INITIAL DECISION RELEASE NO. 994
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16914

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

In the Matter of EVELYN LITWOK	INITIAL DECISION OF DEFAULT April 4, 2016

APPEARANCES: Cynthia A. Matthews and Howard Fischer for the Division of Enforcement, Securities and Exchange Commission

BEFORE: James E. Grimes, Administrative Law Judge

Summary

In this initial decision, I grant the Division of Enforcement's motion for default judgment and sanctions. Respondent Evelyn Litwok is barred from associating with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

Procedural Background

The Commission initiated this proceeding in October 2015, when it issued an order instituting proceedings (OIP) under Section 203(f) of the Investment Advisers Act of 1940. OIP at 1; *see* 15 U.S.C. § 80b-3(f). This proceeding is a follow-on proceeding based on *United States v. Litwok*, 2:02-cr-427 (E.D.N.Y. Apr. 12, 2013), *aff'd*, 611 F. App'x 12 (2d Cir. 2015). The Division alleges the following in the OIP. From 1984 through 1994, Litwok was associated with several broker-dealers as a registered representative. OIP at 1-2. From 1994 through 1997, she was the principal of at least three corporations that operated as unregistered investment advisers. *Id*. at 1. During this same period, Litwok was an unregistered investment adviser. *Id*. Litwok was subsequently charged with tax evasion related to taxes due for tax year 1995. OIP at 2; *see* 26 U.S.C. § 7201. In 2013, a jury convicted Litwok of tax evasion. OIP at 2. Later that year, the United States District Court for the Eastern District of New York sentenced Litwok to twenty-four months' imprisonment and ordered her to pay $1,097,534 in restitution. *Id*.

Litwok did not answer the OIP. *Evelyn Litwok*, Admin. Proc. Rulings Release No. 3344, 2015 SEC LEXIS 4840, at *1 (ALJ Nov. 24, 2015). She also failed to participate in a telephonic prehearing conference held on November 23, 2015. *Id*. I therefore ordered her to show cause why this proceeding should not be determined against her. *Id*. at *1-2. Litwok did not respond to the show cause order.

Following the prehearing conference, I granted the Division "leave to file an appropriate dispositive motion." *Evelyn Litwok*, 2015 SEC LEXIS 4840, at *2. The Division filed a motion in January 2016. Its motion is supported by twenty-seven exhibits, including: the private placement memorandum for Kohn Investment L.P.-1, Ex. 9; the private placement memorandum for Kohn Capital L.P.-33, Ex. 11; Litwok's superseding indictment, Ex. 16; the 2010 judgment in Litwok's criminal case, Ex. 17; the Second Circuit's 2012 decision on Litwok's first appeal, Ex. 23; Litwok's trial transcript, Ex. 24; Litwok's sentencing transcript, Ex. 25; the district court's 2013 amended judgment, Ex. 26; and the Second Circuit's 2015 decision, Ex. 27. Litwok has not filed an opposition to the Division's motion.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule 323, 17 C.F.R. § 201.323. Because Litwok did not file an answer to the OIP, appear at the prehearing conference, or otherwise participate in this proceeding, she is in default.[1] *See* 17 C.F.R. §§ 201.155(a), .220(f), .221(f). As a result, I have accepted as true the factual allegations in the OIP. *See* 17 C.F.R. § 201.155(a). In making the findings below, I have applied preponderance of the evidence as the standard of proof. *See Rita J. McConville*, Securities Exchange Act of 1934 Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005) ("it is well settled that the applicable standard . . . is preponderance of the evidence"), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).

Litwok was an unregistered investment adviser from 1994 through 1997. OIP at 1. She conducted her advisory business through, and was the principal of, several similarly named entities that were also unregistered advisers. *Id*. Among these firms were Kohn Investment Management, Inc., and Kohn Capital Management, Inc.-33. Litwok was sole owner and president of Kohn Investment Management, which served as the general partner of Kohn Investment Partnership, L.P.-1. Ex. 9 at 1, 26. Litwok was also a managing director of Kohn Capital Management, Inc.-33, which was the general partner of Kohn Capital L.P.-33. Ex. 11 at 1, 26.

