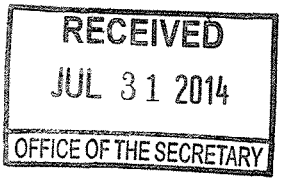
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15580

In the matter of:

ANTHONY CHIASSON,

Respondent-Petitioner.



MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ANTHONY CHIASSON'S PETITION TO REVIEW THE INITIAL DECISION

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Dated: July 30, 2014

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The Division of Enforcement ("Division") submits this memorandum of law in opposition to Respondent-Petitioner Anthony Chiasson's ("Chiasson's") Petition to Review the Initial Decision and his motion for oral argument.

PRELIMINARY STATEMENT

In his petition for review, Chiasson does not contest the legal or factual basis of the Initial Decision or the appropriateness of the sanctions ordered by the ALJ. Rather, Chiasson requests that the Commission take the unprecedented step of reversing the Initial Decision and directing that this follow-on administrative proceeding be stayed until Chiasson's pending criminal appeal is resolved, or, in the alternative, that the Commission delay the issuance of an order of finality until after the resolution of his appeal. In essence, Chiasson is asking the Commission to discard decades of its own precedent and apply a new – and utterly unworkable – legal standard in this matter simply because he believes his appeal has merit. For the reasons set forth below, the Commission should adhere to its well-established precedent and summarily affirm the Initial Decision.

STATEMENT OF FACTS

A. The Criminal Case Against Chiasson

In January 2012, Chiasson was charged with one count of conspiracy to commit securities fraud and four counts of securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5. *U.S. v. Newman et al.*, S2:12-cr-121 (RJS).[1] The evidence adduced during Chiasson's criminal trial established that while serving as a portfolio

[1] The U.S. Attorney's Office for the Southern District of New York ("USAO") later filed a Superseding Indictment that added a fifth securities fraud charge against Chiasson. That Superseding Indictment is attached as Exhibit 1 to the Declaration of Daniel R. Marcus dated July 30, 2014 ("Decl.").

manager at the investment advisory firm Level Global Investors, L.P. ("Level Global"), Chiasson participated in an insider trading scheme – along with a group of corrupt analysts at various hedge funds and investment firms – to trade on the basis of material nonpublic information obtained from employees of publicly traded technology companies. The analysts provided this material nonpublic information to their respective portfolio managers, including Chiasson, who, in turn, used that information to trade in securities.

The trial focused largely on tips from insiders at Dell, Inc. ("Dell") and NVIDIA Corporation ("Nvidia"), who breached duties they owed to their employers by disclosing their companies' confidential earnings numbers before that information was publicly released. The evidence admitted at Chiasson's trial established that Chiasson knew that his analyst, Spyridon Adondakis ("Adondakis"), was providing him with material nonpublic information that corporate insiders had improperly disclosed. For example, Adondakis testified that he informed Chiasson that the Dell information had come from "someone within Dell." Decl. Ex. 2 at 1708. Adondakis further testified that he told Chiasson he expected to receive the final "roll-up" of Dell's financial results before Dell's quarterly earnings announcement in August 2008. Decl. Ex. 2 at 1792.

Also, in August 2008, Chiasson exchanged a series of emails and instant messages with a friend at another hedge fund demonstrating that Chiasson understood that only a Dell insider without authorization to disclose earnings information would have provided specific Dell financial information in advance of a quarterly announcement. After receiving an update from Adondakis, Chiasson told his friend that he had "checks on gm [gross margin for Dell] this qtr [quarter]" indicating that gross margins would be below analyst expectations. Chiasson added he was waiting for the "final read." Decl. Ex. 3. When his friend inquired how Chiasson could

have "checks on gm%," Chiasson responded "Not your concern. I just do." *Id.* Subsequently, after receiving the "final" update from Adondakis, Chiasson told his friend the ultimate range for gross margin: "Gm 17.4-17.7." Decl. Ex. 4. When his friend asked whether it was possible for Dell to report that range, Chiasson replied, "My view on gm more convicted than [yours]." Decl. Ex. 5.

