INITIAL DECISION RELEASE NO. 985
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15215

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

In the Matter of JAMES S. TAGLIAFERRI	INITIAL DECISION March 23, 2016

APPEARANCES: Nancy A. Brown and H. Gregory Baker for the Division of Enforcement, Securities and Exchange Commission

James S. Tagliaferri, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

Respondent James S. Tagliaferri was convicted in federal court of investment adviser fraud, securities fraud, wire fraud, and other crimes; sentenced to prison for seventy-two months; ordered to forfeit $2.5 million and certain real property; and ordered to pay almost $21 million in restitution. At the time of his misconduct, he was associated with a registered investment adviser and acted as an unregistered broker. In this initial decision, I find sanctions to be in the public interest. I therefore grant the Division of Enforcement's motion for summary disposition. Tagliaferri is permanently barred from associating with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent (associational bar); permanently barred from participating in an offering of penny stock (penny stock bar); and permanently prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter (investment company bar) (collectively, industry bars).

PROCEDURAL BACKGROUND

In February 2013, the Securities and Exchange Commission instituted this proceeding pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940. The order instituting proceedings (OIP) alleged that Tagliaferri violated the antifraud and other provisions of the federal securities laws. In March 2013, upon the application of the U.S. Attorney's Office for the Southern District of New York, I stayed this proceeding pending a

parallel criminal action against Tagliaferri, in *United States v. Tagliaferri*, 13-cr-115 (S.D.N.Y.) (*United States v. Tagliaferri*).

Following Tagliaferri's conviction and sentencing, I lifted the stay in this proceeding on June 1, 2015, at Tagliaferri's request that he wanted to review the Division's investigative file; the U.S. Attorney's Office took no position as to Tagliaferri's request and did not indicate that lifting the stay would negatively impact the criminal matter. *James S. Tagliaferri*, Admin. Proc. Rulings Release No. 2750, 2015 SEC LEXIS 2187. I then held a prehearing conference on June 10, 2015, attended by counsel for the Division and Tagliaferri, pro se. I deemed June 1, 2015, as the date of service of the OIP. *James S. Tagliaferri*, Admin. Proc. Rulings Release No. 2797, 2015 SEC LEXIS 2306 (ALJ June 10, 2015); Prehr'g Tr. 12. The Division represented that it would move to amend the OIP before the Commission and that it might seek to convert this proceeding to a follow-on proceeding as a result of Tagliaferri's criminal conviction; I therefore instructed that Tagliaferri need not file an answer to the OIP at that time. *James S. Tagliaferri*, 2015 SEC LEXIS 2306; Prehr'g Tr. 29.

Thereafter, in July 2015, the Division moved to amend the OIP. The Commission granted the Division's motion on September 2, 2015. *James S. Tagliaferri*, Exchange Act Release No. 75820, 2015 SEC LEXIS 3609. The Commission's order amended the OIP in two principal respects. First, it added allegations regarding Tagliaferri's criminal conviction and explained that the conviction may provide an independent basis for remedial sanctions in this proceeding. *Id*. at *4-5. Second, it removed the OIP's directive to determine whether civil penalties and disgorgement are appropriate in the public interest, given Tagliaferri's prison sentence and period of supervised release as well as the restitution imposed on him in the criminal proceeding. *Id*. at *5. The Commission rejected Tagliaferri's argument that amendment of the OIP would unduly prejudice him. *Id*. at *7.

On September 14, 2015, I issued an order construing the Commission's order amending the OIP as converting this proceeding into a follow-on proceeding predicated on Tagliaferri's criminal conviction.[1] *James S. Tagliaferri*, Admin. Proc. Rulings Release No. 3124, 2015 SEC LEXIS 3756. On September 23, 2015, I set a procedural schedule for Tagliaferri's answer and the filing of motions for summary disposition. *James S. Tagliaferri*, Admin. Proc. Rulings Release No. 3160, 2015 SEC LEXIS 3893.

Tagliaferri submitted an answer dated October 13, 2015, which I deemed timely. *James S. Tagliaferri*, Admin. Proc. Rulings Release No. 3277, 2015 SEC LEXIS 4483 (ALJ Oct. 30, 2015). On October 16, 2015, the Division filed its motion for summary disposition with fifteen exhibits in support (Exs. A-O). On November 9, 2015, Tagliaferri filed an opposition to the Division's motion with no supporting exhibits. On November 20, 2015, at my directive, the Division filed a supplemental submission further addressing whether Tagliaferri acted as a broker, together with ten exhibits (Supp. Exs. A-J), and a declaration of Nancy A. Brown (Brown

[1] Although my order referenced the types of remedial action authorized by Exchange Act Section 15(b) and Advisers Act Section 203(f), the remedial action authorized under Investment Company Act Section 9(b) also remained at issue per the original OIP and the Commission's order amending the OIP.

Decl.). The Division also filed a reply in further support of its motion. In January 2016, Tagliaferri filed an opposition to the Division's supplemental submission with his declaration (Tagliaferri Decl.) and three exhibits (Resp. Supp. Exs. A-C). The Division thereafter filed a reply with four exhibits attached (Supp. Reply Exs. A-D).

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule of Practice 323, including the record from *United States v. Tagliaferri*. *See* 17 C.F.R. § 201.323. I have applied preponderance of the evidence 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.

SUMMARY DISPOSITION AND PROCEDURAL ISSUES

Under Rule of Practice 250, a law judge may grant a motion for summary disposition "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a 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 that party, by uncontested affidavits, or by facts officially noted pursuant to § 201.323." 17 C.F.R. § 201.250(a).

