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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.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY AFFIRMANCE OF INITIAL DECISION

U.S. Securities and Exchange Commission,
Division of Enforcement

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PRELIMINARY STATEMENT

The question the Securities and Exchange Commission (the "Commission") must decide in considering whether to grant summary affirmance of the Initial Decision in this matter pursuant to SEC Rule ("Rule") 411(e)(2) is a simple one: Does the presiding Administrate Law Judge's (the "ALJ's") Initial Decision raise any issue that warrants consideration by the Commission of further oral or written argument? The answer, indisputably, is "no." Thus, the Commission should grant summary affirmance of the Initial Decision, and reject the Petition for Review of Initial Decision filed by Respondent Joseph Contorinis (the "Petition").

The Petition raises two issues, neither of which warrants consideration by the Commission. ***First***, Contorinis's argument that this proceeding is time-barred pursuant to 28 U.S.C. § 2462's five-year statute of limitations in light of the Supreme Court's recent decision in Gabelli v. SEC, 133 S. Ct. 1216 (2013), is wholly without merit. The Supreme Court's holding in Gabelli[1] has no bearing where, as here, the Commission has not relied upon the discovery rule in instituting an administrative proceeding, but has instead instituted the proceeding based on the respondent's criminal conviction or civil injunction. The law is clear in follow-on proceedings such as this -- the statute of limitations runs from the date of the criminal conviction or civil injunction, and not from the date of the underlying conduct. Moreover, the text of the Securities Exchange Act of 1934 (the "Exchange Act") and that of the Investment Advisers Act of 1940 (the "Advisers Act") and applicable case law make clear that the statute of limitations for instituting a follow-on proceeding based on a criminal conviction is ten years.

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1 In Gabelli, the Supreme Court held that the discovery rule—which equitably tolls the beginning of statute of limitations periods in private fraud claims until such time when the putative plaintiff discovered or reasonably could have discovered the fraud—is inapplicable to Commission actions governed by 28 U.S.C. § 2462.

Second, Contorinis's argument that the ALJ's imposition of the permanent, industry-wide collateral bar and penny stock bar is not warranted is entirely unsupported by the facts or applicable law. Where, as here, a respondent has been criminally convicted for committing securities fraud, the respondent must show "extraordinary mitigating circumstances" in order to avoid being barred from the industry. Contorinis has failed to do so. Moreover, the ALJ carefully reviewed the record, applied the facts to the factors outlined in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), and found that all six of those factors weigh in favor of the bar imposed.

Moreover, Contorinis's Petition fails on its face to demonstrate either that any prejudicial error was committed in the conduct of the proceeding, or that the Initial Decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review. For these reasons, and those set forth in more detail below, the Division of Enforcement (the "Division") respectfully requests that the Commission summarily affirm the ALJ's Initial Decision pursuant to Rule 411(e) and reject the Petition.

STATEMENT OF FACTS

Contorinis was criminally convicted for conspiracy to commit securities fraud and multiple substantive counts of the same, and is currently serving a 72-month sentence at FCI Schuylkill in Minersville, Pennsylvania. (Answer ¶ 1). Previously, from March 2004 through March 2008, Contorinis was an Executive Vice President and registered representative of Jefferies & Company, Inc. ("Jefferies"), a broker-dealer registered with the Commission from February 2004 through February 2008. (Id.). While employed at Jefferies, Contorinis was Co-Portfolio Manager of the Paragon Fund ("Paragon"), a hedge fund associated with and funded in part by Jefferies. (Id.). He directed trading in, and on behalf of, Paragon along with one other

individual. (Id.). Contorinis was associated with an investment adviser and a broker-dealer during the time period relevant to this administrative proceeding. (Id.).