As with Dell, Adondakis obtained and provided to Chiasson multiple updates on Nvidia's earnings shortly before the company's quarterly announcement in May 2009. *See, e.g.*, Decl. Exs. 6-7. With respect to Nvidia, Adondakis told Chiasson that he got the information from a friend of Adondakis's who, in turn, got the information from a friend from church. Decl. Ex. 2 at 1878.

Chiasson repeatedly traded on the material nonpublic information concerning Dell and Nvidia that he obtained from Adondakis, and his insider trading earned Level Global millions of dollars trading Dell and Nvidia in 2008 and 2009. Decl. Exs. 8-10.

On December 17, 2012, Chiasson was convicted on all five counts. On May 13, 2013, a judgment in the criminal case was entered against Chiasson. (The judgment was later amended on July 16, 2013.) Decl. Ex. 11. Chiasson was sentenced to a prison term of 78 months followed by one year of supervised release. He was also ordered to pay a fine of $5 million and $1,382,217 in criminal forfeiture. *See id.*

B. The Commission's Civil Injunctive Action Against Chiasson

On January 18, 2012, the Division filed its complaint on behalf of the Commission in *SEC v. Spyridon Adondakis et al.*, 12 Civ. 0409 (S.D.N.Y.) (SAS). Decl. Ex. 12. The defendants in that action included, *inter alia*, Chiasson, Level Global, and Adondakis. *Id.*

With respect to Chiasson, the Commission's Complaint alleged that, beginning in 2008, Chiasson received material nonpublic information from Adondakis regarding the securities of Dell and Nvidia, and that Chiasson knew, recklessly disregarded, or should have known, that the material nonpublic information he received from Adondakis had been disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence. The Complaint sought to hold Chiasson liable for insider trading because he directly or indirectly caused Level Global to place trades based on the material nonpublic information he received from Adondakis. *See id.*

On October 4, 2013, the District Court entered a final judgment against Chiasson, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[2] Decl. Ex. 13. The judgment also stated that, upon a subsequent motion by the Commission, Chiasson may be held liable for disgorgement, prejudgment interest and civil penalties. *Id.*

C. Chiasson's Pending Appeal of His Criminal Conviction

Chiasson is appealing his criminal conviction. His appeal was fully briefed on December 18, 2013. On appeal, Chiasson contends, among other things, that to be guilty of insider trading, a tippee, or one who receives material nonpublic information from a tipper, must know that an insider provided the information to the tipper for personal gain. Specifically, Chiasson contends that a tippee must know of the insider's self-dealing by having knowledge of the personal benefit that the insider received in exchange for sharing confidential information with the tipper. *See* Chiasson's Appellate Brief in *U.S. v. Newman et al.*, 13-1837-cr (L), filed on Aug. 15, 2013 (Ex. B to the Declaration of Savannah Stevenson in Support of Chiasson's Petition to Review the Initial Decision) at 21-32. According to Chiasson, the District Court committed reversible error by

improperly instructing the jury with respect to Chiasson's awareness of a personal benefit to the Dell and Nvidia insiders and that, therefore, Chiasson is entitled to a new trial. *Id.* at 49. Chiasson further asserts that the Government offered no proof at his trial from which a rational juror could conclude that Chiasson knew that the Dell and Nvidia tippers were exchanging inside information for a personal gain and, thus, he should be acquitted. *Id.* at 42-43.

In response, the Government has asserted in the criminal appeal that the District Court properly instructed the jury that the Government must prove only that Chiasson knew the Dell and Nvidia insiders breached duties of confidentiality to their employers. Decl. Ex. 14 at 35. Even if the District Court erred, however, the Government contends that such error was harmless because the evidence adduced at trial would have allowed the jury to find that Chiasson knew that the insiders were sharing inside information in exchange for – or in anticipation of receiving – a benefit. *Id.* at 59-65.

Chiasson's appeal was fully briefed on December 18, 2013. The Second Circuit Court of Appeals heard oral argument on April 22, 2014. No decision has yet been rendered and the Second Circuit has given no indication as to when a decision will be issued.