The facts on summary disposition are viewed in the light most favorable to the non-moving party. *See Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 SEC LEXIS 4558, at *8 (Aug. 21, 2014). However, once the moving party has carried its burden of establishing that it is entitled to summary disposition, the opposing party may not rely on bare allegations or denials, but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing. *See id.* The Commission has repeatedly held that summary disposition is generally appropriate in "follow-on" proceedings – administrative proceedings predicated on a conviction or injunction against the respondent – where the only real issue involves the determination of the appropriate sanction. *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & nn.21-24 (Feb. 4, 2008), *pet. denied*, 561 F.3d 548 (6th Cir. 2009).

In his answer and opposition, Tagliaferri makes a number of arguments about the appropriateness of this action and use of summary disposition. **First,** Tagliaferri argues that my order of September 14, 2015 – in which I "construe[d] the amendment of the OIP as converting this proceeding into a follow-on proceeding predicated on Tagliaferri's criminal conviction" – is incongruous with the Commission's order permitting amendment of the OIP, in which it explained that Tagliaferri would "have an opportunity to contest [the amended OIP's] allegations and their legal effect." Answer at 1; Resp. Opp. at 2-3; *see James S. Tagliaferri*, Exchange Act Release No. 75820, 2015 SEC LEXIS 3609; Admin. Proc. Rulings Release No. 3124, 2015 SEC LEXIS 3756. Tagliaferri argues that converting the proceeding into a follow-on proceeding renders any argument he might make as to the amended OIP's allegations moot and "allow[s] the Division to argue the criminal conviction is sufficient to find Respondent guilty in this proceeding even though the allegations expressed in the criminal case differ substantially from those of this proceeding." Answer at 1.

It is true that Tagliaferri is collaterally estopped from relitigating the factual findings and legal conclusions underpinning his criminal conviction.[2] *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *43-45 & nn.69-71 (Mar. 7, 2014). But this did not deprive him of the opportunity to present evidence and arguments to counter the OIP's allegations and the sanctions sought by the Division. *See Blinder, Robinson & Co.*, 837 F.2d at 1109-10 (although petitioner was estopped from relitigating issues decided in previously litigated matter, he could present mitigating evidence as to the appropriate sanction). Moreover, as the Commission observed in its order granting amendment of the OIP, "to the extent that Tagliaferri's conviction provides an independent basis for sanctions, it is irrelevant whether he was convicted of the same conduct alleged in the OIP." *James S. Tagliaferri*, 2015 SEC LEXIS 3609, at *8.

Second, Tagliaferri argues that he was denied due process because the Division failed to provide him with copies of its entire investigative file. Resp. Opp. at 1-2. Rule of Practice 230(d) states that the Division must make the investigative file available to a respondent for inspection and copying no later than seven days after service of the OIP. 17 C.F.R. § 201.230(d). Additionally, Rule of Practice 230(e) states that documents subject to inspection and copying must be made available to the respondent for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. 17 C.F.R. § 201.230(e).

It is undisputed that on June 4, 2015, the Division offered to make the investigative file available for Tagliaferri to review at the Division's New York office on June 5, 2015. *See* Supp. Ex. C; Brown Decl. ¶ 5; Resp. Opp. to Supp. Submission at 8. Tagliaferri was located in Connecticut at this time. Prehr'g Tr. 27-28. On the same day the Division made this offer, Tagliaferri declined to come to the Division's office in person for several reasons: (1) he was unfamiliar with Concordance, the program used to maintain the documents; (2) he was unwilling to agree to the entry of a protective order that the Division had proposed regarding the handling of files that contained sensitive third-party information; and (3) he was unable to travel to New York City on June 5. Supp. Ex. D. Once Tagliaferri declined to come to the Division's office in person, the Division began to prepare a .pdf version of the investigative file, which it said would take approximately two weeks. Supp. Ex. E. The Division also noted that should Tagliaferri wish to review the documents in person on another date, they would be available for him at the Division's office provided he gave Division counsel at least twenty-four hours' notice. *Id*. Therefore, Tagliaferri was aware for the one-month period from June 5, 2015, until his July 6, 2015, incarceration that he could review the investigative file at the Division's office.[3]

[2] While Tagliaferri has appealed his conviction to the Second Circuit, "the fact that a judgment is pending on appeal ordinarily does not detract from its finality (and therefore its preclusive effect) for purposes of subsequent litigation." *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1104 n.6 (D.C. Cir. 1988).

[3] Tagliaferri was aware that he was scheduled to surrender for incarceration on July 6, 2015. *See* Prehr'g Tr. 28.

As of July 2, 2015, the Division had provided Tagliaferri with approximately one half of the investigative file in .pdf format, but determined that the .pdf conversion process was taking substantially longer than originally anticipated due to a number of large Excel spreadsheet files. Brown Decl. ¶ 8. Tagliaferri surrendered for incarceration on July 6, 2015. *See* Endorsement from Judge Abrams (May 5, 2015), *United States v. Tagliaferri*, ECF No. 154; Resp. Opp. to Supp. Submission at 11. The Division then asked Tagliaferri if he had "found out whether and how [he] can receive the rest of [the Division's] production" while incarcerated. Supp. Ex. F. On August 24, 2015, Tagliaferri informed the Division that he was not able to receive documents in disc or flash drive format at his prison and asked for a summary of the remaining documents so that he could determine what he wanted to review in hard copy. *Id*. On August 27, 2015, the Division responded that it did not have an index of the investigative file, but provided a list of producing parties to help Tagliaferri narrow down the documents he felt he needed. Supp. Ex. G. The Division offered to print documents requested by Tagliaferri "so long as the cost is not excessive," and it asked Tagliaferri whether there was a limit to how many documents he could receive at one time in hard copy. *Id*. Tagliaferri responded on August 31, 2015, that there was no limit to the number of documents he could receive and suggested the Division send 100 documents at a time. Supp. Ex. H. On September 3, 2015, the Division informed Tagliaferri that the remainder of the production was too large to provide in hard copy in its entirety. Supp. Ex. I. According to the Division, the remainder of the investigative file consisted of approximately one million pages and over 130,000 documents which would cost more than $50,000 to print. Brown Decl. ¶ 13. As a solution, the Division offered to produce a hard drive containing the remaining documents to a designee of Tagliaferri, who could review the contents and print any documents Tagliaferri wanted to have in hard copy. Supp. Ex. I. Tagliaferri insisted there was no such person who could review and print the documents on his behalf. *Id*.

