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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15308

In the Matter of

JOSEPH CONTORINIS,

Respondent.

PETITION FOR REVIEW OF INITIAL DECISION

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Respondent Joseph Contorinis submits this petition (the "Petition"), pursuant to Rules 410 and 411 of the Securities and Exchange Commission's (the "Commission's") Rules of Practice, for review of the Initial Decision issued by the presiding Administrative Law Judge ("ALJ") on August 22, 2013 (the "Initial Decision").

I. INTRODUCTION

The Commission should grant this Petition for review of the Initial Decision's imposition of a lifetime associational bar on Mr. Contorinis for at least two reasons. *First*, in light of the Supreme Court's recent decision in *Gabelli* v. *SEC*, 133 S. Ct. 1216 (2013), regarding the application of 28 U.S.C. § 2462, the rejection of Mr. Contorinis's statute of limitations argument was an erroneous decision of law that is "important and that the Commission should review." Rule 411(b)(2). To be consistent with the spirit of the Supreme Court's decision in *Gabelli*, these proceedings had to be commenced within five years of when the claim for an industry bar *first accrued* in order to be timely under § 2462. Here, those five years expired no later than January 23, 2011—more than two years *before* the Commission initiated these proceedings. Despite knowing of the alleged misconduct since 2009, at the latest, the Commission waited until 2013 to initiate these proceedings. That is contrary to the very purpose of statutes of limitations, as supported by the Supreme Court's recent holding in *Gabelli*. For this reason alone, the Petition should be granted and the Initial Decision reversed in its entirety.

Second, contrary to the ALJ's erroneous application of the *Steadman* factors in the Initial Decision, the facts and circumstances of Mr. Contorinis's case do not weigh in favor of a lifetime associational bar. A lifetime bar is "the most drastic remed[y]" available to the Commission. *Steadman* v. *SEC*, 603 F.2d 1126, 1137 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). Accordingly, such a bar is not appropriate merely because Mr. Contorinis

was convicted of insider trading or because such bars have been imposed on others. Here, the trades at issue were made openly, in a single stock, on a few days, over a period of a few weeks, in Mr. Contorinis's otherwise unblemished, twenty-year career in the financial services industry. Mr. Contorinis did not cause others to engage in any wrongdoing. He did not breach fiduciary duties to his clients, defraud investors or deprive them of their hard-earned savings, or divert investors' funds for his own use. In fact, the district court judge who presided over Mr. Contorinis's two-week trial and heard Mr. Contorinis's testimony concluded: "*I don't think there is any chance that you are going to commit crimes in the future. . . . There is not much dispute about that.*" (Declaration of Farrah R. Berse, dated July 19, 2013 ("Berse Decl. II") Ex. 3 at 56.[1]) Such facts and circumstances do not support a lifetime associational bar. Moreover, the ALJ erred by failing seriously to consider any sanction less than a lifetime associational bar.

II. BACKGROUND

Mr. Contorinis was a co-Portfolio Manager for the Jefferies Paragon Fund, LLC (the "Fund"), a fund created and controlled by Jefferies & Company, Inc. ("Jefferies") and funded by outside investors and Jefferies. (Declaration of Farrah R. Berse, dated June 25, 2013 ("Berse Decl. I") Ex. 1 at 3–4, 21, 23; Ex. 2 at 1011; Ex. 4 at 3.) The Fund's trades in Albertsons, Inc. ("Albertsons") that were at issue in the related criminal and civil cases against Mr. Contorinis occurred between late 2005 and January 2006. (*See, e.g.*, Berse Decl. I Ex. 5 at ¶¶ 41, 44, 46, 50.) The Fund closed out its position in Albertsons on January 23, 2006. (Berse Decl. I Ex. 4 at 10; Ex. 6.)

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[1] References are to documents that were part of the record below. Mr. Contorinis can provide copies of any of these documents at the Commission's request.