On February 4, 2009, the United States Attorney for the Southern District of New York criminally charged Contorinis with conspiracy and securities fraud resulting from his trading in Albertsons, Inc. ("Albertsons") stock on behalf of Paragon based on material, nonpublic information. (Div. Mot. Ex. A, Complaint in United States v. Contorinis, 09-MAG-289 (S.D.N.Y.)).[2] The next day, on February 5, 2009, the Commission civilly charged Contorinis based on the same set of facts, alleging that he violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. (Div. Mot. Ex. B, Complaint in SEC v. Stephanou, et al., Civil Action No. 09-cv-01043 (RJS) (S.D.N.Y.)). Contorinis denied that he engaged in insider trading. (Div. Mot. Ex. C, Contorinis's Answer in SEC v. Stephanou).

On November 5, 2009, Contorinis was indicted on one count of conspiracy to commit securities fraud and nine substantive counts of securities fraud. (Div. Mot. Ex. D, Indictment in United States v. Contorinis, Case No. 1:09-cr-01083-RJS (S.D.N.Y.)). Contorinis fought the criminal allegations of insider trading, refusing to admit his guilt and requiring the government to prove each element of the claims beyond a reasonable doubt.

Contorinis's criminal trial began on September 20, 2010 and ran until October 6, 2010. (Div. Mot. Ex. E at 1-2:9 and 1925:6-1927:13, Excerpts of Trial Transcripts in United States v. Contorinis.) Over the course of eight-and-a-half days, attorneys for the government and Contorinis presented evidence and arguments to the jury. (Id. at 37 and 1844). Among the

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2 The Division's citations to Div. Mot. Ex. __ and Div. Reply Ex. __ are references to the exhibits to the Division's Brief in Support of its Motion for Summary Disposition and Reply in Further Support of its Motion for Summary Disposition, respectively, which are part of the record in this administrative proceeding. The Division will provide copies of any of these documents at the Commission's request.

government's evidence, Nicos Stephanou—the confessed tipper to Contorinis—testified that Contorinis received confidential information relating to the Albertsons takeover discussions on more than eight occasions between November 8, 2005 and January 17, 2006. Div. Reply Ex. B at 417:25-418:8, 428:4-10, 431:6-17, 433:18-434:3, 440:19-441:11; 442:2-442:15; 443:22-444:3, 444:25-445:11, 451:12-22; 452:9-452:25; 473:19-474:2, 474:3-23 (Excerpts from the Trial Transcript in United States v. Contorinis, 09 CR 1083 (RJS) (S.D.N.Y.)).

Contorinis testified in his defense, denying that he had traded on the basis of material nonpublic information. (See, e.g., Div. Mot. Ex. E at 1163:12-24; 1299:7-11; 1366:11-14; 1368:6-9; 1372:1-3; 1383:20-23; 1397:4-7).

On October 6, 2010, after one-and-a-half days of deliberations, the jury found Contorinis guilty of one count of conspiracy to commit securities fraud and seven substantive counts of securities fraud. (Id. at 1925:6-1927:13). Specifically, the jury found that Contorinis committed securities fraud in connection with the following trades in Albertsons stock:

1. The sale of 406,750 shares of Albertsons stock on December 22, 2005;
2. The sale of 311,600 shares of Albertsons stock on December 22, 2005;
3. The sale of 1,493,300 shares of Albertsons stock on December 22, 2005;
4. The purchase of 269,200 shares of Albertsons stock on January 11, 2006;
5. The purchase of 30,700 shares of Albertsons stock on January 11, 2006;
6. The purchase of 557,100 shares of Albertsons stock on January 11, 2006; and
7. The purchase of 318,000 shares of Albertsons stock on January 11, 2006.

(Div. Mot. Ex. F, Jury Verdict in United States v. Contorinis). All told, Contorinis's conspiracy to commit securities fraud resulted in his purchasing or selling 3,100,540 shares of securities based on material, nonpublic information. (Id.). As a direct result of Contorinis's illegal

trading, Paragon made $7,260,604 in illegal profits and avoided losses of $5,345,700. SEC v. Stephanou, No. 09 Civ. 1043 (RJS), 2012 WL 512626, at *1 (S.D.N.Y. Feb. 3, 2012).