D. The Follow-on Administrative Proceeding Against Chiasson and the Initial Decision

On October 21, 2013, the Commission issued an Order Instituting Proceedings ("OIP") in this matter, and Chiasson was served with the OIP shortly thereafter. During a prehearing conference on October 31, 2013, Administrative Law Judge Cameron Elliott granted the Division's request for leave to file a motion for summary disposition, and waived the requirement that Chiasson file an Answer to the OIP.

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[2] The judgment stated that that Chiasson "agreed not to oppose entry of this Judgment based solely on the collateral estoppel effect of his conviction" in his criminal case. Decl. Ex. 14 at 1.

The parties completed briefing on the summary disposition motion on December 20, 2013, and Judge Elliott issued his initial decision on April 18, 2014 (the "Initial Decision"). Decl. Ex. 15. Judge Elliott recognized that the Commission has "repeatedly upheld [the] use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction[,]" and stated that circumstances in which summary disposition in a follow-on proceeding involving fraud are not appropriate "will be rare." *Id.* at 2-3, *citing Gary M. Kornman*, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14262-63, 2009 SEC LEXIS 367, at *40-41, *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Rel. No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 & nn.21-24, 2008 SEC LEXIS 236, at *20, *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *John S. Brownson*, Exchange Act Rel. No. 46161 (July 3, 200), 55 S.E.C. 1023, 1028 n.12 (2002), 2002 SEC LEXIS 3414, at *9 n.12, *pet. denied*, 66 Fed. App'x 687 (9th Cir. 2003).

Judge Elliott further found that Chiasson did not dispute that the statutory basis for the requested sanction had been satisfied, and that Chiasson "does not oppose the Division's" motion for summary disposition. *Id.* at 4. Instead, Chiasson requested that Judge Elliott defer decision on the motion for summary disposition until the end of the 210-day period in which the Initial Decision was to issue. However, as Judge Elliott correctly noted in his decision, Rule of Practice 250 required him to "promptly grant or deny" a motion for summary disposition and Chiasson had "not shown good cause within the meaning of the rule" to defer decision on the motion.[3] *Id.* Judge

[3] Chiasson claims that it is "curious" that Judge Elliott "did not wait the few extra days" until the oral argument in Chiasson's criminal appeal before deciding the Division's motion for summary disposition in this proceeding. Memorandum of Point and Authorities in Support of Anthony Chiasson's Petition to Review the Initial Decision ("Chiasson Br.") at 6 n. 3. However, Judge Elliott's issuance of his decision prior to the oral argument in the criminal appeal makes perfect sense given that: (i) Rule 250 requires him to promptly decide a summary disposition motion; and (ii) the merits (or lack thereof) of a respondent's criminal appeal do not – and should not –

Elliott found that "[t]he Commission has repeatedly held that the pendency of an appeal is not grounds to defer decision in an administrative proceeding." *Id.*, *citing Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2601 n.4, 2007 WL 98919, at *7 n.4; *Joseph P. Galluzzi*, Exchange Act Rel. No. 46405 (Aug. 23, 2002), 55 S.E.C. 1110, 1116 n.21 (2002); *Ira William Scott*, Advisers Act Rel. No. 1752 (Sept. 15, 1998), 53 S.E.C. 862, 865 n.8 (1998); *Charles Phillip Elliott*, Exchange Act Rel. No. 31202 (Sept. 17, 2012), 50 S.E.C. 1273, 1277 n.17 (1992), *aff'd*, 36 F.3d 86 (11th Cir. 1994). He concluded that if the statutory basis for a bar were to cease to exist, "the remedy is to petition the Commission for reconsideration of this action." *Id.*, *citing Jon Edelman*, 52 S.E.C. 789, 790 (1996), 1996 SEC LEXIS 3560, at *2-3; *Charles Phillip Elliott*, Exchange Act Rel. No. 31202 (Sept. 17, 2012), 50 S.E.C. at 1277 n.17.

Finding that there was no genuine issue with regard to any material fact, Judge Elliott concluded summary disposition was appropriate. *Id.* at 5. He then determined that it was in the public interest to bar Chiasson from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *Id.* at 5, 9. In imposing the collateral industry bar, Judge Elliott cited to, among other things, Chiasson's repeated insider trading and his failure to make any assurances against future violations. *Id.* at 6-7.