In March 2003, a grand jury issued a superseding indictment charging Litwok with one count of mail fraud and three counts of tax evasion. Ex. 16; *see* 18 U.S.C. § 1341 (mail fraud); 26 U.S.C. § 7201 (tax evasion). Count two of the indictment alleged that Litwok "did knowingly and willfully attempt to evade and defeat" the taxes she owed for tax year 1995 "by failing to file an Individual Income Tax Return . . . , by failing to pay income taxes to the" IRS, "and by concealing and attempting to conceal . . . her true assets." Ex. 16 at 3. Counts three and four concerned similar allegations for tax years 1996 and 1997. *Id*. In 2010, Litwok was found guilty of all four counts. Ex. 17 at 1. The district court sentenced Litwok to two years' imprisonment and ordered her to pay restitution of $23,551. *Id*. at 2, 5.

[1] Litwok may move to set aside the default in this case. Rule 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*.

In 2012, the Second Circuit reversed Litwok's tax evasion convictions for tax years 1996 and 1997. Ex. 23 at 1, 12. It also vacated and remanded her remaining two convictions because they were improperly joined. *Id*. at 13-15.

In its decision, the court of appeals rejected Litwok's argument that the evidence was insufficient to support her tax evasion conviction for 1995. Ex. 23 at 11-12. The court noted evidence that Peter Testaverde, who was one of Litwok's accountants, "review[ed] . . . brokerage account statements" and other document for one of Litwok's investment firms and "discover[ed] $2.3 million in excess personal compensation." *Id.* at 5. After Testaverde raised the issue with Litwok, she said the firm's brokerage statements were inaccurate and prevented Testaverde from verifying the statements with the brokerage firm. *Id*. As a result, Testaverde was unable to prepare certain tax forms and the investment firm's partners were unable to determine their income and file their own tax returns. *Id*. at 12. The court held this evidence was sufficient to support the determination that "Litwok actively prevented the filing of her returns" for 1995. *Id*.

On remand, Litwok was retried on the tax evasion charge related to tax year 1995. During the retrial, the prosecution presented evidence that Litwok failed to file a tax return for tax year 1995. Ex. 24 at 191. The prosecution also called accountant Testaverde to testify. *See id*. at 200-37. He explained that he was asked to audit Kohn Investment Partnership, L.P.-1 because one of its limited partners was leaving the partnership. *Id*. at 202. After he analyzed the partnership's brokerage statements, Testaverde determined that Kohn Investment Management—of which Litwok was sole owner and president—had withdrawn $2.3 million from the partnership "in excess of what the allocation schedule" called for. *Id*. at 204, 211-12. When Testaverde asked Litwok about the withdrawal, she told him that the brokerage statements, which she had given him, *id*. at 227, were inaccurate, *id*. at 217. Testaverde later resigned from the audit engagement after Litwok refused to allow him to contact the partnership's broker. *Id*.

IRS agent Eileen Smith also testified during the retrial. Smith calculated that Litwok's income in 1995 was $2.3 million. Ex. 24 at 265. Subtracting expenses, Smith asserted that Litwok's net income was $2.05 million. *Id*. at 265-66. Based on these amounts and the applicable tax rates, Smith calculated that Litwok owed over $790,000 in taxes for tax year 1995. *Id*. at 267.

After Litwok rested, the district court instructed the jury that in order to convict, the prosecution was required to establish that she "knowingly and willfully attempted to evade . . . or defeat some substantial portion of" her taxes that were "due and owing." Ex. 24 at 314. And to establish that Litwok "knowingly and willfully attempt[ed] in any manner to evade or defeat any income tax imposed by law," the prosecution was required to "prove beyond a reasonable doubt the act of evasion described in the indictment." *Id.* After deliberating, the jury found Litwok guilty of tax evasion. *Id*. at 324-25; *see* Ex. 26 at 1.

During the later sentencing hearing, the district court addressed Litwok, saying, "You've misstated so many things to so many people for so much, it is almost impossible to tell which [thing] is the truth and which is not. You've listed schools that you've graduated from and degrees [that you did not earn]," as reported by the probation office in its presentence report. Ex. 25 at 11-12, 15-16. The court then sentenced Litwok to two years' imprisonment with credit for

time already served and ordered her to pay $1,097,534 in restitution. *Id.* at 12; Ex. 26 at 2, 4. The court of appeals affirmed Litwok's conviction and sentence in April 2015. Ex. 27.