At the December 17, 2010 sentencing hearing, the district court specifically found that Contorinis willfully committed perjury during trial. (Div. Reply Ex. A at 30:18-33:20 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing)). The district court also noted the damage resulting from Contorinis's actions:

> [P]eople and the national and global economy turn on the need for people to have confidence in their markets and confidence in the systems in place. And ***if that confidence is eroded by the belief that the folks who are running the game are actually breaking the law and are engaging in insider trading and everybody else is just a sucker, that I think has real consequences.*** It's a difficult consequence to quantify but I don't think anyone can doubt that it's real. . . . I think ***this is a crime that does damage to the national economy and does damage that is pretty considerable*** . . . .

(Id. at 55:20-56:7 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing) (Emphasis added)). Finally, the district judge commented on Contorinis's fundamental misunderstanding of the severity of his crimes: "I am struck by the fact that you really did not seem to recognize the seriousness of this crime up through even the trial." (Id. at 57:10-57:12 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing)). Following this, Contorinis was sentenced to serve a prison term of 72 months.

On December 30, 2010, Contorinis appealed the criminal conviction. On August 17, 2012, the Court of Appeals for the Second Circuit affirmed the conviction, although it vacated the forfeiture order and remanded the case for the district court's consideration of the appropriate forfeiture amount. (Answer ¶ 6; United States v. Contorinis, 692 F.3d 136 (2d Cir. 2012)).

Following Contorinis's criminal conviction, the Commission moved for summary judgment in its civil enforcement action on the ground, among others, of collateral estoppel. (Div. Mot. Ex. G, Brief in Support of Motion for Summary Judgment in SEC v. Stephanou).

Rather than acknowledging the wrongful nature of his conduct—after having been criminally convicted—Contorinis continued to fight the Commission's claims. (Div. Mot. Ex. H, Contorinis Opp'n to Mot. for Summary Judgment in SEC v. Stephanou). The district court agreed with the Commission that Contorinis was collaterally estopped from challenging the jury's guilty verdict, and, on February 29, 2012, entered summary judgment against Contorinis. (Answer ¶ 2; Stephanou, 2012 WL 512626, at *3). Among other things, the district court judgment permanently enjoined Contorinis from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5. (Id. at *4). The Court also ordered Contorinis to disgorge profits of approximately $7.26 million and to pay prejudgment interest calculated at the IRS underpayment rate. (Id. at *7).[3]

On April 30, 2013, the Commission instituted this Administrative Proceeding and, on June 10, 2013, Contorinis filed his Answer. Notwithstanding his criminal conviction and the final judgment entered against him in the civil enforcement action, Contorinis persists in denying "that he engaged in insider trading in ABS securities or otherwise . . . ." (Answer ¶¶ 3, 5). Contorinis further "denies the allegations in the [Comission's] complaint in [its civil enforcement] action, including that he violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder." (Answer ¶ 2). He also "avers that the jury verdict was in error and against the weight of the evidence presented at trial." (Answer ¶¶ 4-5). At no time has Contorinis acknowledged or recognized the wrongful nature of his actions, shown any contrition, or provided any assurance that he will not engage in future violations.

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[3] Contorinis also appealed the district court's final judgment in the civil action brought by the Commission, which is fully briefed and set for argument in front of the Second Circuit on October 7, 2013.

On June 27, 2013, the Division moved for summary disposition and the entry of an order barring Contorinis from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of a penny stock. On June 28, 2013, Contorinis also moved for summary disposition, arguing that: (1) this proceeding is time-barred because the statute of limitations began to run at the time of the alleged wrongdoing; and (2) Apprendi v. New Jersey, 530 U.S. 466 (2000), bars any sanction in this case because a jury did not find the additional facts necessary to impose such a sanction.