Based on the foregoing, I find that the Division complied with Rule 230, pursuant to which it made its investigative file available to Tagliaferri. The Commission opinions in *Jose P. Zollino*, 58 S.E.C. 388 (2005), and *Byron S. Rainner*, Exchange Act Release No. 59040, 2008 SEC LEXIS 2840 (Dec. 2, 2008), do not compel a different outcome. Unlike the respondents in those cases, Tagliaferri was given a "reasonable opportunity" to review the investigative file. He had a full month before his incarceration to review the file at the Division's office and yet declined to do so, knowing full well of his incarceration date. He was then given an opportunity to have an electronic version of the file sent to a designee, but declined that offer. And he has not at any point indicated that he would pay the cost for the Division to produce the file in hard copy. *See* 17 C.F.R. § 201.230(f) ("The respondent may obtain a photocopy of any documents made available for inspection. The respondent shall be responsible for the cost of photocopying."); *cf. Byron S. Rainner*, 2008 SEC LEXIS 2840, at *4 (finding error where an incarcerated respondent was not provided with a copy of the Division's investigative file where the respondent "agreed to pay the costs").

Tagliaferri asserts that he was unfamiliar with the Concordance program, Resp. Opp. to Supp. Submission at 10, but nothing suggests that the Division would not have shown him how to use the program at its office. He also asserts that he relied on the Division's representation that it could produce its entire investigative file for his review on a timely basis. Tagliaferri Decl. ¶ 20. While it is regrettable that the .pdf conversion process did not go as planned, that does not obviate the fact that the Division made the investigative file available for Tagliaferri at

its office, and that Tagliaferri could not agree to any alternate location or solution following his incarceration. He also claims that he could not agree to the Division's offer to review the investigative file at its New York office because he was "confined to a wheelchair and subject to a bail condition of home confinement." Tagliaferri Decl. ¶ 18. His email to the Division rejecting its offer to review the investigative file at its New York office did not mention these issues. Supp. Ex. D. In any event, Tagliaferri's conditions of release do not suggest that he was precluded from traveling to the Division's office, located in the Southern District of New York, to review the investigative file had he wished to do so. *See* Order (July 25, 2014), *United States v. Tagliaferri*, ECF No. 56 (setting forth, in relevant part, that Tagliaferri's travel was restricted to the Southern District of New York and the District of Connecticut, and that home detention and electronic monitoring were imposed). Nothing suggests that the district court would have barred him from making the trip. In summary, his countervailing assertions fail to show any genuine issue regarding whether the Division met its Rule 230 obligations. Because I do not find a violation of Rule 230, I do not find a violation of due process.

Third, Tagliaferri argues that he should have the opportunity to present evidence at a hearing to determine "his degree of culpability."[4] Answer at 1-2; Resp. Opp. at 3. Also, his answer included a list of witnesses who he would call at a hearing, without any explanation of their expected testimony. Answer at 3; Resp. Opp. at 3. Tagliaferri was given the opportunity to identify specific evidence creating genuine issues of material fact that could not be resolved without a hearing. *See James S. Tagliaferri*, 2015 SEC LEXIS 3893, at *2-3 (order discussing specifics regarding motions for summary disposition and noting that an opposition "may set forth its own alternative findings and conclusions"). His bare assertions requesting a hearing, without factual support showing the need for one, do not create any "genuine issue with regard to any material fact" to overcome the Division's motion for summary disposition. 17 C.F.R. § 201.250(b); *see Jay T. Comeaux*, 2014 SEC LEXIS 4558, at *8.

FACTUAL BACKGROUND

Overview of Tagliaferri's Conduct[5]

[4] His conviction for investment adviser fraud, securities fraud, and wire fraud required the jury to conclude that he acted knowingly, willfully, and with the intent to defraud, and this point cannot be relitigated in this proceeding. *See* Trial Tr. 2756-57, 2764, 2769, 2783, *United States v. Tagliaferri*, ECF No. 89 (jury instructions); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *28 (Feb. 13, 2009) ("The doctrine of collateral estoppel prevents relitigating the factual findings or the legal conclusions of an underlying criminal proceeding in a follow-on administrative proceeding."), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

[5] These facts are drawn primarily from the district court's order denying Tagliaferri's motion for acquittal. *See* Ex. G; *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657, at *12 & n.20 (Apr. 23, 2015) (noting that, in *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 4614 (Mar. 7, 2014), the Commission's analysis referenced the district court's order denying acquittal, which made express findings about what the jury would have concluded from the evidence presented at the respondent's criminal trial).