A. The Criminal Case

In November 2009, Mr. Contorinis was indicted on allegations that he violated § 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder by trading on inside information—allegedly received from Mr. Contorinis's friend, who was a banker at UBS—in the stock of Albertsons. (Division of Enforcement's Mot. for Summ. Disposition & Mem. of Law in Supp. thereof against Resp't Joseph Contorinis ("Division Mot.") Ex. D.) In October 2010, a jury found Mr. Contorinis guilty on one count of conspiracy to commit securities fraud and seven substantive counts of insider trading relating to the Fund's trades in Albertsons on two days: December 22, 2005, and January 11, 2006. The jury found Mr. Contorinis not guilty of two additional counts of substantive insider trading. (*Id.* Ex. F.) The district court sentenced Mr. Contorinis to 72 months' imprisonment, to be followed by 24 months of supervised release, and ordered him to forfeit $12,650,438. (Berse Decl. I Ex. 9.)

On appeal, the Court of Appeals for the Second Circuit affirmed the conviction, but vacated the forfeiture order after holding that Mr. Contorinis could not, as a matter of law, be required to forfeit funds that he never received or controlled. *United States* v. *Contorinis*, 692 F.3d 136, 148 (2d Cir. 2012). On remand, the parties agreed that in light of the Second Circuit's order, the appropriate amount of forfeiture—representing Mr. Contorinis's personal profits as a result of the trades at issue—was $427,875. (Berse Decl. II Ex. 4.) The district court has adjourned Mr. Contorinis's resentencing with regard to the imposition of a criminal fine, if any, pending the outcome of Mr. Contorinis's appeal of his civil judgment. *See* below at n.2.

B. The Civil Case

In February 2009, the Commission filed a parallel civil action against Mr. Contorinis. (Division Mot. Ex. B.) The Complaint did not allege—and the Commission (and the U.S. Attorney's Office in the related criminal case) never sought to show—that Mr. Contorinis

made these trades for his own benefit. Rather, the Complaint alleges that Mr. Contorinis made the trades on behalf of the Fund. (*Id.* at ¶¶ 19–20, 50–51.)

In a February 2012 memorandum and order, the district court granted the Commission's motion for summary judgment on collateral estoppel grounds, based on Mr. Contorinis's conviction in the related criminal case. *SEC* v. *Contorinis*, No. 09 Civ. 1043(RJS), 2012 WL 512626 (S.D.N.Y. Feb. 3, 2012). In a February 29, 2012 judgment, Mr. Contorinis was, among other things, permanently enjoined from violating § 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.[2] (Berse Decl. I Ex. 11.)

C. This Administrative Proceeding

On April 30, 2013—*more than seven years* after the Fund closed out of its position in Albertsons—the Commission commenced these proceedings pursuant to § 15(b) of the Exchange Act ("§ 15(b)") and § 203(f) of the Advisers Act ("§ 203(f)"), seeking to impose a lifetime associational bar on Mr. Contorinis. (Initial Decision at 1.) The relief sought was based on Mr. Contorinis's October 6, 2010 conviction and the permanent injunction imposed in the related civil judgment. (*Id.* at 5.) At a May 31, 2013 prehearing conference in the instant proceedings, the parties were granted leave to file motions for summary disposition, which they both did on June 28, 2013. (*Id.* at 2.)

In his motion for summary disposition, Mr. Contorinis asserted, among other things, that these proceedings were time barred under 28 U.S.C. § 2462. (Resp't Joseph Contorinis's Mem. of Law in Supp. of Mot. for Summ. Disposition ("Contorinis Mem.") at 4–11.) Specifically, Mr. Contorinis asserted that § 2462's five-year statute of limitations applies

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[2] Mr. Contorinis timely filed a notice of appeal of the civil judgment, including a challenge to the injunction and the order of disgorgement and prejudgment interest. The appeal is fully briefed and oral argument is currently scheduled for October 7, 2013.

and that the five-year clock was triggered no later than the time of the alleged misconduct—or January 23, 2006—and therefore expired as of January 23, 2011. (*Id.*) The ALJ denied Mr. Contorinis's motion just five days later—on July 3, 2013—before receiving any response from the Division of Enforcement (the "Division"). The ALJ stated:

> The statute of limitations in follow-on proceedings may run from, in this case, either the date the injunction against Contorinis issued, or the date of his criminal conviction, and not necessarily from the date of the underlying misconduct. I decline Contorinis' invitation to revisit *Markowski*'s binding precedent.