On July 3, 2013, the ALJ summarily denied Contorinis's Motion for Summary Disposition, finding "[t]hese arguments are so utterly meritless that I see no need for further briefing on them." (July 3, 2013 Order).

On August 22, 2013, the ALJ issued the Initial Decision, granting the Division's Motion for Summary Disposition and barring Contorinis from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of penny stock.

On September 12, 2013, Contorinis filed his Petition.

ARGUMENT

The Division respectfully submits that the Initial Decision should be summarily affirmed because: (1) this administrative proceeding is not time-barred by the five-year statute of limitations under 28 U.S.C. § 2462; and (2) the permanent, industry-wide collateral bar and penny stock bar imposed by the Initial Decision is in the public interest.

I. This Administrative Proceeding is not Time-Barred by the Five-Year Statute of Limitations Under 28 U.S.C. § 2462.

The Commission instituted this administrative proceeding based on Contorinis's conviction for securities fraud and conspiracy to commit securities fraud in United States v. Contorinis, 09 CR 1083 (RJS) (S.D.N.Y.), which occurred on October 6, 2010, and the related civil injunction entered against him on February 29, 2012 in SEC v. Stephanou, et al., Civil Action No. 09-cv-01043 (RJS) (S.D.N.Y.). Given these circumstances, the ALJ correctly found in his July 3, 2013 Order that "[t]he 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." Michael J. Markowski, Release No. 44086, 2002 WL 1932001, at *1 (March 20, 2001) (Opinion of the Commission) (holding that the statute of limitations for a follow-on proceeding based on an injunction begins to run at the time the injunction was issued); Proffitt v. FDIC, 200 F.3d 855, 864-65 (D.C. Cir. 2000) ("While the FDIC might well have brought an action earlier . . ., its failure to do so does not render untimely, and therefore, unauthorized, its action based on the later occurring effect."); Vladislav Steven Zubkis, Release No. 52876, 2005 WL 3299148, at * 4 (December 2, 2005) (Opinion of the Commission) (noting that "the basis for this administrative proceeding is the injunction, which was entered less than five years before proceedings were instituted, and therefore within the limitations period").

In his Petition, Contorinis apparently concedes that the ALJ's July 3, 2013 Order accurately reflects the holdings of Markowski, Proffitt, and Zubkis. Nevertheless, he contends that "the issue of when a claim for an associational bar first accrued should be revisited in light of Gabelli." (Pet. at 7). This position has no merit.

In Gabelli, the Supreme Court held that the discovery rule is not applicable when calculating the statute of limitations periods under actions governed by 28 U.S.C. § 2462. The Supreme Court's decision, however, has no bearing on the present administrative proceeding because the Division has not relied upon the discovery rule in bringing this proceeding, which was, instead, based on Contorinis's criminal conviction and civil injunction.

Moreover, as Contorinis himself acknowledges, the Commission may impose a bar on an industry participant in the event that: "(a) the respondent engaged in certain wrongful acts; (b) the respondent was convicted of certain crimes; ***or*** (c) an injunction was entered." (Pet. at 8 (emphasis added)); Exchange Act § 15(b)(6)(A)(i)-(iii); Advisers Act § 230(f). Obviously, the Commission may not bring a claim based on a respondent's criminal conviction or injunction until the respondent has been criminally convicted or enjoined. Claims based on a respondent's criminal conviction or injunction, therefore, have not "accrued" until after the criminal conviction or entry of the injunction. The D.C. Circuit's holding in Markowitz is consistent with—and is not called into question by—the Supreme Court's decision in Gabelli.[4]

Finally, the five-year statute of limitations period in 28 U.S.C. § 2462, which was the basis for the decision in Gabelli, is not even applicable to that portion of the administrative proceeding based on Contorinis's criminal conviction because Congress specifically provided a ten-year statute of limitations for such proceedings. Title 28 U.S.C. § 2462 provides:

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[4] Moreover, the public policy rationale for imposing statute of limitations periods is not as compelling where, as here, causes of action are based upon an underlying criminal conviction or civil injunction. In both situations, the respondent would have already litigated the relevant facts during the applicable statute of limitations period, and would be barred from relitigating them in a follow-on proceeding. Additionally, requiring the Commission to initiate all administrative proceedings upon the discovery of underlying wrongful conduct rather than permitting the Commission to wait to initiate follow-on proceedings until after a criminal conviction or civil injunction undoubtedly would result in significant inefficiency -- forcing the same facts to be simultaneously litigated by the same parties both in federal district court and before the Commission.

> "***Except as otherwise provided by Act of Congress***, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . ." (Emphasis added).

The text of Section 15(b)(6)(A)(ii) of the Exchange Act and that of Section 230(f) of the Advisers Act, however, authorize the Commission to institute administrative proceedings and to impose sanctions on securities industry participants who have ". . . been convicted . . . within 10 years of the commencement of the proceedings . . . ." Exchange Act § 15(b)(6)(A)(ii); Advisers Act § 230(f); Frederick W. Wall, Release No. 52467, 2005 WL 2291407, at *3 (September 19, 2005) (Opinion of the Commission) ("As we have held, '[b]ecause the Congress has authorized us to commence a proceeding to determine whether a convicted person's association is in the public interest up to ten years from the date of conviction, Section 2462 is not applicable to this proceeding.'" (citing William F. Lincoln, Release No. 39629, 1998 WL 80228, at *3 (February 9, 1998) (Opinion of the Commission))).

This administrative proceeding, accordingly, is not time-barred by the five-year statute of limitations under 28 U.S.C. § 2462.

II. The Permanent, Industry-Wide Collateral Bar and Penny Stock Bar Imposed by the Initial Decision are in the Public Interest.

A. Contorinis Fails to Demonstrate "Extraordinary Mitigating Circumstances" Necessary To Avoid the Imposition of a Permanent, Industry-Wide Collateral Bar and Penny Stock Bar.

"Absent extraordinary mitigating circumstances, [an individual convicted of securities fraud] cannot be permitted to remain in the securities industry." John S. Brownson, Release No. 46161, 77 SEC Docket 3097, 2002 WL 1438186, at *2 (July 3, 2002) (Opinion of the Commission); see also Eric S. Butler, Release No. 65204, 2011 WL 3792730, at *4 (Aug. 26,

2011) (Opinion of the Commission) (same). Contorinis has not—and cannot—meet this showing. Indeed, in imposing Contorinis's sentence of 72 months in prison for the crimes he committed, the district court noted the lack of mitigating circumstances, which justified the severity of his sentence. (Div. Reply Ex. A at 54:5-54:20 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing) ("There are an awful lot of defendants who appear in this courtroom who started with nothing and never got much more than that. I won't say they have been driven to crime, but ***their decision to turn to crime is more understandable in light of where they started***." (emphasis added)). Contorinis similarly has failed to set forth any "extraordinary mitigating circumstances" to justify his being permitted to remain in the securities industry in either his Opposition to the Division's Motion for Summary Disposition (the "Opposition") or his Petition.

B. The Six Steadman Factors All Demonstrate that Contorinis Should Be Permanently Barred from the Securities Industry and from Participating in any Penny Stock Offering.

The ALJ carefully considered the facts and correctly found it appropriate and in the public interest to enter a permanent, industry-wide collateral bar against Contorinis and to bar him from participating in any offering of a penny stock based on the six Steadman factors.[5]

a. Contorinis's Actions Were Egregious.

Contorinis's actions were egregious, and well exceed what is required to justify the permanent, industry-wide collateral bar and penny stock bar that the ALJ imposed here.