Tagliaferri founded and operated an investment firm, TAG Virgin Islands, Inc. (TAG),[6] a registered investment adviser, where he had primary responsibility for investment decisions. Ex. G at 1. The clients' investment management agreements with TAG gave Tagliaferri complete control over their accounts and Tagliaferri could buy and sell assets on their behalf without prior permission from them. *Id*. at 2. Tagliaferri's clients had instructed him to pursue a conservative investment strategy, investing in "blue chip" stocks and other liquid, relatively low-risk assets. *Id*. Tagliaferri initially followed this approach, but beginning in 2007, clients began to inquire why an increasing percentage of their portfolios were invested in unfamiliar assets. *Id*. Tagliaferri was often unresponsive to their questions and made a number of misstatements. *Id*. By the time these clients terminated their relationships with Tagliaferri in 2011 and 2012, they had lost hundreds of thousands and, in some cases, millions of dollars. *Id*.

During the time of his misconduct, Tagliaferri received fees from several of the companies[7] in which he had invested his clients' funds and he did not disclose these fees to his clients. *Id*. In addition, Tagliaferri used certain clients' funds to purchase shares of stocks for other clients, including a thinly traded stock known as Fund.com. *Id*. at 3-4. The cash generated through these trades was then used, among other things, to pay back clients who held notes due for payment in other entities. *Id*. at 4; *see also* Ex. E (Sentencing Tr. 42). Lastly, Tagliaferri created false and fictitious notes that were placed in client accounts, which purported to reflect that a certain company had borrowed certain funds from TAG, when in fact no such loan existed. Ex. G at 4.

Criminal Proceeding

In July 2014, a federal jury found Tagliaferri guilty of one count of investment adviser fraud (Advisers Act Section 206),[8] one count of securities fraud (Exchange Act Section 10(b) and Rule 10b-5),[9] four counts of wire fraud,[10] and six counts of violations of the Travel Act.[11]

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[6] There appears to be no dispute that, as alleged in the criminal indictment, TAG Virgin Islands, Inc.'s successor was TAG Virgin Islands, LLC. Ex. A ¶ 2. References to TAG in this decision apply to both entities.

[7] Several of these companies were substantially controlled by Jason Galanis or his brother, Jared Galanis, associates of Tagliaferri. Ex. G at 3. The Commission has since filed a civil complaint against the Galanises alleging violations of the securities laws, including violations arising out of dealings with Tagliaferri. *See* Ex. C.

[8] 15 U.S.C. § 80b-6.

[9] 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

[10] 18 U.S.C. § 1343.

[11] 18 U.S.C § 1952.

Dkt. Sheet at 07/24/2014 entry, *United States v. Tagliaferri*; Ex. G at 1. In October 2014, the district court denied Tagliaferri's motion for acquittal. Ex. G. In February 2015, the district court sentenced Tagliaferri to a seventy-two month prison term plus thirty-six months of supervised release, ordered him to forfeit $2.5 million and certain real property, and entered judgment. *See* Ex. D; Ex. E (Sentencing Tr. 82, 84). Tagliaferri appealed to the Second Circuit, and his appeal remains pending as of the date of this initial decision. *United States v. Tagliaferri*, No. 15-536 (2d Cir.). In July 2015, the district court ordered Tagliaferri to pay almost $21 million in restitution. Ex. H.

DISCUSSION

Under Exchange Act Section 15(b)(6), associational and penny stock bars are authorized in this proceeding because: 1) Tagliaferri willfully violated Advisers Act Section 206 and Exchange Act Section 10(b) and Rule 10b-5, and, as an additional basis, he was convicted, within ten years of the commencement of this proceeding, of felonies that involved the purchase or sale of any security, arose out of the conduct of the business of a broker or investment adviser, and involved a violation of the wire fraud statute, 18 U.S.C. § 1343; 2) he was associated with a broker or dealer at the time of the misconduct; and 3) the sanction is in the public interest.[12] 15 U.S.C. § 78*o*(b)(4)(B)(i), (ii), (iv) and (D), (6)(A)(i), (ii). Similarly, Advisers Act Section 203(f) authorizes an associational bar because Tagliaferri willfully violated the Exchange and Advisers Acts and was convicted of the conduct described above, he was associated with an investment adviser at the time of the misconduct, and the sanction is in the public interest. 15 U.S.C. § 80b-3(e)(2)(A), (B), (D), and (5), (f).

Under Investment Company Act Section 9(b), an investment company bar is authorized because: Tagliaferri willfully violated Advisers Act Section 206 and Exchange Act Section 10(b) and Rule 10b-5; and such a bar is in the public interest. 15 U.S.C. § 80a-9(b)(2).

Tagliaferri's criminal conviction establishes the first prerequisite for industry bars

As established by Tagliaferri's conviction, he violated Advisers Act Section 206 and Exchange Act Section 10(b) and Rule 10b-5. Exs. A, D. The jury verdict establishes that Tagliaferri committed these violations willfully – a term of art which was defined to the jury as "knowingly and purposely, with an intent to do something the law forbids." Trial Tr. 2757, 2769, *United States v. Tagliaferri*, ECF No. 89 (jury instructions on investment adviser and securities fraud).[13] His violations, therefore, were necessarily willful as that term is defined in

[12] The Division does not seek to bar Tagliaferri from associating with a municipal advisor or nationally recognized statistical rating organization, because such bars were not available prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, when much of Tagliaferri's misconduct occurred. Motion at 8 n.9 (citing *Koch v. SEC*, 793 F.3d at 158).