E. Chiasson's Petition for Review of the Initial Decision

On May 9, 2014, Chiasson filed a petition for review of the Initial Decision (the "Petition"). The Petition did not assert – because it could not – that Judge Elliott had committed any prejudicial error, or that the Initial Decision embodied any clearly erroneous factual finding or

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have any effect on whether the Division is entitled to relief in a follow-on administrative proceeding. *See* Argument Section A., *infra*. It should also be noted that Chiasson never informed the ALJ of the date on which oral argument in his criminal appeal would be held.

conclusion, erroneous legal conclusion, or important exercise of discretion or decision of law or policy that the Commission should review. *See* 17 C.F.R. § 201.411(b)(2) (standards for discretionary review). Instead, Chiasson stated that he was "renew[ing] our assertion that this Initial Decision was premature" because the basis for the associational bar "may very well soon be mooted." Petition at 2. Chiasson asserted that it "would be more efficient and a better use of resources for the Commission to review" the Initial Decision and also "refrain from entering a final order" while his appeal was pending. *Id.* at 3. He added that he was "effectively already barred" from the securities industry. *Id.* at 4.

On May 30, 2014, the Commission issued an Order Granting Petition for Review and Scheduling Briefs. Although captioned as an order granting the Petition, the Order also directed the parties to address the question whether the Initial Decision should be summarily affirmed pursuant to Rule of Practice 411(e).

ARGUMENT

Rule of Practice 411(e)(2) provides that "upon its own initiative" the Commission may summarily affirm an initial decision. 17 C.F.R. § 201.411(e)(2). To do so, the Commission must find that "no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument." *Id.* Although the Commission has observed that summary affirmance is rare, the Commission has also held that summary affirmance is appropriate in cases where "the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission." *Eric S. Butler*, Exchange Act Rel. No. 6520 (Aug. 26, 2011), 2011 SEC LEXIS 3002, at *2 n.2.

This case falls squarely within the bounds of the summary affirmance rule. Chiasson does not dispute the legal basis of the Initial Decision. Indeed, he expressly concedes that he "is *not*

arguing that the caselaw on which the ALJ relied is wrong, should be overturned or should be ignored." Chiasson Br. at 20 (emphasis in original). Chiasson also does not contest that the factual predicates for the relief imposed against him exist, nor does he dispute the ALJ's finding that the relief imposed – a collateral associational bar – is in the public interest.[4] Chiasson instead contends that Judge Elliott, and now the Commission, should ignore well-established Commission precedent and wait until the resolution of his criminal appeal before imposing the bar. For the reasons set forth below, the Commission should deny Chiasson's request.

A. The Initial Decision Correctly Determined that Chiasson's Pending Appeal Was No Obstacle to Granting the Division Relief

The law is clear that a pending appeal of a criminal conviction does not preclude entry of an associational bar based on that conviction. The Commission repeatedly has adhered to this precedent. *See James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007), 2007 SEC LEXIS 2420; *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2601 n.4, 2007 WL 98919, at *7 n.4; *Michael Batterman*, Advisers Act Rel. No. 2334 (Dec. 3, 2004), 57 S.E.C. 1031, 6 n.10 (2004), 2004 SEC LEXIS 2855, at *22 n.10; *Joseph P. Galluzzi*, Exchange Act Rel. No. 46405 (Aug. 23, 2002), 55 S.E.C. 1110 (2002); *Ira William Scott*, Advisers Act Rel. No. 1752 (Sept. 15, 1998), 53 S.E.C. 862 (1998), 1998 SEC LEXIS 1957, at *7 n.8; *Jon Edelman*, 52 S.E.C. 789 (1996), 1996 SEC LEXIS 3560, at *2; *Charles Phillip Elliott*, Exchange Act. Rel. No. 31202 (Sept. 17, 1992), 50 S.E.C. 1273 (1992). And, in entering the Initial Decision barring Chiasson, Judge Elliott expressly relied on much of this precedent. Decl. Ex. 15 at 4.