Conclusions of Law

Section 203(f) of the Advisers Act gives the Commission authority to impose a collateral bar[2] against Litwok if, among other things, (1) she was associated with or seeking to become associated with an investment adviser at the time of the misconduct at issue; (2) she was convicted of an offense described in Section 203(e)(2) or (3) within ten years before the issuance of the OIP; and 3) imposing a bar is in the public interest. 15 U.S.C. § 80b-3(e)(2)-(3), (f).

The first factor is met in this case. Litwok acted as an investment adviser. OIP at 1. The fact that she never registered as an adviser is irrelevant to this determination. *See Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999); *Anthony J. Benincasa*, Investment Company Act of 1940 Release No. 24854, 2001 WL 99813, at *1 (Feb. 7, 2001).

The second factor is also met. First, the jury returned its verdict in January 2013, less than ten years before the Commission issued the OIP in this case.[3] *See* Ex. 24 at 324-26. Second, Litwok's conviction meets the requirements of Section 203(e)(3) of the Advisers Act. That section applies to "any crime . . . punishable by imprisonment for 1 or more years, and that is not described in [Section 203(e)(2)]." 15 U.S.C. § 80b-3(e)(3)(A). Litwok was convicted of violating 26 U.S.C. § 7201. Ex. 26 at 1. Violations of Section 7201 are punishable by up to five years' imprisonment, 26 U.S.C. § 7201, well above the threshold in Section 203(e)(3).

With respect to the third factor, whether imposition of a collateral bar would be in the public interest, I must consider the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See Toby G. Scammell*, 2014 WL 5493265, at *5. The public interest factors include:

> 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 h[er] conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

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[2] A collateral bar is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014).

[3] For purposes of the Advisers Act, the term "convicted" is defined to include a verdict. *See* 15 U.S.C. § 80b-2(a)(6); *Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *8 (Mar. 7, 2014).

Id. Other relevant factors include the degree of harm resulting from the violation[4] and the deterrent effect of administrative sanctions.[5] The public interest "inquiry . . . is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

Before imposing a collateral bar, an administrative law judge must determine, based on the evidence presented, "whether such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014). I must therefore "'review [Litwok's] case on its own facts' to make findings regarding [her] fitness to participate in the industry in the barred capacities." *Id.* (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)). A decision to impose a collateral bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'" *Id*. (quoting *McCarthy*, 406 F.3d at 189-90); *see also John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012) ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors."), *called into question on other grounds by Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015).

Certain principles are relevant to the determination of whether Litwok's conviction warrants imposition of a collateral bar. First, for a variety of reasons—for example, participants in the industry have access to investors' funds or investments and also have the ability to influence investment decisions—"[t]he securities industry presents continual opportunities for dishonesty and abuse." *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) (alteration in original; citation omitted); *Bruce Paul*, Exchange Act Release No. 21789, 1985 WL 548579, at *2 (Feb. 26, 1985). Because this is the case, the industry necessarily "depends very heavily on the integrity of its participants." *Bruce Paul*, 1985 WL 548579, at *2.

The industry particularly depends on the integrity of investment advisers who owe their clients "an 'affirmative [fiduciary] duty of utmost good faith.'" *Timbervest, LLC*, Advisers Act Release No. 4197, 2015 WL 5472520, at *5 (Sept. 17, 2015) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963)). "Investors . . . place a high degree of trust and confidence in the investment advisory relationship." *Montford & Co.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *18 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). Consistent with the need to protect the investing public, the Commission looks with particular disfavor on advisers who commit fraud, *see Alfred Clay Ludlum, III*, Advisers Act Release No. 3628, 2013 WL 3479060, at *4 (July 11, 2013), as well as on securities professionals who commit "dishonest conduct unrelated to securities transactions or securities business," *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *7 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *see Ahmed Mohamed Soliman*, Exchange Act Release

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[4] *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at *24 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

[5] *See Guy P. Riordan*, Securities Act of 1933 Release No. 9085, 2009 WL 4731397, at *19 & n.107 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

No. 35609, 1995 WL 237220, at *3 (Apr. 17, 1995) (criminal conviction for tax law violations involving "fraud and deceit" is a "serious" offense which "shows a lack of honesty and [judgment] and indicates that [the respondent is] unsuited to function in the securities industry").