[13] It is presumed that juries follow the court's instructions. *See CSX Transp., Inc. v. Hensley*, 556 U.S. 838, 841 (2009). And, "[i]n the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment." *Eric S. Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *14

the context of Commission proceedings. *David F. Bandimere*, Exchange Act Release No. 76308, 2015 SEC LEXIS 4472, at *101 (Oct. 29, 2015) ("[W]illfulness is shown where a person intends to commit an act that constitutes a violation; there is no requirement that the actor also be aware that he is violating any statutes or regulations.").

Tagliaferri's conviction also provides additional bases for satisfying the first prerequisite of associational and penny stock bars under Sections 15(b) and 203(f). His conviction for investment adviser and securities fraud involved the purchase or sale of a security and arose out of the conduct of the business of a broker or investment adviser, and he was convicted of wire fraud under 18 U.S.C. § 1343. Thus, the first prerequisite for bars under Exchange Act Section 15(b)(6), Advisors Act Section 203(f), and Investment Company Act Section 9(b) is met.

Tagliaferri was associated with an investment adviser and acted as a broker

Tagliaferri satisfies the second prerequisite for a bar under the Advisers Act because at the time of his misconduct he was associated with TAG, a registered investment adviser. *See* Ex. N.[14] Furthermore, Tagliaferri acted as an investment adviser, as the jury necessarily found in convicting Tagliaferri of investment adviser fraud. Trial Tr. 2749, 2751-54, *United States v. Tagliaferri*, ECF No. 89 (jury instructions on elements of investment adviser fraud); *see also Teicher v. SEC*, 177 F.3d 1016, 1017-19 (D.C. Cir. 1999) (affirming Commission's authority to bar persons from association with investment advisers, whether registered or unregistered); *Anthony J. Benincasa*, Investment Company Act Release No. 24854, 2001 SEC LEXIS 2783, at *4-6 (Feb. 7, 2001) (Commission authority to impose sanctions under Section 203(f) is not limited to registered investment advisers, and an individual acting as investment adviser meets definition of "person associated with an investment adviser").

Regarding the second prerequisite for a bar under the Exchange Act, the Commission has the authority to bar persons, such as Tagliaferri, who act as unregistered brokers. *See Daniel Imperato*, Exchange Act Release No. 74596, 2015 SEC LEXIS 1377, at *13 (Mar. 27, 2015); *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013).

The term broker is defined in the Exchange Act as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). Courts consider several factors to determine whether a person is engaged in the business of effecting transactions in securities for the account of others, including whether he

> (1) is an employee of the issuer; (2) received commissions as opposed to a salary; (3) is selling, or previously sold, the securities of other issuers; (4) is involved in

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n.23 (Aug. 26, 2011) (quoting *United States. v. Fabric Garment Co.*, 366 F.2d 530, 534 (2d Cir. 1966)).

[14] Tagliaferri does not dispute that he was associated with TAG during the period of his misconduct or that TAG was a registered investment adviser.

> negotiations between the issuer and the investor; (5) makes valuations as to the merits of the investment or gives advice; and (6) is an active rather than passive finder of investors.

SEC v. Martino, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003) (quoting *SEC v. Hansen*, No. 83-cv-3692, 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. Apr. 6, 1984)). "[T]ransaction-based compensation" is "one of the hallmarks of being a broker-dealer." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. Apr. 1, 2011).

Tagliaferri's conduct went beyond merely choosing investments for his clients. He was an active finder of investors, particularly for the company International Equine Acquisitions Holdings, Inc. (IEAH), and companies associated with the Galanises. *See, e.g.*, Ex. G at 2-3. Tagliaferri was also closely involved in the negotiations with the issuers of the terms of the notes purchased by his clients, as established by his emails with IEAH president Michael Iavarone and Jared Galanis. *See, e.g.*, Supp. Ex. A at Bates 1631-35 (GX 134), 9494 (GX 607).[15]

In addition, Tagliaferri earned transaction-based compensation – he received fees in exchange for his client investments. In its order denying his motion for acquittal, the district court found that ample evidence supported a jury finding that the "fees Tagliaferri received were in exchange for his investment of his clients' funds into IEAH and the Galanis entities." Ex. G at 2-3, 7 (citing excerpts of the transcript from Tagliaferri's criminal trial as well as government exhibits introduced at trial). The government's trial exhibits also demonstrated that Tagliaferri's company, TAG, received fees in connection with investments of clients' funds. *See, e.g.*, Supp. Ex. A at Bates 21296 (GX 5004) (note from Tagliaferri discussing "finders fee" TAG will receive from IEAH investment); Supp. Reply Ex. B at Bates 264162-64 (GX 1696) (chart compiled by TAG employee, "cc" to Tagliaferri, listing "fee payments related to notes").[16] Thus, Tagliaferri's compensation was transaction-based because "his compensation was based on the dollar amount of the original investment transactions (i.e., the amount he collected from investors to purchase [the securities])." *David F. Bandimere*, 2015 SEC LEXIS 4472, at *32.

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[15] Tagliaferri does not dispute that the email address that appears in these exhibits, J6395@aol.com, belonged to him. *See, e.g.*, Supp. Ex. A at Bates 9494 (GX 607) (email reflects James Tagliaferri as the name associated with the email address J6395@aol.com). A statement by a party, or by a party's agent, or that a party agrees is true, constitutes an admission within the meaning of Rule of Practice 250. *See Wheat, First Sec., Inc.*, 56 S.E.C. 894, 923 & n.55 (2003) (citing Federal Rule of Evidence 801(d)(2)). Therefore, Tagliaferri's statements in his emails are admissions and have been considered against him. Additionally, there is no dispute that Michael Iavarone was the president of IEAH at the time of Tagliaferri's misconduct. *See* Resp. Supp. Ex. B; Supp. Reply Ex. C. And there is no dispute that the email address reflected in GX 607 belonged to Jared Galanis. *See* Supp. Ex. A at Bates 9654 (GX 655) (email from jmg@sentinellawgroup.com to Tagliaferri signed "Jared").