[4] Neither Chiasson's initial petition for review (filed May 9, 2014), nor his brief submitted in support of the petition (filed June 30, 2014), takes issue with the ALJ's application of the relevant public interest factors in deciding to impose an industry bar. Thus, pursuant to Rule 411(d), the Commission's decision on the instant petition need not address the ALJ's decision that a bar is in the public interest.

In *Jon Edelman*, the petitioner filed a motion to stay the administrative proceeding against him. He contended that the administrative proceeding should be stayed pending disposition of a motion to vacate his conviction that he had filed in federal district court based on purported new evidence. After the administrative law judge denied the motion, the petitioner appealed to the Commission, seeking review and an emergency stay. The Division did not oppose Edelman's motion to the Commission for a stay. Nevertheless, the Commission declined to grant it. The Commission's determination was unequivocal:

> The pendency of an appeal of a criminal conviction generally is an insufficient basis upon which to grant a motion to stay proceedings. *This remains the case where the respondent, as here, represents that he will not be involved in the securities industry.* The public interest demands prompt enforcement of the securities laws, even while other government proceedings are under way. Accordingly, indefinite stays for the purposes of pursuing other relief are inappropriate.

Edelman, 1996 SEC LEXIS 3560 at *2-3. (emphasis added).

Likewise, in *Charles Phillip Elliott*, the petitioner (like Chiasson), was free on bond pending the appeal of his criminal conviction. *Elliott*, 1992 SEC LEXIS 2334 at *3. Elliott argued that the Commission should withhold judgment pending his appeal, but the Commission declined to do so, noting that that the instant proceeding was "concerned with the factual existence of Elliott's conviction and its public interest implications. Elliott's conviction has been established, and Elliott may not challenge its validity." *Id.* at *11. The Commission recognized that "a court of competent jurisdiction has acted, and the fact that an appeal is taken does not bear on our consideration." *Id.* at n.17.

The guidance of *Edelman* and *Elliott*, among the litany of other Commission precedent addressing this issue, is equally applicable here. Neither Chiasson's belief in the strength of his appeal, nor his interpretation of the legal community's purported reaction to the oral argument in

his appeal, Chiasson Br. at 1, 11-12, are relevant to the issue before the Commission in this case and do not provide any reason for the Commission to delay the institution of an industry bar against Chiasson.

As an initial matter, neither the parties nor the Commission knows when the decision in Chiasson's appeal will be rendered, what the ruling will be, or whether further appellate litigation will result (*e.g.*, whether Chiasson or the Government will seek a rehearing *en banc* or a writ of *certiorari* from the U.S. Supreme Court). Thus, Chiasson, like the respondent in *Elliott*, is asking for an indefinite stay that could be in effect for years, during which time there would be no legal restraint on his returning to work in the securities industry.

Further, permitting respondents like Chiasson to challenge the imposition of a bar based on the purported merits of an appeal in a criminal or civil action (or on the reaction of the legal community to that appeal) would create a new – and completely unworkable – standard for future cases. The approach advocated by Chiasson would require the Commission's Administrative Law Judges – and the Commission itself – to scour the public record for news articles and public comments assessing the legal community's reaction to appellate arguments in order to evaluate the merits of a respondent's appeal in a separate legal proceeding. *Cf.* Chiasson Br. at 17-18 (discussing *Charles Phillip Elliott* and noting that in the petitioner's appeal "there was no evidence in the record about the merits of the appeal, the reaction of the judges during oral argument, or anything that would indicate whether his arguments moved the appellate panel"; discussing *Ira William Scott* and noting that the petitioner "did not provide any facts concerning the nature of the appeal or its likelihood of success").

This result would run counter to the Commission's clearly stated holding in cases like *Edelman*. It would also undermine the purpose of Advisers Act Section 203(f), which seeks to

protect the public from investment advisers who have been convicted of violating the federal securities laws. Finally, it would eviscerate the doctrine of collateral estoppel by requiring the Commission to reconsider issues that were actually litigated and necessary to the Court's decision in the criminal case. Such collateral challenges are, of course, highly disfavored. *See James E. Franklin,* Exchange Act Rel. No. 56649 (Oct. 12, 2007), 2007 SEC LEXIS 2420, at *11 (citing *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1109-11 (D.C. Cir. 1988) and *Elliott v. SEC*, 36 F.3d 86, 87 (11th Cir. 1994)).