(Order Denying Resp't's Mot. for Summ. Disposition ("Order") (citations omitted).) The ALJ did not address the Supreme Court's recent decision in *Gabelli* v. *SEC*, 133 S. Ct. 1216 (2013), which Mr. Contorinis specifically raised in his memorandum of law. (*See generally* Order; Contorinis Mem. at 5–9, 11.)

Mr. Contorinis opposed the Division's motion for summary disposition on the ground that the factors set forth in *Steadman*, 603 F.2d at 1140, do not warrant the imposition of a permanent associational bar. (Resp't Joseph Contorinis's Mem. of Law in Opp'n to Division's Mot. for Summ. Disposition ("Contorinis Opp'n") at 8–16.) In the Initial Decision granting the Division's motion for summary disposition, however, the ALJ concluded that every *Steadman* factor weighed in favor of a permanent associational bar and that Mr. Contorinis "offered no creditably mitigating factors." (Initial Decision at 6–8.)[3]

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[3] While Mr. Contorinis acknowledges that the Commission recently held in *Lawton*, File No. 3-14162, 2012 WL 6208750 (SEC Dec. 13, 2012), that "collateral bars imposed pursuant to Section 925 of Dodd-Frank are not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct," *id.* at *6–10, Mr. Contorinis respectfully submits that that case was wrongly decided and expressly raises this issue to preserve it for further appeal. Enactment of § 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. No. 111-203, § 925, 124 Stat. 1376, 1850–51 (2010), for the first time gave the Commission the authority to impose: (a) an associational bar with respect to municipal advisors and nationally recognized statistical rating organizations, *see,*

III. BASIS FOR REVIEW (17 C.F.R. §§ 201.410(B) & 201.411(B)(2))

The Order and Initial Decision include the following erroneous conclusions of law:

- The ALJ erroneously found that the "statute of limitations in follow-on proceedings may run from, in this case, either the date the injunction against Contorinis issued, or the date of his criminal conviction, and not necessarily from the date of the underlying misconduct." (Order.) This finding misapplies 28 U.S.C. § 2462 and is in conflict with the spirit of the Supreme Court's recent decision in *Gabelli*, 133 S. Ct. 1216.

- The ALJ did not adequately address why, in Mr. Contorinis's case, a temporary bar, rather than a lifetime bar, would not satisfy the statute's "public interest" requirement. (*See* Initial Decision at 8.) Moreover, the ALJ erroneously found that a five-year bar "would be no bar at all, because it would run essentially concurrently with [Mr. Contorinis's] imprisonment." (*Id.*) In fact, Mr. Contorinis's projected release date is currently December 27, 2015, and his actual release date could be earlier. Therefore, five years would still impose a substantial bar on Mr. Contorinis, in addition to the *de facto* bar already resulting from his six-year term of incarceration.

- The ALJ erroneously concluded that "the *Steadman* factors weigh in favor of a permanent associational bar, and Contorinis has offered no creditably mitigating factors." (*Id.* at 6.) Mr. Contorinis, however, offered several "creditably mitigating factors," including, for example, the age of his violations, his otherwise spotless twenty-year career in the securities industry (both before and after the isolated conduct at issue), and other mitigating factors set forth in further detail below. Accordingly, the *Steadman* factors do not weigh in favor of a permanent associational bar.

- In concluding that "the last *Steadman* factor" is more specifically characterized as the "likelihood that the respondent's *occupation* will present opportunities for future violations," rather than the "likelihood of future violations" (*id.* at 8 (emphasis in original)), the ALJ rendered this factor virtually meaningless, because any respondent challenging a bar likely seeks to be employed in an "occupation [that] will present opportunities for future violations." Moreover, the ALJ placed form over substance and erroneously disregarded whether there was any *actual* likelihood that Mr.

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e.g., *Bartko*, File No. 3-14700, 2012 WL 3578907, at *7 (Aug. 21, 2012) (Elliot, A.L.J.); and (b) a collateral bar on a respondent who had not yet sought to associate with a particular branch of the securities industry, *see, e.g.*, *Teicher* v. *SEC*, 177 F.3d 1016, 1019–21 (D.C. Cir. 1999). Because the conduct at issue ended no later than January 2006 and therefore pre-dates Dodd-Frank, the collateral bar imposed in the Initial Decision would have an impermissible retroactive effect on Mr. Contorinis. *See Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 280 (1994).