[16] As discussed, a statement by a party or by a party's agent constitutes an admission within the meaning of Rule of Practice 250. *Wheat, First Sec., Inc.*, 56 S.E.C. at 923 & n55. The author of this exhibit is a TAG employee, i.e., Tagliaferri's agent. Therefore, this email and attached chart are deemed admissions, and I considered this exhibit as evidence against him.

Tagliaferri's contrary arguments on the broker issue fail to create a genuine issue of material fact. First, Tagliaferri asserts that the Division mischaracterizes the IEAH investments made on behalf of clients, which he asserts were units composed of secured notes and an interest in a racehorse, the latter of which he claims does not fall under the Commission's jurisdiction. Resp. Opp. to Supp. Submission at 2-3; Tagliaferri Decl. ¶ 7; Resp. Supp. Ex. A. That Tagliaferri's investments on behalf of clients were securities was determined at his criminal trial. Tagliaferri was convicted of securities fraud: one of the elements necessary to prove that charge was that his conduct was "in connection with the purchase or sale of securities." Trial Tr. 2763-72, *United States v. Tagliaferri*, ECF No. 89 (jury instructions). Thus, his present contention that the Commission lacks jurisdiction over some component of the investments is immaterial.[17]

Tagliaferri argues that fees he received from IEAH and other companies for his clients' investments were not compensation for investing clients' funds in these companies.[18] Once again, this is a fact that was litigated and determined in his criminal trial. The jury convicted Tagliaferri of violations of the Travel Act[19] and was instructed that an element of a criminal violation of the Travel Act is that the defendant's interstate travel or use of a facility was done with the intent to carry on the unlawful activity alleged in the indictment. Trial Tr. 2794, *United States v. Tagliaferri*, ECF No. 89. The unlawful activity alleged in the indictment was that Tagliaferri violated the New York commercial bribe receiving statute by causing his clients to invest in certain securities in exchange for receiving undisclosed payments. Trial Tr. 2791-92, 2794-96, *United States v. Tagliaferri*, ECF No. 89. Thus, the jury determined that Tagliaferri received compensation in exchange for his client investments, and he is estopped from arguing otherwise.

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[17] Insofar as Tagliaferri's contention extends beyond whether he acted as a broker but bears on the Commission's "jurisdiction" to institute this proceeding, it fails. The Commission's authority in such regard "arises from [Tagliaferri's] criminal conviction for one or more offenses enumerated in Exchange Act Section 15(b)(6) and Advisers Act Section 203(f)," *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016), and from his willful violations as enumerated in Investment Company Act Section 9(b). Whether the investments Tagliaferri sold were securities is an element of proof, not a jurisdictional prerequisite. *See David R. Wulf*, 2016 WL 1085661, at *4.

[18] In support of his argument that the fees were unrelated to client investments, Tagliaferri cites to a January 2011 declaration of Michael Iavarone, which purports that Tagliaferri's fees from IEAH were not kickbacks but "fully disclosed and properly earned fees" for consulting and other services. Resp. Supp. Ex. B ¶ 6; *see* Resp. Opp. to Supp. Submission at 4; Tagliaferri Decl. ¶ 8. Iavarone recanted this declaration in a subsequent declaration, in which he stated that Tagliaferri pressured him into signing the January 2011 declaration. *See* Supp. Reply Ex. C ¶¶ 10-11. A letter, dated March 2015, from Tagliaferri's former counsel to the district court asserted counsel's belief that there was no coercion of Iavarone. Resp. Supp. Ex. C. Regardless, this dispute is immaterial because, as discussed in the text, the jury determined that certain client investments were made in exchange for undisclosed payments.

[19] 18 U.S.C § 1952.

Tagliaferri also argues that his compensation was not transaction-based because certain exhibits from his criminal trial to which the Division cites are "unexecuted, incomplete, redacted or cannot be attributed to any party" or are simply proposals, and do not show that any transactions actually took place for which fees were received. Resp. Opp. to Supp. Submission at 5. Many of the exhibits to which Tagliaferri objects are emails with the issuers and cited by the Division to argue that he was involved in negotiations with the issuers. *See, e.g.*, Supp. Ex. A at 9494 (GX 607), 4560-61 (GX 656), 16679-80 (GX 658). In any event, as the jury necessarily decided that Tagliaferri received undisclosed payments for certain client investments, his issue with these particular exhibits is immaterial to whether his compensation was transaction-based.

Lastly, Tagliaferri argues that regardless of how his fees are characterized, he received assistance of in-house and outside counsel for TAG for advice regarding client disclosures. An advice-of-counsel defense relates to the question of scienter.[20] It does not have any bearing on whether Tagliaferri operated as an unregistered broker. In any event, to establish an advice-of-counsel defense, Tagliaferri must show: "(1) that he made complete disclosure to counsel; (2) that he sought advice on the legality of the intended conduct; (3) that he received advice that the intended conduct was legal; and (4) that he relied in good faith on counsel's advice." *Rodney R. Schoemann*, 2009 SEC LEXIS 3939, at *46. Tagliaferri has not made the requisite showing; he only states that he relied on counsel for advice, and, without any evidentiary support, that a law firm reviewed disclosures and issued a letter that TAG was in full compliance. Resp. Opp. to Supp. Submission at 6-7.