Second, "because '[f]idelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud,' in most fraud cases the *Steadman* factors, such as egregiousness, scienter, and opportunity for future misconduct, will weigh in favor of a bar."[6] *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 n.71 (Dec. 12, 2013) (quoting *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *7 (Feb. 4, 2008)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014) (alteration in original).

Third, tax fraud is a serious matter because it amounts to lying to a government "agency that relies upon truthful reporting of economic activity." *Fog Cutter Capital Grp., Inc*., Exchange Act Release No. 52993, 2005 WL 3500274, at *4 (Dec. 21, 2005), *pet. denied*, 474 F.3d 822 (D.C. Cir. 2007). A respondent's willingness to lie "to the government is properly of great interest to securities regulators who operate under similar constraints as the tax authorities." *Id*. This is the case because "[b]oth the tax and the securities regulatory schemes depend on the honor, candor, and integrity of regulated persons to report accurately to the regulatory authority the information sought by such authority." *JJFN Servs., Inc*., Exchange Act Release No. 39343, 1997 WL 722029, at *3 (Nov. 21, 1997).

Considering the foregoing, a collateral bar is warranted. Based on the facts of her case, Litwok's conviction for tax evasion in violation of 26 U.S.C. § 7201 involved dishonest conduct and fraud. Litwok's misconduct concerned income from her advisory business. Indeed, evidence presented during Litwok's trial showed that she made $2.3 million in unauthorized withdrawals from Kohn Investment Partnership, L.P.-1. Ex. 24 at 204, 211-12. Litwok was convicted because she failed to report this income. She thus violated her fiduciary duty by stealing money belonging to the partnership and then essentially defrauded the government by failing to report the stolen money as income.[7] And Litwok's misconduct is aggravated by the fact that during her second trial, the prosecution presented evidence that, in addition to tax year

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[6] While it is true that the Commission most often applies this maxim in cases involving securities fraud, *see Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *3 (Sept. 17, 2009), other types of fraud may also warrant imposition of a collateral bar, *cf. Bruce Paul*, 1985 WL 548579, at *2 (addressing a tax evasion conviction for purposes of Section 15(b) of the Exchange Act). Indeed, various non-securities offenses, including any crime punishable by imprisonment for one or more years, can serve as a basis for a collateral bar. 15 U.S.C. § 80b-3(e)(2)-(3), (f).

[7] *See* Ex. 9 at 2, 10, 26 (Kohn Investment Partnership, L.P.-1, and its general partner Kohn Investment Management were organized under Delaware law, and Litwok was the president and sole owner of the general partner); *see also* Ex. 24 at 30, 71-72 (accountant Lawrence Goldstein testified that Litwok took at least $1.1 million for personal reasons, including to make a personal deposit and partial payment on a house), 126, 143-45 (former Litwok employee Elizabeth Kratochvil testified that Litwok spent money on lavish items during the period the partnership was losing money).

1995, Litwok failed to file tax returns for a number of other years in the 1990s. *See* Ex. 24 at 187-94.

In addition to the foregoing negative factors, Litwok compounded her misconduct by taking affirmative steps to conceal her income. She lied to her accountant and then acted to prevent him from investigating the matter. Ex. 24 at 217, 227; *see* Ex. 23 at 5.

Litwok also acted with scienter, both in stealing the partnership's money and attempting to evade the taxes she owed on her ill-gotten income. By taking affirmative steps to conceal her theft, Litwok demonstrated consciousness of guilt. *See United States v. Rybicki*, 287 F.3d 257, 264 (2d Cir. 2002) ("efforts to avoid detection . . . are indicative of consciousness of guilt"), *on reh'g in banc*, 354 F.3d 124 (2d Cir. 2003). And, she could not have been convicted of tax evasion absent evidence that she acted willfully, which in this context means a voluntary and intentional violation of a known legal duty. *See Cheek v. United States*, 498 U.S. 192, 201 (1991); Ex. 24 at 315 (jury instructions).

