INITIAL DECISION RELEASE NO. 979
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16803

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

In the Matter of	:	
	:	INITIAL DECISION
MAHER F. KARA	:	March 15, 2016

APPEARANCES: E. Barrett Atwood for the Division of Enforcement, Securities and Exchange Commission

George C. Harris, Su-Han Wang, and Carl H. Loewenson, Jr., of Morrison & Foerster LLP for Respondent Maher F. Kara

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Maher F. Kara from the securities industry with a right to reapply after three years. He was previously convicted of securities fraud and conspiracy to commit securities fraud and enjoined against violations of the antifraud provisions of the Securities Exchange Act of 1934 (Exchange Act).

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on September 10, 2015, pursuant to Section 15(b) of the Exchange Act. The proceeding is a follow-on proceeding based on *SEC v. Kara*, No. 3:09-cv-1880 (N.D. Cal.), in which Kara was enjoined against violations of the antifraud provisions of the Exchange Act, and *United States v. Kara*, No. 3:09-cr-417 (N.D. Cal.), in which Kara was convicted of securities fraud and conspiracy to commit securities fraud. In accordance with leave granted, the parties timely filed a joint stipulation of facts and cross-motions for summary disposition, pursuant to 17 C.F.R. § 201.250(a). *See Maher F. Kara*, Admin. Proc. Rulings Release No. 3171, 2015 SEC LEXIS 3950 (A.L.J. Sept. 28, 2015).

This Initial Decision is based on the pleadings, the parties' Joint Stipulation of Facts,[1] and Kara's Amended Answer to the OIP. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which Kara was convicted were decided against him in the criminal and civil cases on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Kara was convicted of securities fraud and conspiracy to commit securities fraud in *United States v. Kara*, and enjoined against violations of the antifraud provisions in *SEC v. Kara*. The Division of Enforcement urges that he be permanently barred from the securities industry. Kara opposes this, arguing that, at most, a three-year broker-dealer bar is an appropriate sanction.

C. Procedural Issues

1. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the courts' orders in *United States v. Kara* and *SEC v. Kara*.

2. Related Case

The United States Supreme Court has granted certiorari in a case arising out of the facts underlying *SEC v. Kara* and *United States v. Kara*. *Salman v. United States*, No. 15-628, 2016 WL 207256 (U.S. Jan. 19, 2016). Kara believes that a Supreme Court decision favorable to the petitioner would eliminate the basis of Kara's conviction and injunction, and thus, this administrative proceeding. If this occurs, Kara can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).[2]

---

[1] Exhibits in the Joint Stipulation of Facts are documents from *SEC v. Kara* and *United States v. Kara* and related cases, including Kara's plea agreement and the transcript of his July 6, 2011, change of plea hearing in *United States v. Kara* (ECF Nos. 134 [viewed in *SEC v. Kara*, ECF No. 138] and 145 – Exs. 6 and 7, respectively) and Kara's consent and injunction in *SEC v. Kara* (ECF Nos. 138 [which includes *United States v. Kara*, ECF No. 251, Kara's judgment] and 145 – Exs. 8 and 9, respectively.)

[2] *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded district court's judgment that was basis for OIP); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for OIP); *Evelyn Litwok*, Advisers Act of 1940 (Advisers Act) Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending

3. Commission's Authority

Kara urges these affirmative defenses: "The Commission lacks authority to conduct the proceedings herein" and "This administrative proceeding is unconstitutional." However, Exchange Act Section 15(b) specifically authorizes a follow-on proceeding such as this one based on a respondent's injunction or conviction for violation of the antifraud provisions. Further, the Commission has recently affirmed the constitutionality of its administrative proceedings. *See Raymond J. Lucia Cos.*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3628, at *76-90 (Sept. 3, 2015), *appeal pending*, No. 15-1345 (D.C. Cir., filed Oct. 5, 2015); *accord Timbervest, LLC*, Investment Advisers Act of 1940 (Advisers Act) Release No. 4197, 2015 SEC LEXIS 3854, at *89-104 (Sept. 17, 2015), *appeal pending*, No. 15-1416 (D.C. Cir., filed Nov. 13, 2015); *David F. Bandimere*, Securities Act of 1933 Release No. 9972, 2015 SEC LEXIS 4472, at *74-86 (Oct. 29, 2015).