Even if events in unrelated cases that occurred after the oral argument in Chiasson's criminal appeal were somehow relevant to this proceeding – which they are not – Chiasson's brief mischaracterizes the nature, and overstates the import, of several of those events. *See* Chiasson Br. at 9-11. For example, while Chiasson is correct that the Division agreed to delay the briefing of its summary judgment motion against Michael Steinberg (another hedge fund portfolio manager who, like Chiasson, received the tips concerning Dell and Nvidia and was found guilty of insider trading), *id.* at 9-10, Chiasson's brief omits the fact that the Division, as here, has instituted follow-on administrative proceedings against Steinberg, and recently filed a motion for summary disposition seeking the same collateral industry bar that the ALJ ordered against Chiasson.[5]

Similarly, Chiasson mischaracterizes the request by the USAO to continue the stay of the administrative proceeding against Steven A. Cohen (AP File No. 3-15382). *See id.* at 10-11. That action was filed in July 2013 and then stayed a few weeks later upon the request of the USAO. The stay was based on the existence of three ongoing criminal actions, one involving the

[5] The Division also pursued, and obtained, an associational bar against Todd Newman, who was Chiasson's co-defendant in the criminal case. Newman was convicted of insider trading in Dell and Nvidia and is also appealing his conviction. Newman's bar became final on March 24, 2014. *See Todd Newman*, Initial Decision Rel. No. 562 (Feb. 10, 2014), 2014 WL 507514; *see also Todd Newman*, Exchange Act Rel. No. 71787 (Mar. 24, 2014), SEC LEXIS 1041.

investment advisory firms owned by Cohen, and two involving employees of those firms (including Steinberg). The USAO's May 28, 2014 request to extend the stay – which was made pursuant to a directive by ALJ Murray that the USAO update her every 90 days as to the status of the criminal actions – was based on the fact that two of the three criminal actions, including the Steinberg case, were still ongoing. Chiasson's appeal was referenced in the USAO's letter because of its potential impact on Steinberg's own appeal, the status of which is relevant to the continuation of the stay. However, it is not correct to assert, as Chiasson does, that the mention of his appeal in the USAO's stay-extension request indicates the USAO's "apparent expectation" that Chiasson will prevail on his appeal. *Id.* at 15.

Finally, though Chiasson notes that the district court judge who presided over his trial has acknowledged that "the Second Circuit may change course and require a new knowledge of benefit element," *id.* at 12, *citing U.S. v. Steinberg*, 2014 U.S. Dist. LEXIS 70037, *24 (S.D.N.Y. 2014), Chiasson fails to mention the judge's additional observation that "[u]ntil then, however, the Court must follow precedent as it is written" which does not require a "jury . . . [to] find any knowledge of the tippers' benefits beyond what [is] necessary to find knowledge of the tippers' breaches." *Steinberg*, 2014 U.S. Dist. LEXIS 70037 at *25.

B. Chiasson Has Suffered No Prejudice as a Result of the Initial Decision, and Will Suffer No Prejudice if the Decision is Affirmed

Chiasson's claim that he will be "severely prejudiced" should the Initial Decision be affirmed is incorrect. Chiasson Br. at 19. Chiasson's remedy should his appeal succeed is straightforward and well-documented. If his appeal succeeds, the Commission will entertain Chiasson's application for reconsideration of its action imposing administrative relief. *Charles Phillip Elliott* at *11 n.17; *Jon Edelman* at *3. Such an application would require the expenditure of only minimal resources by Chiasson and the Division.

Chiasson's concerns about the length of time that it may take to lift the bar should his appeal succeed are misplaced. In past cases, the Commission has acted to lift bars following successful appeals just weeks after the respondent has moved to vacate the bar. *See, e.g., Evelyn Litwok*, Advisers Act Rel. No. 3438 (July 25, 2012), 104 S.E.C. Docket 1061, 2012 WL 3027914 & Decl. Ex 16 (bar vacated on July 25, 2012, seven weeks after respondent's motion was received on June 12, 2012); *see also Jimmy Dale Swink, Jr.,* Rel. No. 34-36042 (August 1, 1995), 59 S.E.C. Docket 2386, 1995 WL 467600 & Decl. Ex 17 (bar vacated on August 1, 1995, 12 days after respondent's motion was received on July 20, 1995).

