analysis "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). Having engaged in such analysis, a full collateral bar against Johnson is necessary and appropriate to protect the public.

Johnson's Misconduct

In his plea agreement, Johnson admitted the following:

> Beginning in or about June 2005, and continuing until in or about September 2014, . . . Johnson knowingly devised and intended to devise, and participated in, a scheme to defraud [Redridge] clients, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts. For the purpose of executing the scheme, Johnson did knowingly cause an interstate wire transfer in the amount

of $20,000 from Clearing Firm A in Minneapolis, Minnesota to [his] bank account . . . .

Specifically, between 2005 and September 2014, Johnson was the Chief Investment Officer for [Redridge,] which was a registered broker/dealer and was in the business of providing investment advice to . . . clients, and for the management of their assets. Johnson was a person associated with a broker/dealer and with an investment adviser.

Clearing Firm A held funds belonging to [Redridge] clients and which were managed by [Redridge]. In order for a [Redridge] client to transfer funds from a [Redridge] client account held at Clearing Firm A to an account belonging to a third party, Clearing Firm A required a letter of authorization, which a [Redridge] employee prepared on the client's behalf. The letter of authorization included details about the account from which money was to be withdrawn and the account to which money was to be transferred. Clearing Firm A required the signature of the [Redridge] client on the letter of authorization, and further required the letter of authorization to be notarized. The wire information contained on the letter of authorization was input [sic] into a software application, accessible with three separate passwords, through all computers at [Redridge], and subsequently was routed to Clearing Firm A for processing. Separately, a [Redridge] employee sent the signed and notarized letter of authorization to Clearing Firm A through electronic mail. Upon receipt, Clearing Firm A confirmed that the wire information matched the wire information contained on the letter of authorization. After confirmation, Clearing Firm A released the funds from the client's account and wired them to the third-party account.

Johnson forged letters of authorization, which falsely represented to Clearing Firm A that a [Redridge] client had authorized the wire transfer of money from a designated [Redridge] client account to a third[-]party account. The fraudulent letters of authorization contained information belonging to the [Redridge] client, including the client's account information at Clearing Firm A, the amount of funds to be transferred, and information concerning the beneficiary account. Johnson specifically targeted client accounts from which he believed the missing funds would go undetected because of the relatively large amount of money and/or activity in the account. Johnson further affixed an image of the [Redridge] client's signature from a previously signed document thereby falsely representing, and causing to be falsely represented, that the [Redridge] client authorized the wire transfer of funds to an account belonging to, and controlled by, Johnson.

Johnson used three separate passwords belonging to [Redridge] to access the application software utilized in the processing of wire transfers in order to input information regarding the third-party wire transfer and caused that information to be routed to Clearing Firm A for processing. Johnson further forwarded to Clearing Firm A the fraudulent letter of authorization in which he

> falsely represented, and caused to be falsely represented, to Clearing Firm A that the [Redridge] client had authorized it to release funds from the client's account and to transfer those funds to [Johnson]'s account. Johnson forwarded the forged letter of authorization to Clearing Firm A from a computer using a feature designed to conceal from Clearing Firm A that he was the sender of the forged letter of authorization.
>
> Between June 2005 and September 2014, Johnson conducted at least 115 fraudulent wire transfers, and fraudulently obtained approximately $1.15 million to which he was not entitled from client accounts into his personal bank accounts.
>
> On or about September 14, 2014, . . . for the purpose of executing the scheme to defraud, Johnson knowingly caused to be transmitted by means of wire communication in interstate commerce certain wirings, signs, signals, and sounds, namely, an interstate wire transfer in the amount of $20,000 from Clearing Firm A in Minneapolis, Minnesota to [his] bank account . . . .

Div. Ex. 2 at 2-5 (capitalization altered, term "defendant" omitted).[3]

Egregious and Recurrent

Johnson's misconduct was egregious. He misused his position as a registered representative to actively devise and perpetrate a scheme to steal money from clients, totaling at least $1.15 million. *See* Div. Ex. 2 at 2-5. The egregious nature of his misconduct is underscored by the 60-month prison term and $1.2 million in restitution imposed against him. Judgment (July 16, 2015), *Johnson Criminal Case*, ECF No. 37. Johnson's misconduct was also recurrent; it involved at least 115 fraudulent wire transfers over a nearly ten year period. Div. Ex. 2 at 4.

As a result of his misconduct, Johnson was permanently enjoined from violating the antifraud provisions, and pled guilty to wire fraud. The Commission considers conduct involving fraud and dishonesty to be particularly serious and subject to severe sanctions. *See, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (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" (internal quotation marks omitted)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Gary M. Kornman*, 2009 SEC LEXIS 367, at *23 ("The securities industry presents a great many

[3] Johnson's misconduct predating the Dodd-Frank Act and as described by his plea agreement can be considered in assessing the public interest. *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *16-17 & n.21, *20-21 (Jan. 14, 2011) (considering criminal conviction in assessing the public interest, even though OIP was based on civil injunction); *Laurie J. Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, *47 n.54 (Apr. 5, 1999) (matters outside statute-of-limitations period can be considered in assessing sanctions where the respondent's conduct "may be viewed as part of a continuing, interconnected scheme"), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000).

opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants. Indeed, the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business." (internal quotation marks and footnote omitted)); *Ahmed Mohamed Soliman*, 52 S.E.C. 227, 231 (1995) (criminal conviction for tax law violations involving "fraud and deceit" is a "serious" offense which "shows a lack of honesty and judgement [sic] and indicates that [the respondent was] unsuited to function in the securities industry"); *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)).

