

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4791/May 8, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17856

In the Matter of

JOHN AUSTIN GIBSON, JR.

ORDER FOR SUPPLEMENTAL BRIEF

This is a follow-on proceeding instituted by the Securities and Exchange Commission after Respondent John Austin Gibson, Jr., was convicted of mail fraud. According to the allegations in the order instituting proceedings (OIP), Gibson was associated with a dually registered broker-dealer and investment adviser from October 2007 until March 2009. OIP at 1. Gibson, who allegedly acted as an unregistered investment adviser for an uncertain period of time after March 2009, was convicted in 2016. *Id.* at 1-2. In light of Gibson's conviction and prior status, the Commission instituted this proceeding to determine whether he should be barred from participating in the securities industry. *Id.*

After the Commission instituted this proceeding, the Division of Enforcement filed a dispositive motion supported by evidence that Gibson's fraudulent scheme lasted from 2008 through 2014. Ex. 4 at 1-3. As part of his scheme, Gibson approached five investors and convinced them to move their investments to accounts he promised to establish and monitor. *Id.* at 1-3. The last of these investors transferred funds to Gibson in October 2009. *Id.* at 2-3. Instead of establishing and monitoring accounts for them, Gibson used the investors' funds for his own purposes. *Id.* at 2-3. After obtaining the investors' funds, Gibson concealed his use of the funds by mailing false account statements to the investors. *Id.* at 2-3.

Based on Gibson's conviction, conduct, and prior status, the Division asks that I bar Gibson from participating in an offering of penny stock and from association with any broker, dealer, or investment adviser. Mot. at 6. It also asks that I bar Gibson from associating with a municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *Id.*

The Division's request that I bar Gibson from associating with a municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization potentially implicates the retroactivity concerns addressed in *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017) and *Koch v. SEC*, 793 F.3d 147 (D.C. Cir. 2015). Within fourteen days, the Division should supplement its motion and address whether, consistent with *Bartko* and *Koch*, Gibson may be barred from associating with a municipal securities dealer, municipal advisor, transfer

agent, or nationally recognized statistical rating organization. Understanding that Gibson agreed that his mail fraud scheme lasted from 2008 through 2014, Ex. 4, at 1, the Division should address (1) whether it must establish for retroactivity purposes that Gibson continued to act as an investment adviser after 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; and (2) if so, the evidence and precedent that supports the allegation that Gibson continued to act as an investment adviser after July 22, 2010. Alternatively, the Division may withdraw its request that I bar Gibson from associating with a municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Nothing in this order is intended to suggest that I have decided to rule that Gibson did not continue to act as an investment adviser after July 2010 or that the reasoning in *Bartko* and *Koch* applies in Gibson's circumstance.

James E. Grimes
Administrative Law Judge