Chiasson misconstrues the cases in which the Commission supposedly took longer to lift bars. *See* Chiasson Br. at 19. In *Linus N. Nwaigwe*, the respondent moved to have the associational bar set aside on May 15, 2013, and his bar was lifted less than 2 months later, not the year later that Chiasson contends. *See Nwaigwe*, Exchange Act Release No. 69967 (July 11, 2013), 2013 WL 3477085 & Decl. Ex 18; Chiasson Br. at 19. In *Richard L. Goble*, although the respondent won his appeal and the injunction underlying the bar was set aside, the appeals court directed the district court not to vacate the injunction but instead to re-write it. That is, the appeals court still believed that some injunction was necessary. The Division and Goble disputed whether these circumstances provided sufficient basis to lift the bar and the Commission asked for briefing. Thereafter, the time between the completion of briefing and the lifting of the bar was only 40 days (not the seven months Chiasson cites in his brief). *See Goble,* Exchange Act Rel. No. 68651, 2013 WL 150557 & Decl. Ex. 19; Chiasson Br. at 19; *see also Kenneth E. Mahaffy, Jr.,* Exchange Act Rel. No. 68462 (Dec. 18, 2012), 105 S.E.C. Docket 893, 2012 WL 6608201 (respondent's

successful appeal was not made final until September 14, 2012 and his bar was lifted only three months later (not the four months cited in Chiasson's brief)).[6]

Finally, Chiasson is wrong when he claims that delaying the imposition of the collateral bar "will not prejudice the Division or the public in any way." Chiasson Br. at 20. As in any case, the Division and the public both have an interest in obtaining the appropriate legal remedy as expeditiously as possible, and an indefinite delay of a remedy to which the Division is legally entitled surely prejudices both the Division and the investing public that the Commission protects.

C. Oral Argument is Unnecessary

The Commission should deny Chiasson's request for oral argument. Though Rule 451(a) provides that requests for oral argument on whether to affirm an initial decision will usually be granted, the Division respectfully submits that exceptional circumstances exist such that oral argument would be inadvisable. Unlike most respondents who ask the Commission not to affirm an initial decision, Chiasson is "*not* arguing that the caselaw on which the ALJ relied is wrong, should be overturned or should be ignored." Chiasson Br. at 20 (emphasis in original). Nor is Chiasson arguing that Judge Elliot erred in finding that a substantive basis exists to bar him from the securities industry. As a result, Chiasson's memorandum of law in support of the instant petition, as well as his upcoming reply brief, afford him more than sufficient opportunity to present arguments in support of the single, discrete issue presented by his petition. Chiasson's request for oral argument belies his professed concerns about "the efficient use of resources." *Id.* at 2, 18.

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[6] Any purported prejudice that would result from the BrokerCheck system not accurately reflecting the lifting of his bar can be easily cured by Chiasson himself. *See* Chiasson Br. at 20. FINRA allows an individual to correct and/or amend his/her BrokerCheck entry and to dispute any inaccurate information contained on BrokerCheck. *See* http://www.finra.org/Industry/Compliance/Registration/ CRD/FilingGuidance/P121845; and http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P016571.

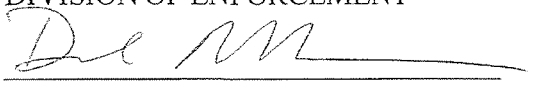
Rather than serving to clarify or enhance the Commission's understanding of the relevant issues, oral argument would merely squander additional resources – of the Division, the Commission and Chiasson himself – and further delay the entry of the bar against Chiasson that the Initial Decision imposed.

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Commission summarily affirm the Initial Decision and deny Chiasson's request for oral argument.

Dated: July 30, 2014

Respectfully submitted,
DIVISION OF ENFORCEMENT



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