Scienter

Johnson's misconduct involved a high degree of scienter—intent to defraud. Div. Ex. 2 at 2; *see Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (scienter refers to "a mental state embracing intent to deceive, manipulate, or defraud" (citation omitted)); *United States v. Leahy*, 464 F.3d 773, 786 (7th Cir. 2006) (wire fraud is a specific intent crime involving intent to defraud). He methodically worked to perpetrate his scheme to defraud, going as far as to forge letters of authorization and manipulating computer systems in order to steal client money. Div. Ex. 2 at 3-4.

Johnson worked in the securities industry for at least two decades and earned multiple securities licenses. BrokerCheck Report at 1, 3. He thus understood his responsibilities as a registered representative but yet blatantly disregarded them for his own gain.

Failure to Recognize Wrongdoing or Provide Assurances Against Future Wrongdoing

"If [a respondent] doesn't know right from wrong in this industry, how can he avoid wrongdoing in the future?" *Gann v. SEC*, 361 F. App'x 556, 560 (2d Cir. 2010). "[A]s the Supreme Court has recognized, the 'degree of intentional wrongdoing evident in a defendant's past conduct' is an important indication of the defendant's propensity to subject the trading public to future harm." *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *33 (Dec. 13, 2012) (quoting *Aaron*, 446 U.S. at 701), *called into question on other grounds by Koch v. SEC*, --- F.3d ---, 2015 WL 4216988, at *8-10 (D.C. Cir. Apr. 20, 2015). Thus, although "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).

Johnson's guilty plea in the criminal case could be taken as an acknowledgement of wrongdoing. For purposes of negotiating the plea agreement and the government's recommendation to the court regarding his sentencing range, it was stipulated that Johnson "demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct." Div. Ex. 2 at 7. However, by not participating in this proceeding, Johnson

forfeited his opportunity to reinforce that recognition, and he has offered no assurances against future violations.

Moreover, even if his plea agreement indicates some level of recognition, Johnson's refusal to cooperate with a FINRA investigation into his underlying misconduct is an aggravating factor supporting a collateral bar. *See* BrokerCheck Report at 11 ("Johnson failed to provide FINRA with requested documents and information and failed to appear and provide on-the-record testimony. Counsel for Johnson informed FINRA that Johnson would not provide the requested documents and information, and would not appear and provide on-the-record testimony."); *see also John W. Lawton*, 2012 SEC LEXIS 3855, at *46 ("Regulatory efforts to detect violative conduct require full cooperation by persons associated with each of the professions covered by the collateral bar. Persons who fail to cooperate with such efforts may be deemed presumptively unfit for employment in the securities industry because such non-cooperation frustrates . . . efforts to detect misconduct, and such inability in turn threatens investors and markets." (internal quotation marks omitted; omission in original)).

Likelihood of Opportunities for Future Wrongdoing

The final *Steadman* factor is the "likelihood that the [respondent]'s occupation will present opportunities for future violations." *Steadman*, 603 F.2d at 1140. Johnson is a securities professional, who has been associated with a number of securities-related firms. BrokerCheck Report at 1. He has provided no assurance that he will never return to work in the securities industry. If he were to reenter the securities industry, his occupation would present opportunities for future violations.

Although Johnson has been sentenced to a prison term and thus is unlikely to return to the industry in the near future, the Commission "do[es] not view [a] criminal sentence as mitigative of the appropriate sanction to be imposed in the public interest . . . ." *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *27 (Jan. 14, 2011).

Final Considerations

I have considered Johnson'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." *Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *34 (Mar. 7, 2014) (quoting *John W. Lawton*, 2012 SEC LEXIS 3855, at *28 n.34). "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 SEC LEXIS 3855, at *43. As securities professionals routinely gain access to sensitive financial and investment information, they must "take on heightened responsibilities to safeguard that information and to avoid temptations to fraudulently misuse their access for inappropriate—but potentially lucrative or self-serving—ends." *Id.* at *43-44.

The extent, nature, and duration of Johnson's fraudulent conduct demonstrate that he is incapable of taking on any such heightened responsibilities in any capacity in the securities industry. He does not know right from wrong and lacks the competence and integrity to continue

in the securities profession. Accordingly, a full collateral bar, as opposed to a more limited bar or suspension, "will prevent [Johnson] from putting investors[, clients, and other market participants] at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014).

RULING

Pursuant to Commission Rule of Practice 250, I GRANT the Division of Enforcement's Motion for Summary Disposition.

Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, I ORDER that Eric W. Johnson is BARRED from associating with a 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, including acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule of Practice 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 of Practice 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.

Johnson may move to set aside the default in this case. Rule of Practice 155(b) 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.*

Brenda P. Murray
Chief Administrative Law Judge