4. Statute of Limitations

Kara argues that the proceeding is barred because it was not brought within the five-year statute of limitations set forth in 28 U.S.C. § 2462.[3] This argument fails. The proceeding was initiated within five years of the August 21, 2015, injunction in *SEC v. Kara* and the December 22, 2014, conviction in *United States v. Kara*.[4] Kara argues that since the violative conduct ended in

---

before Commission, reversed certain convictions and vacated and remanded other convictions, all of which were basis for OIP); *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012) (vacating bar issued in follow-on administrative proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).

[3] Recently, the Commission declared its non-acquiescence to the ruling of the U.S. Court of Appeals for the D.C. Circuit in *Johnson v. SEC*, 87 F.3d 484, 488-92 (D.C. Cir. 1996), that sanctions such as associational bars are subject to the statute of limitations set forth in 28 U.S.C. § 2462. *Timbervest*, 2015 SEC LEXIS 3854, at *55-56 & n.71.

[4] Even if Kara's July 6, 2011, guilty plea in *United States v. Kara* is construed as a "conviction" – *see Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *28 (Mar. 7, 2014) (construing a jury verdict to be a conviction for the purpose of the Exchange Act) – the relevant statute of limitations is ten years from the date of the conviction, as expressly provided by Exchange Act Section 15(b)(6)(A)(ii). 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." *Gregory Bartko*, 2014 SEC LEXIS 841, at *33 (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 Release No. 52467, 2005 SEC LEXIS 2380, at *9 (Sept. 19, 2005) (same). Further, acts outside the statute of limitations may be considered to establish a respondent's motive, intent, or knowledge in committing violations that are within the statute of limitations. *Sharon M. Graham*, Exchange Act Release No. 40727, 1998 SEC LEXIS 2598, at *41 n.47 (Nov. 30, 1998) (citing Fed. R. Evid. 404(b) and *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411 (1960)), *aff'd*, 222 F.3d 994 (D.C. Cir. 2000); *Terry T. Steen*,

2007, the proceeding is untimely because it was not brought within five years, noting that Exchange Act Section 15(b)(6)(A)(i) authorizes the Commission to bar a person who "has committed or omitted any act, or is subject to an order or finding, enumerated in [Section 15(b)(4)](A), (D), or (E)." However, the instant proceeding is not authorized by those sections but rather by Exchange Act Sections 15(b)(6)(A)(ii), (iii) and 15(b)(4)(B)(i), (C).

5. Collateral Bar

Kara urges that a collateral bar would be an impermissible retroactive application of the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 since his misconduct ended before the July 22, 2010, effective date of the Dodd-Frank Act. He notes that this proceeding was instituted pursuant to Exchange Act Section 15(b), that he was associated with a broker-dealer only, and that, prior to Dodd-Frank, the Exchange Act had no provision for collateral bars. Thus, Kara argues, the undersigned has no authority to bar him from anyone other than a broker-dealer. Kara cites *Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015), *pet. for rehearing en banc denied*, 2015 U.S. App. LEXIS 16375 (Sept. 14, 2015), *pet. for cert. filed*, No. 15-78 (U.S. Dec. 14, 2015), in support of this argument. However, *Koch* is consistent with sanctioning Kara with a collateral bar that consists of a bar from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent; the court allowed such a bar to stand against Respondent Koch, who was associated with an investment adviser only. The court ruled, however, that imposing bars from association with any municipal advisor or nationally recognized statistical rating organization would be an impermissible retroactive application of new sanctions provided by the Dodd-Frank Act.

II. FINDINGS OF FACT

Kara was convicted, on his plea of guilty, of one count of conspiracy, in violation of 18 U.S.C. § 371, and one count of securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, in *United States v. Kara*. Stip. Ex. 6, Stip. Ex. 7, Stip. Ex. 8 at Ex. B; *United States v. Kara*, ECF Nos. 134, 145, 251 at 1.[5] He was sentenced to three years of probation and three months of home confinement. *United States v. Kara*, ECF No. 251 at 2-3, ECF No. 277 at 18;[6] Stip. at 10. Between the July 6, 2011, date of his guilty plea and the December 2014 date of his sentencing, and pursuant to his plea agreement, Kara provided cooperation with the government, which resulted in his testifying at the trials of his brother-in-law Bassam Salman and of Salman's brother-in-law Karim Bayyouk. Stip. at 9-10. The court imposed the relatively light sentence, in part, because of Kara's

---

Exchange Act Release No. 40055, 1998 SEC LEXIS 1033, at *13-15 & n.16 (June 1,1998) (citing *H.P. Lambert Co. v. Sec'y of the Treasury*, 354 F.2d 819, 822 (1st Cir. 1965)). Also, such acts may be considered in determining the appropriate sanction if violations are proven. *Steen*, 1998 SEC LEXIS 1033, at *13.