In summary, the indisputable evidence establishes that Tagliaferri was associated with a registered investment adviser and acted as an unregistered broker.

The public interest warrants full industry bars

The criteria to determine whether a sanction is in the public interest are the *Steadman* factors: 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 v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). 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 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.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003).

[20] *Rodney R. Schoemann*, Securities Act of 1933 Release No. 9076, 2009 SEC LEXIS 3939, at *45 (Oct. 23, 2009).

Having engaged in the case-specific analysis required by *Ross Mandell*, I have determined that full industry bars are appropriate and in the public interest. *See* 2014 SEC LEXIS 849, at *7-8.

Tagliaferri's misconduct was egregious and recurrent

First, Tagliaferri's conduct was egregious. Tagliaferri was convicted of investment adviser fraud, securities fraud, wire fraud, and other crimes. The Commission considers conduct involving fraud 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), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

As already discussed, the jury necessarily found that Tagliaferri was an investment adviser. Trial Tr. 2749, 2751-54, *United States v. Tagliaferri*, ECF No. 89. Courts have interpreted Section 206 as establishing a statutory fiduciary duty on investment advisers to act at all times in the best interest of their clients and requiring advisers to exercise utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, 194, 200-01 (1963); *SEC v. Moran*, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996) (collecting case law); *see* Trial Tr. 2752, *United States v. Tagliaferri*, ECF No. 89 (jury instructions echoing this point). Congress enacted Section 206 "to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested." *Capital Gains*, 375 U.S. at 191-92.

Tagliaferri breached his fiduciary duty to his clients. He earned over $1 million in fees from IEAH and companies associated with the Galanises in exchange for investing millions of dollars of client funds in securities issued by these companies. Ex. G at 2-3. Importantly, Tagliaferri did not disclose these payments to his clients at the time he invested their funds into the securities of these companies. *Id*. at 3. In addition, Tagliaferri engaged in "cross-trading" – using one client's funds to purchase another client's shares of a particular stock. *Id*. at 3-4. The cash generated through these trades was then used to pay back clients who held notes due for payment in other entities. *Id*. at 4. Numerous clients testified at Tagliaferri's criminal trial that it would have been important for them to know that Tagliaferri was affiliated with the companies he was investing their money in, that he was receiving fees from these companies, and that certain purchases of stock were being used to generate funds to pay off notes issued to other clients because it appeared Tagliaferri was not acting in their best interests, but in his own interest. *See, e.g.*, Supp. Ex. B at 821-25, 1091, 1102-03.

Additionally, Tagliaferri's conduct caused substantial harm to his victims. At his sentencing hearing, the district court noted that Tagliaferri's clients trusted him to act with their best interests in mind and he breached that trust, causing his clients to lose millions of dollars, which for some was their livelihood and their savings. Ex. E (Sentencing Tr. 79-80). The district court also noted that many of his clients lost what they had hoped to pass on to their children and their grandchildren, their sense of dignity, and their faith in others. *Id*. The egregiousness of Tagliaferri's misconduct is further underscored by the fact that the district court

sentenced him to seventy-two months' imprisonment followed by thirty-six months of supervised release and ordered him to pay over $20 million in restitution. Exs. D, H.

Tagliaferri's violations were recurrent and not isolated. His misconduct occurred over at least a four-year period and involved between ten and fifty investors. *See* Sentencing Tr. 25, *United States v. Tagliaferri*, ECF No. 140; Ex. G at 2 (noting that the jury heard testimony from "a number of Tagliaferri's former clients" who each told a "similar story" about Tagliaferri's misconduct regarding their investments).

Scienter

As the jury necessarily found in convicting Tagliaferri of securities fraud, investment adviser fraud, and wire fraud, he acted with scienter – an intent to defraud. *See* Trial Tr. 2756-57, 2764, 2769, 2783, *United States v. Tagliaferri*, ECF No. 89 (jury instructions); *see also United States v. Vilar*, 729 F.3d 62, 88 (2d Cir. 2013) (scienter is an element of the government's case for securities fraud under Exchange Act Section 10(b) and Rule 10b-5); *United States v. Pierce*, 224 F.3d 158, 165 (2d Cir. 2000) (same as to wire fraud under 18 U.S.C. § 1343); *SEC v. Steadman*, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992) (same as to adviser fraud under Advisers Act Section 206(1)).[21] The jury, in convicting Tagliaferri of these violations, necessarily found that he acted "willfully," which in the criminal context connotes a high degree of scienter – a bad purpose. *See* Trial Tr. 2753, 2756, 2764, 2769, 2776, *United States v. Tagliaferri*, ECF No. 89; *Bryan v. United States*, 524 U.S. 184, 191 (1998) ("The word 'willfully' is sometimes said to be 'a word of many meanings' whose construction is often dependent on the context in which it appears. . . . As a general matter, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.'"). In its jury instructions, the district court defined "willfully" as "to act knowingly and purposely, with an intent to do something the law forbids, that is to say, with bad purpose either to disobey or to disregard the law." Trial Tr. 2757, *United States v. Tagliaferri*, ECF No. 89.