Contorinis would commit future violations. There is insufficient evidence in the record here to conclude that any such likelihood is present.

- The ALJ erroneously concluded that Mr. Contorinis's misconduct was egregious and recurrent. (*Id.* at 6–7.) This conclusion overlooked that Mr. Contorinis's conduct lacked many of the more egregious characteristics typical of insider trading. For example, Mr. Contorinis did not defraud investors, divert investors' funds for his own use, or trade in secret accounts. Moreover, the ALJ's conclusion that the conduct at issue was egregious was erroneously based, in part, on a Guidelines enhancement for conduct other than the underlying conduct charged in the Order Initiating Proceedings or even the conduct underlying Mr. Contorinis's conviction. (*Id.* at 7.) The ALJ's conclusion was also erroneous because it was based, in part, on purported harm to investors and the marketplace, (*id.*), evidence of which was not part of the record.

IV. SUPPORTING REASONS (17 C.F.R. §§ 201.410(B) & 201.411(B)(2))[4]

A. These Proceedings Are Time Barred under 28 U.S.C. § 2462.

The Petition should be granted (and the Initial Decision ultimately reversed in its entirety) because the ALJ erred in concluding that these proceedings are not time barred under 28 U.S.C. § 2462. When a claim for sanctions accrues is an important question warranting review, and a question that has taken on additional significance in light of the Supreme Court's recent decision in *Gabelli*. Specifically, Mr. Contorinis respectfully submits that any prior decisions on the issue of when a claim for an associational bar first accrued should be revisited in light of *Gabelli*. (*See* Order, citing *Markowski*, 55 S.E.C. 21, 24–26 (2001), *pet. denied*, *Markowski* v. *SEC*, No. 01-1181, 2002 WL 1932001, at *1 (D.C. Cir. Apr. 25, 2002) (per curiam); *Zubkis*, 58 S.E.C. 1014, 1024 n.31 (2005); *Wall*, 58 S.E.C. 758, 764 (2005); *Proffitt* v. *FDIC*, 200 F.3d 855, 862–65 (D.C. Cir. 2000); *Elliott* v. *SEC*, 36 F.3d 86, 87 (11th Cir. 1994).)

Section 2462 provides that any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless

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[4] As permitted by Rule 410(b), the supporting reasons are "stated in summary form." Mr. Contorinis looks forward to the opportunity to brief these issues fully if the Commission grants the Petition.

commenced within five years from the date when the claim *first accrued.*" (Emphasis added.) The Supreme Court's recent decision in *Gabelli* confirms that the standard "first accrual" rule must be applied to § 2462 in order to protect the purpose of statutes of limitations. 133 S. Ct. at 1221, 1223.

Sections 15(b) and 203(f) authorize the Commission to impose an associational bar—after making a finding that such a bar would be in the public interest—if the Commission also finds that (a) the respondent engaged in certain wrongful acts; (b) the respondent was convicted of certain crimes; or (c) an injunction was entered. The factual and legal prerequisites for the Division to pursue an associational bar were therefore in place—and the Division had "a complete and present cause of action," *Gabelli*, 133 S. Ct. at 1220 (internal quotation marks omitted)—once Mr. Contorinis allegedly violated the securities laws. That was no later than January 23, 2006. Under § 2462, that is "the date when the claim *first accrued*," and which thus started the Commission's five-year clock.

Despite the foregoing, in the Initial Decision, the ALJ held that, in a proceeding under § 15(b) or § 203(f), § 2462's five-year clock "may run from, in this case, either the date the injunction against Contorinis was issued, or the date of his criminal conviction, and not necessarily from the date of the underlying misconduct." (Order.) The ALJ's interpretation is inconsistent with the relevant statutes and with the spirit of the Supreme Court's recent holding in *Gabelli*. As the Supreme Court just recently affirmed, the standard "first accrual" rule, rather than the discovery rule, *must* be applied to § 2462 in order to protect the purpose of statutes of limitations:

> This reading sets a fixed date when exposure to the specified Government enforcement efforts ends, advancing the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a

> defendant's potential liabilities. . . . We have deemed [statutes of limitations] vital to the welfare of society, and concluded that even wrongdoers are entitled to assume that their sins may be forgotten.