[5] ECF No. 134, Kara's July 6, 2011, Plea Agreement, may be viewed at *SEC v. Kara*, ECF No. 138, Ex. A.

[6] ECF No. 277, the transcript of Kara's December 19, 2014, sentencing hearing, may also be viewed at Kara's Opposition, Declaration of George C. Harris, Ex. 2.

"extraordinary cooperation . . . which required him to prolong his sentencing process and participate in . . . two trials, a number of proffers and the difficulty of circumstances of having to testify against relatives." *United States v. Kara*, ECF No. 277 at 19. The court also noted that Kara "did not engage in trades for personal gain and gained nothing from this in terms of any monetary enrichment." *Id*., ECF No. 277 at 20. In limiting the probation period to three years, the court stated, "There's no need to extend probation beyond that. I think it's unlikely that Mr. Kara would recommit any similar offense." *Id*., ECF No. 277 at 18.

Kara was enjoined, on consent, in *SEC v. Kara* from committing violations of Exchange Act Sections 10(b) and 14(e) and Rules 10b-5 and 14e-3 on August 21, 2015. Stip. Exs. 8, 9; *SEC v. Kara*, ECF Nos. 138, 145. In his July 2, 2015, Consent, Kara affirmatively stated that "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, [he] understands that he shall not be permitted to contest the factual allegations of the complaint in this action." Further, he stated that he "understands and agrees to comply with . . . the Commission's policy 'not to permit a defendant . . . to consent to a judgment . . . that imposes a sanction while denying the allegations . . . in the complaint.'" Finally, he agreed he "will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis" and "hereby withdraws any papers filed in this action to the extent that they deny the facts admitted in his plea agreement." *SEC v. Kara*, ECF No. 138 at 3-4; Stip. Ex. 8 at 3-4.

Facts underlying *SEC v. Kara* and *United States v. Kara* are set forth in the Stipulation and are as follows: From 1999 to 2007, Kara worked as an investment banker at Citigroup. Starting in mid-2002, Kara worked in Citigroup's healthcare group, advising public companies and other clients in the biotechnology and pharmaceutical industry about takeovers, acquisitions, mergers, corporate finance, and other multi-million dollar transactions. Kara obtained confidential and material nonpublic information by virtue of the relationship of trust and confidence between Citigroup and its clients. He fully understood that the intentional misuse of such information was a crime. His brother Michael (a/k/a Mounir) Kara understood that Kara received such information and was prohibited from disclosing it. Michael had a scientific background, which Kara did not, and, when he started working in the healthcare group, Kara asked Michael questions about biotechnology and the science associated with the clients' pharmaceuticals; Kara gave Michael clear instructions that the information he shared was confidential. Toward the end of 2003, their father became ill, and Kara shared confidential and material nonpublic information regarding Citigroup clients that provided treatment options that might help. At the end of 2004, their father died, and Kara became concerned about Michael's well-being; they spent more time together and Kara shared updates about their work that included confidential and material nonpublic information. At first Kara believed that Michael was maintaining the confidentiality of the information. Later, when Kara became suspicious and confronted him, Michael denied he was trading on the information. Eventually, in 2006, Kara came to understand that Michael was trading on the information. In 2007, Michael begged for more information, and Kara provided information concerning a transaction that he was not working on personally, in the hope of minimizing the risk that his misuse of Citigroup's confidential information would be detected. Michael and a downstream tippee made millions through trading on the confidential information.[7] Kara never

[7] Additional downstream tippees made further profits. *United States v. Kara*, ECF No. 277 at 19.

traded on the confidential information or was aware of the profits others made as a result of the tips. In May 2007, Commission staff telephoned Kara in an investigation into unusual trading in one of the stocks at issue in *SEC v. Kara* and *United States v. Kara*, and he made a number of untruthful statements; for example, he denied that he had confidential information about the issuer.

In the portion of his plea agreement concerning securities fraud (insider trading), Kara agreed that "I acted willfully and with an intent to deceive." *United States v. Kara*, ECF No. 134 at 2-3; *SEC v. Kara*, ECF No. 138, Ex. A at 2-3; Stip. Ex. 6 at 2-3. At his sentencing hearing, after expressing remorse for his wrongful conduct and the resulting harm to others, Kara stated, "I accept full responsibility for my conduct." *United States v. Kara*, ECF No. 277 at 17.