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5 It is unclear on what Contorinis bases his claim that "the ALJ failed to seriously consider any sanction less than a lifetime associational bar." (Pet. at 10). The ALJ thoroughly considered the record, applied the facts to the six Steadman factors, and concluded that it was in the public interest to impose a permanent, industry-wide collateral and penny stock bar. Moreover, Contorinis provides no support for his suggestion that the ALJ had an affirmative obligation in his Initial Decision specifically "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." (Id. at 12).

In Gary M. Kornman, for instance, the Commission affirmed the Court's decision permanently barring respondent from associating with any broker, dealer, or investment adviser based only on a false statement he made to the Commission during an investigation. Release No. 59403, 2009 WL 367635, at *12 (Feb. 13, 2009) (Opinion of the Commission). The Commission explained: "[T]he importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business." Kornman, 2009 WL 367635, at *7. Kornman's conduct, however, pales as compared with Contorinis's significant insider trading activities and his attempt to escape the consequences of his unlawful actions by willfully perjuring himself during his criminal trial.[6] (Div. Reply Ex. A at 30:18-33:20).

Additionally, the ALJ appropriately rejected Contorinis's claim that the severity of his actions should be measured by the personal benefit Contorinis actually received. (Initial Decision at 7). Rather, the relevant consideration is the "the degree of harm to investors and the marketplace," Marshall E. Melton, Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003) (Opinion of the Commission), which, the court concluded, "is more accurately measured by the total profits and losses avoided by the Fund through Contorinis's trades." (Initial Decision at 7). Contorinis's insider trading, accordingly, harmed investors and the marketplace to the tune of about $12.6 million.[7] Stephanou, 2012 WL 512626, at *1.

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6 Contorinis's unsupported contention that it was improper for the ALJ to consider the district court's finding that Contorinis's willfully committed perjury during the criminal trial is unpersuasive. (Pet. at 13). Contorinis gave this false testimony during the criminal trial resulting in the criminal conviction on which this proceeding is based. The district court's perjury finding is indisputably part of the record. Furthermore, Contorinis's argument is undermined by the fact that it was ***he*** who first submitted the sentencing hearing transcript as evidence for the ALJ's consideration. (Opp. at 3-4).

7 Contorinis's claim that "there was no evidence in the record of the proceedings concerning harm to the marketplace or investors" is without support. (Pet. at 13). The

b. Contorinis's Infractions Were Recurrent, not Isolated.

Not only was Contorinis convicted of conspiracy to commit securities fraud and seven substantive counts of securities fraud, but also the record makes clear that his unlawful conduct spanned a much longer period than the two specific days on which he traded. Stephanou testified that Contorinis received confidential information relating to the Albertsons takeover discussions over a period of several weeks, including on the following dates: (1) on November 28, 2005; (2) on December 7, 2005; (3) on December 8, 2005; (4) on December 21, 2005; (5) in the very early hours of December 22, 2005; (6) in the morning of December 22, 2005; (7) on January 11, 2006; and (8) on January 17, 2006. (Div. Reply Ex. B at 417:25-418:8, 428:4-10, 431:6-17, 433:18-434:3, 440:19-441:11; 442:2-442:15; 443:22-444:3, 444:25-445:11, 451:12-22; 452:9-452:25; 473:19-474:2, 474:3-23 (Excerpts from the Trial Transcript in United States v. Contorinis, 09 CR 1083 (RJS) (S.D.N.Y.))). Thus, the scope of Contorinis's insider trading activity is not as limited as Contorinis suggests in his Petition.[8]

c. Contorinis's Securities Fraud Violations Were Willful, Knowing, and With the Intent to Defraud.

At the end of the criminal trial, but before the jury's deliberations, the district judge specifically instructed the jury as follows:

> In order to meet its burden of proof with respect to Counts Two through Ten of the Indictment, the government must establish beyond a reasonable doubt, with respect to each specific count, the following elements of the crime of securities

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record clearly demonstrates that the amount of unlawful profits and losses avoided was approximately $12.6 million. See supra at 12. Given that the securities markets function as a "zero-sum game," Paragon's unlawful profits and losses avoided necessarily reflect the harm to the marketplace or other investors.