Gabelli, 133 S. Ct. at 1221 (citation and internal quotation marks omitted). The Supreme Court concluded that to do otherwise "would leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future." *Id.* at 1223.

Yet that is exactly what the Initial Decision would do here. Permitting the Commission to bring proceedings within five years of any of the three events that provide a legal basis for the imposition of a bar, regardless of when the claim *first* accrued, would have a similar effect to permitting the Commission to apply the discovery rule to § 2462—as the Commission proposed and the Supreme Court flatly rejected in *Gabelli*. It would impermissibly expand the Commission's ability to commence proceedings at an *indeterminate date in the future*.

Both the plain text and the purpose of the statute of limitations, as confirmed by the Supreme Court's recent decision in *Gabelli*, require that § 2462's five-year clock began to run from the time that the claim first accrued, which is when the Fund closed out of its position in Albertsons in January 2006. As these proceedings were not commenced until April 2013, the claim is time barred and the Initial Decision should be reversed. Moreover, the question of when such a claim accrues has significant implications not just for Mr. Contorinis, but for all respondents regarding the extent of their exposure to government enforcement actions. It therefore presents an important question of law that the Commission should review.

B. A Lifetime Associational Bar Is Not Warranted.

The Petition should be granted (and the Initial Decision reversed in its entirety) for a second reason: the ALJ's finding that permanently barring Mr. Contorinis from the industry is in the "public interest" was erroneous. Under § 15(b) and § 203(f), the Commission

is authorized to impose an associational bar *only* after making a finding that such a bar would be "in the public interest." 15 U.S.C. § 78o(b)(6)(A); *id.* § 80b-3(f). In crafting the relevant statutes in this way, Congress made clear its view that the fact of a conviction or the entry of an injunction is not, on its own, enough to justify a bar. Otherwise, the "public interest" requirement would be rendered a nullity and all defendants convicted or enjoined would automatically be subject to a lifetime associational bar. Moreover, because a lifetime associational bar is the "most drastic remed[y]" available to the Commission, the Commission "has a greater burden to show with particularity the facts and policies that support these sanctions and why less severe action would not serve to protect investors." *Steadman*, 603 F.2d at 1137.

Concluding here that the *Steadman* factors weigh in favor of a lifetime associational bar reflects a fundamental misapplication of those factors. This error was further exacerbated when the ALJ failed seriously to consider any sanction less than a lifetime associational bar. Such erroneous legal conclusions in relation to the *Steadman* factors could have significant implications in numerous other cases in which the Division is seeking sanctions, and therefore warrant review.

1. There Is No Likelihood of Future Violations.

In the Initial Decision, the ALJ acknowledged that the last *Steadman* factor is sometimes characterized as the "likelihood of future violations," rather than the "likelihood that the defendant's *occupation* will present opportunities for future violations." (Initial Decision at 8 (emphasis in original).) Nevertheless, the ALJ chose to consider only the latter formulation, thereby disregarding entirely whether there was any *actual* likelihood that Mr. Contorinis would commit future violations if given the opportunity. However, any respondent challenging the imposition of a lifetime associational bar is necessarily interested in employment connected to

the securities industry. It therefore logically follows that the respondent's occupation would "present opportunities for future violations" of the securities laws. The latter formulation of this *Steadman* factor, as interpreted by the ALJ, renders this factor virtually meaningless, because any respondent challenging a bar likely seeks to be employed in an "occupation [that] will present opportunities for future violations." Thus, the proper interpretation and application of this factor has significant implications not just in Mr. Contorinis's proceedings, but in numerous other proceedings in which the *Steadman* factors are applied.

In Mr. Contorinis's case, there is insufficient evidence in the record to conclude that there is *any* likelihood of future violations by Mr. Contorinis. *See Steadman*, 603 F.2d at 1140 ("To say that past misconduct gives rise to an inference of future misconduct is not enough."). As Judge Sullivan stated at Mr. Contorinis's sentencing hearing: "I don't think there is any chance that you are going to commit crimes in the future. . . . There is not much dispute about that." (Berse Decl. II Ex. 3 at 56.) Moreover, the staleness of the underlying conduct weighs strongly against any suggestion that Mr. Contorinis poses a present threat to the public that would warrant imposing a lifetime associational bar. *See, e.g.*, *Proffitt*, 200 F.3d at 862 (concluding that a long-past offense alone cannot determine a defendant's current risk to the public). Here, *more than seven years* have passed since the conduct at issue ended in January 2006 and with no further incident, even though the government did not take any action against Mr. Contorinis until three years later, in February 2009.