Litwok's conduct was egregious. She violated her fiduciary obligation and stole a large amount of money from the partnership and ultimately from its limited partners. The fact that Litwok violated her fiduciary obligation weighs heavily against her. *See John W. Lawton*, 2012 WL 6208750, at *11 ("Lawton's willingness to violate his fiduciary duty to his clients is more than sufficient to demonstrate his unfitness to take on another role as a fiduciary"); *Alfred Clay Ludlum*, 2013 WL 3479060, at *4. The fact that Litwok also lied to her accountant about her actions and then tried to defraud the government by evading taxes she owed on her income further demonstrates that Litwok's conduct was egregious. *See Fog Cutter Capital Grp.*, 2005 WL 3500274, at *4. That the district court sentenced her to a two-year prison term and ordered her to pay $1,097,534 in restitution to the IRS underscores the egregious nature of her misconduct. Ex. 26 at 2, 4.

Litwok's propensity to shade the truth did not go unnoticed by the district court. It remarked that she "misstated so many things to so many people for so much, it is almost impossible to tell" what is true and what "is not." Ex. 25 at 11-12. Further, her propensity to lie has been a subject of other proceedings as well. *See In re Litwok*, 246 B.R. 1, 10-11 (E.D.N.Y. 2000) ("[T]his [c]ourt adopts the [bankruptcy court's] findings that Litwok filed a $1.5 billion complaint with the NYSE against [a creditor, Republic New York Securities Corp.]; that Litwok fabricated evidence to support that complaint; and that the arbitration panel found that the complaint was fraudulent and filed in bad faith."), *aff'd*, 4 F. App'x 43 (2d Cir. 2001); 17 C.F.R. § 201.323 (official notice). Dishonesty weighs against allowing a respondent to remain in the securities industry. *Cf. Bruce Paul*, 1985 WL 548579, at *2 (stating that the industry "depends very heavily on the integrity of its participants").

Litwok has made no assurances against future violations. She has also not shown that she recognizes the wrongful nature of her conduct. To the contrary, during her sentencing hearing, Litwok asserted that she was not liable and the prosecution had mischaracterized the evidence. Ex. 25 at 6-10. She concluded by telling the district court that it had left her no choice but "to file an immediate motion for prosecutorial misconduct." *Id.* at 10. Litwok's inability or unwillingness to accept responsibility for her actions shows that if given the opportunity, she would engage in misconduct in the future.

Litwok's misconduct was not isolated. As noted, evidence presented during Litwok's second trial showed that in addition to tax year 1995, Litwok failed to file tax returns for a number of other years in the 1990s. *See* Ex. 24 at 187-94.

As to the question of whether it is likely that Litwok's occupation will present opportunities for future violations, the Commission has held that "the existence of a violation raises an inference that" the acts in question will recur. *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). If she were to continue working in the securities industry, Litwok's occupation would "present[] opportunities for future illegal conduct in th[is] . . . industry." *John W. Lawton*, 2012 WL 6208750, at *11. In combination with Litwok's affirmative failure to recognize the wrongfulness of her actions and the fact that her actions were not isolated, this factor weighs in favor of a collateral bar.

Against these negative factors is the fact that Litwok's misconduct happened twenty years ago and is therefore not recent. I do not give significant weight to this factor, however. During her sentencing hearing, Litwok explained that she was arrested in 1997. Ex. 25 at 5. The fact, therefore, that Litwok's misconduct stopped almost twenty years ago was not the result of her decision to reform her behavior.

Finally, imposing a collateral bar will serve as a general and specific deterrent.[8] It will deter Litwok and will further the Commission's interest in deterring others from engaging in similar misconduct.

Given the foregoing, I find that it is in the public interest to impose a collateral bar against Litwok.

Order

The Division of Enforcement's motion for default judgment and sanctions is GRANTED.

Under Section 203(f) of the Investment Advisers Act of 1940, Evelyn Litwok is permanently BARRED from associating with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent.[9]

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[8] Although general deterrence is not determinative of the question of whether the public interest weighs in favor of imposing an industry bar, it is a relevant consideration. *See Peter Siris*, 2013 WL 6528874, at *11 n.72; *see also PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007); *Guy P. Riordan*, 2009 WL 4731397, at *19 & n.107.

[9] Because Litwok's misconduct occurred before July 22, 2010, the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, the Division does not seek to bar Litwok from associating with a municipal advisor or a nationally recognized statistical rating organization. *See* Mem. Law Supp. Mot. at 10 n.9; *Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015) (holding on retroactivity grounds that the

This initial decision will 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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James E. Grimes
Administrative Law Judge

Commission cannot apply the Dodd-Frank amendments to bar a respondent from associating with municipal advisors and rating organizations based on conduct predating Dodd-Frank).