In rejecting Tagliaferri's motion for acquittal, the district court concluded that the evidence supported the jury's finding that Tagliaferri possessed the requisite fraudulent intent. Ex. G at 6-9, 13-17. The evidence showed that fees Tagliaferri received were in exchange for his investment of his clients' funds into IEAH and the Galanis entities, and that he did not disclose the fees to certain clients. *Id.* at 7, 10-11. In emails to IEAH employees, Tagliaferri gave no indication that the fees were paid for anything other than the use of funds. *Id.* at 7. Emails between Tagliaferri and Jared Galanis, which discuss the terms of various loans, make clear that fees paid to Tagliaferri were in exchange for the use of funds. *Id.* Tagliaferri then took steps to conceal the existence of these fees. The jury heard testimony that, long after IEAH had paid Tagliaferri fees in connection with his clients' investments in the company, Tagliaferri instructed

[21] The district court, in instructing the jury regarding the elements of investment adviser fraud, including scienter, drew no distinction between Advisers Act Section 206(1) and the other subsections, which do not require proof of scienter. *See* Trial Tr. 2752-60, *United States v. Tagliaferri*, ECF No. 89; *see also ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 SEC LEXIS 4474, at *33 (Oct. 30, 2015) ("Scienter must be proven to establish a Section 206(1) violation, but negligence is sufficient for purposes of Sections 206(2) and (4)").

one of his employees to white out certain details from the invoices that had been created in connection with those fees. *Id.* at 9 n.6. As the district court noted, the jury could have found that Tagliaferri then sent those invoices to IEAH with information related to "financial services" Tagliaferri allegedly performed for the fees, in an attempt to show that the fees were paid for services TAG performed, and not for the investment of TAG client funds in IEAH. *Id.* The jury also heard testimony from IEAH's managerial accountant that Tagliaferri asked her to change how the fees were recorded on IEAH's books – from "investment banking fees" to "consulting fees." *Id.* Also, the evidence showed that Tagliaferri intended to deceive his clients because: contrary to TAG's compliance policy, he engaged in undisclosed cross trading; and he issued to his clients' accounts fake "sub-notes" based on a master "note" that did not exist. *Id.* at 4, 7-9.

As to one of the wire fraud counts, the district court rejected Tagliaferri's argument that the government failed to prove that he acted with intent to defraud. *Id*. at 13-16. The evidence showed that he intended to defraud a particular client by not disclosing that he was receiving fees and that a fax TAG sent to State Street Bank – directing it to issue TAG a check from the client's account for the payment of advisory fees – was in furtherance of the fraud. *Id.*

Assurances against future violations, recognition of wrongful conduct, and likelihood of future violations

At his sentencing, Tagliaferri made statements in which he seemed to recognize the wrongful nature of his conduct. For example, he stated his actions were "deplorable, there's no other way to describe it, and I accept the responsibility and whatever the [c]ourt decides." Ex. E (Sentencing Tr. 75). However, Tagliaferri then attempted to shirk responsibility by stating with respect to culpability that he was not "really a predator" because his crime was more of a "gate-keeping" violation, and suggested that the court should consider this point in its sentencing decision. *Id*. Considering these statements together with Tagliaferri's answer and oppositions submitted in this proceeding, I find that Tagliaferri has made only a lukewarm recognition of his culpability, and there is no indication that he has made assurances against future violations.

Although "[c]ourts have held 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*, 2013 SEC LEXIS 2155, at *23 n.50 (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted); *see Gann v. SEC*, 361 F. App'x 556, 560 (2d Cir. 2010) (affirming permanent associational bar and stating "if [respondent] doesn't know right from wrong in this industry, how can he avoid wrongdoing in the future?"). Tagliaferri has done little in this proceeding to rebut that inference.

Tagliaferri has made no firm representations as to his future employment. However, absent an industry bar, he would be permitted to resume activities within the securities industry, which would present opportunities for future violations and the risk that his conduct will be repeated. "Each area of the industry covered by the [industry] bar presents continual opportunities for [similar] dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence." *Ross Mandell*, 2014 SEC LEXIS 849, at *22 (internal quotation marks omitted, second alteration in original). Tagliaferri was the founder of TAG, his investment adviser firm from which he perpetrated his misconduct, and had primary

responsibility for investment decisions. Ex. G at 1-2. Without an industry bar, there is no assurance that he will not engage in similar misconduct once he is released from prison. His criminal sentence is not mitigative of the appropriate sanction to be imposed in the public interest. *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *27 (Jan. 14, 2011).

Final considerations as to remedial sanction

The balance of *Steadman* factors weigh in favor of a permanent industry bar against Tagliaferri, given his egregious and recurrent misconduct, high degree of scienter, and lack of assurances against future wrongdoing. I have also considered Tagliaferri'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*, 2014 SEC LEXIS 841, at *34 (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 [industry] bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, 2012 SEC LEXIS 3855, at *43.

The extent, nature, and duration of Tagliaferri's misconduct demonstrate that he is incapable of such fairness and integrity in any capacity in the securities industry. A full and permanent industry bar, as opposed to a more limited bar or suspension, "will prevent [Tagliaferri] 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 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). Additionally, "absent extraordinary mitigating circumstances" not presented here, a person "who has been convicted of securities fraud cannot be permitted to remain in the securities industry." *Charles Trento*, Securities Act Release No. 8391, 2004 SEC LEXIS 389, at *11 (Feb. 23, 2004). Given the foregoing, I find that it is in the public interest to impose permanent industry bars against Tagliaferri.

ORDER

IT IS ORDERED that, pursuant to Rule 250 of the Commission's Rules of Practice, the Division of Enforcement's motion for summary disposition against Respondent James S. Tagliaferri is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, James S. Tagliaferri is permanently BARRED from associating with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

It is FURTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, James S. Tagliaferri is permanently BARRED 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.

It is FURTHER ORDERED that, pursuant to Section 9(b) of the Investment Company Act of 1940, James S. Tagliaferri is permanently PROHIBITED from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under 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 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.

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Cameron Elliot
Administrative Law Judge