As an investment banker at Citigroup, Kara worked for Citigroup Global Markets Inc., the registered broker-dealer arm of Citigroup, and had nothing to do with Citigroup's investment adviser, Citigroup Asset Management, which was separated from the broker-dealer by a strict ethical wall. Opposition, Declaration of Maher F. Kara at 1-2. Kara's employment in the financial industry ended in October 2008, when he was let go by Barclays PLC after he received a Wells notice from the Commission. *Id*. at 2. Since that time, he has been primary caregiver to his two children, has performed his court-ordered community service and continued such volunteer activity, and has studied biotechnology at the University of California, Santa Cruz Extension. *Id*. Kara testified as a government witness at the trial of Bassam Salman, one of Michael's tippees; Salman is Kara's wife's brother. *Id*. His wife's family blames him for Salman's conviction and stopped speaking to Kara and his wife. *Id*. at 2-3. Kara has not spoken with Michael for more than seven years. *Id*. at 3.

III. CONCLUSIONS OF LAW

Kara has been convicted "within 10 years of the commencement of [this proceeding]" of a felony or misdemeanor that "involves the purchase or sale of any security [and] conspiracy to commit any such offense" within the meaning of Sections 15(b)(4)(B)(i) and 15(b)(6)(A)(ii) of the Exchange Act. He has been enjoined "from engaging in or continuing any conduct or practice in connection with . . . the purchase of sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act.

IV. SANCTION

A collateral bar with a right to reapply after three years will be ordered.[8]

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 78*o*(b)(6)(A). Commission considers factors including:

[8] The sanction will not include a bar from association with a municipal advisor or nationally recognized statistical rating organization in light of *Koch v. SEC*, 793 F.3d at 157-58, and the date of Kara's violative conduct.

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

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

As described in the Findings of Fact, Kara's conduct was egregious and recurrent, over a period of years, and involved a high degree of scienter, as shown by his conviction for securities fraud and the admission in his plea agreement, "I acted willfully and with an intent to deceive." His previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could re-enter the securities industry. The violations are not recent, having ended more than eight years ago. Kara has recognized the wrongful nature of his conduct. Any direct financial harm to investors cannot be quantified. Although Kara's tippee and downstream tippees made millions in profits from their insider trading, Kara received no financial benefit; rather he lost his job and has been shunned by those who did benefit. However, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). A conviction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

Kara argues that any sanction should be limited to a three-year bar from association with a broker-dealer. Concerning his request for a limited sanction, the Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *29-30. Further, the Commission has said, "repeated insider trading is exactly the type of egregious behavior that supports a collateral bar." *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *29 n.47 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Indeed, from 1995 to the present, there have been over forty-six litigated follow-on proceedings based on antifraud injunctions or convictions in which the

Commission issued opinions, and all of the respondents were barred[9] – forty-three unqualified bars and three bars with the right to reapply after five years.[10] Further, in every such case that followed the statutory provision of collateral bars, the Commission imposed a collateral bar rather than an industry specific bar, reasoning that the antifraud provisions of the securities laws apply broadly to all securities-related professionals and violations demonstrate 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. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012).

Although a collateral bar is appropriate, this case includes mitigating circumstances that militate against a permanent bar. Kara has unequivocally recognized the wrongful nature of his conduct. His violations did not profit him and were not even motivated by financial concerns. In the judgment of the court in *United States v. Kara*, he is unlikely to reoffend. Thus, a permanent bar is unnecessary. A collateral bar with a right to reapply after three years is congruent with the sentence of three years' probation imposed in *United States v. Kara* and will be ordered.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, MAHER F. KARA IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent, subject to a right to reapply after three years.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 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 of the Commission's Rules of Practice, 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 a 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 occur, the Initial Decision shall not become final as to that party.

---

[9] The pre-Dodd-Frank cases imposed industry-specific bars, such as a bar from association with an investment adviser on a respondent who had been associated with an investment adviser at the time of his violation.

[10] Those three were *Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987 (Oct. 22, 1996); *Martin B. Sloate*, Exchange Act Release No. 38373, 1997 SEC LEXIS 524 (Mar. 7, 1997); and *Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504 (June 30, 2008). The Commission's opinions do not make clear the factors that distinguished these cases from those in which unqualified bars were imposed, but there is little difference between a "bar" and a "bar with the right to reapply in five years."

Carol Fox Foelak
Administrative Law Judge