8 Contorinis's reliance upon his purportedly "otherwise unblemished, twenty-year career in the financial services industry" (Pet. at 2) is undermined by Stephanou's testimony during Contorinis's criminal trial that he provided Contorinis with material, nonpublic information with respect to companies other than Albertsons starting in as early as 2004. (Div. Reply Ex. A at 379:18-22).

> fraud: . . . that the defendant acted willfully, knowingly and with the intent to defraud.

(Div. Mot. Ex. E at 1865:6-17). The jury's guilty verdict, therefore, conclusively determined that Contorinis's insider trading activities were undertaken willfully, knowingly, and with the intent to defraud. Contorinis conceded as much by failing to address this point in his Opposition. (See generally Opp.).

d. Contorinis Has Provided No Assurances Against Future Violations.

Contorinis has not provided any, let alone sincere, assurances that he will refrain from engaging in any future securities fraud violations. This factor indisputably weighs in favor of the bar imposed by the Initial Decision.

e. Contorinis Has Not Acknowledged, Let Alone Recognized, the Wrongful Nature of His Conduct.

Despite his criminal conviction, affirmed on appeal, Contorinis persists in denying that he engaged in insider trading, and in denying the allegations in the Commission's complaint in the civil enforcement action. He also avers that the jury verdict was in error and against the weight of the evidence at the criminal trial. This complete lack of acknowledgement or recognition of the wrongful nature of his conduct demonstrates the appropriateness of the bar imposed by the Initial Decision. Cf. Frederick C. Gartz, Initial Release No. 113, 1997 WL 441913, at *17 (August 6, 1997) (Chief ALJ Murray) ("Since Mr. Gartz does not admit that he acted illegally, it is probable that if allowed to participate in the industry in an unsupervised capacity he will continue his illegal activities.").

f. Contorinis's Future Employment Within the Industry Will Present Opportunities for Future Violations.

If Contorinis were allowed to remain in the securities industry, he would undoubtedly be presented with opportunities to commit future violations. Apparently conceding this fact,

Contorinis argues that this factor should instead be the "likelihood of future violations." (Pet. at 10-11). But the fact is that it is Contorinis—not the ALJ, nor the Division—who seeks to change the factor as set forth in Steadman. Steadman, 603 F.2d at 1140 (". . . the likelihood that the defendant's occupation will present opportunities for future violations.").

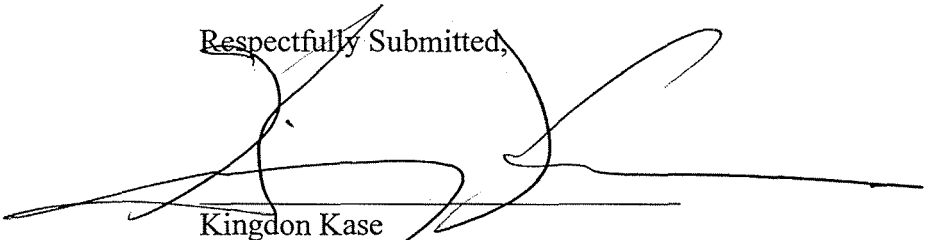
Regardless, Contorinis argues against the bar imposed by the Initial Decision on the grounds that "there is no risk of future violations." (Pet. at 11). This begs the question, and is belied by all the other facts in this record. After careful review of the record, the ALJ appropriately found that every one of the Steadman factors weighs in favor of a permanent, industry-wide collateral and penny stock bar. There is no reason to disturb this result.

CONCLUSION

For all the foregoing reasons, and for all the reasons set forth in the Division's briefing in support of its Motion for Summary Disposition, the Division respectfully requests that the Commission summarily affirm the ALJ's Initial Decision.

Dated: October 3, 2013

Respectfully Submitted,



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