Where, as in Mr. Contorinis's case, there is no risk of future violations and no risk is posed to the public, it makes no sense to conclude that this last *Steadman* factor weighs in favor of a permanent bar based solely on the nature of the respondent's occupation.

Accordingly, the proper interpretation and application of this factor—both in Mr. Contorinis's case and more broadly—warrants review.

2. The Initial Decision Does Not Adequately Address a Lesser Sanction.

In the Initial Decision, the ALJ rejected imposing a bar for a term of years, rather than a lifetime associational bar, on the ground that the five-year bar suggested by Mr. Contorinis "would be no bar at all, because it would run essentially concurrently with his imprisonment." (Initial Decision at 8.) Even assuming, *arguendo*, that a five-year bar would run concurrently with Mr. Contorinis's imprisonment—which it would not—the ALJ failed to explain adequately why any sanction other than a lifetime associational bar would not be sufficient to discourage others from engaging in the same conduct, particularly when imposed on top of the 72 months' incarceration, 24 months' supervised release, and significant monetary sanctions already imposed on Mr. Contorinis, including at least $427,875 in forfeiture and a $1,000,000 civil penalty, as well as other potential amounts that are currently under appeal ($7.26 million in disgorgement and $2.485 million in prejudgment interest).

The ALJ's failure seriously to consider any sanction other than a lifetime associational bar is a fundamental error warranting review.

3. The Conduct Was Not Egregious or Recurrent.

The findings in the Initial Decision that Mr. Contorinis's misconduct was egregious and recurrent, (*id.* at 6–7), are erroneous. This was an anomalous episode, involving a single stock, that spanned a very short period in Mr. Contorinis's otherwise unblemished, twenty-year career in the securities industry. Mr. Contorinis did not engage in any deception or effort to conceal any of the relevant conduct—neither the underlying communications nor the trading itself. There are no allegations that Mr. Contorinis caused others to engage in any alleged wrongdoing, breached fiduciary duties to his clients, defrauded investors or deprived

them of their hard-earned savings, or diverted investors' funds for his own use. And as the Honorable Richard J. Sullivan stated at Mr. Contorinis's sentencing hearing:

> There is no indication, as is the case in other cases in this courthouse, where people have persistently over time repeatedly for years engaged in a steady practice of insider trading. There is no evidence really of that in this case here. It was relatively isolated.

(Berse Decl. II Ex. 3 at 58). Overall, the conduct at issue does not reflect those characteristics that often accompany insider trading and that would elevate the conduct to the level of recurrent or egregious.

The Initial Decision's finding of egregiousness is further in error because it was based on purported "harm to investors and the degree of harm to the marketplace," which the ALJ measured as the "total profits and losses avoided by the Fund." (Initial Decision at 7.) But there was no evidence in the record of these proceedings concerning harm to the marketplace or investors. The Fund's profits and losses avoided, while not insubstantial, were a small percentage of the Fund's assets under management at the time—less than 3.5%. And Mr. Contorinis's personal profits were far smaller; indeed, the government has agreed that Mr. Contorinis's personal profits did not exceed $427,875. (Berse Decl. II Ex. 4.)

Furthermore, in applying the *Steadman* factors, it was improper for the ALJ to consider conduct underlying a U.S. Sentencing Guidelines enhancement as part of the calculation of egregiousness. (Initial Decision at 7.) Mr. Contorinis's testimony at the criminal trial formed no part of the underlying conduct charged in the Order Instituting Proceedings. The ALJ's assessment of the egregiousness of Mr. Contorinis's actions should have been limited to that underlying conduct.

CONCLUSION

For the foregoing reasons, Mr. Contorinis respectfully requests that the Commission grant his petition for review and, ultimately, reverse the Initial Decision and dismiss the Order Initiating Proceedings in its entirety and with prejudice.

Dated: New York, New York
September 12, 2013

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