UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15580

In the matter of:

ANTHONY CHIASSON,

Respondent.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT ANTHONY CHIASSON

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Dated: November 22, 2013

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The Division of Enforcement moves, pursuant to Rule 250 of the Commission's Rules of Practice, for summary disposition of the claims in the Order Instituting Proceedings ("OIP") in this matter, brought under Section 203(f) of the Investment Advisers Act of 1934 ("Advisers Act") against Respondent Anthony Chiasson, and respectfully requests that this Court issue an order barring Chiasson from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (hereinafter a "collateral industry bar"). In support of its motion, the Division respectfully submits this memorandum of law.

PRELIMINARY STATEMENT

In December 2012, after a four-week criminal trial, Chiasson was found guilty of one count of conspiracy to commit securities fraud and five counts of securities fraud based on his participation in an insider trading scheme that netted millions of dollars in profits for the hedge fund that Chiasson co-founded and where he worked as a portfolio manager. On October 4, 2013, Judge Harold Baer of the U.S. District Court for the Southern District of New York issued a final judgment against Chiasson in a parallel civil action brought by the Commission based on the same insider trading conduct.

Because Chiasson's conduct was egregious and intentional, and because Chiasson has never acknowledged his misconduct or indicated any willingness to refrain from future wrongdoing, this Court should impose a collateral industry bar against him.

STATEMENT OF FACTS

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 in *U.S. v. Newman et al.*, S2:12-cr-121 (RJS).[1] The evidence adduced during the criminal trial established that while serving as a portfolio manager at the investment advisory firm Level Global Investors, L.P. ("Level"), Chaisson participated in an insider trading scheme along with a cohort of corrupt analysts at various hedge funds and investment firms who exchanged material nonpublic information obtained from employees of publicly traded technology companies. The analysts provided the inside information they obtained to their 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. Based on this material nonpublic information, Chiasson executed trades in Dell and Nvidia securities, earning more than $6.7 million in illicit profits for the funds that Level managed.

On December 17, 2012, Chiasson was convicted of all counts. On May 13, 2013, a judgment in the criminal case was entered against Chiasson. (The judgment was later amended on July 16, 2013.) *See* Decl. Ex. 2. Chiasson was sentenced to a prison term of

[1] The U.S. Attorney's Office for the Southern District of New York 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 Matthew J. Watkins dated November 22, 2013 ("Decl.").

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. Chiasson is appealing his conviction.

The Commission's Civil Injunctive Action Against Chiasson

On January 18, 2012, the Commission filed its complaint in *Securities and Exchange Commission v. Spyridon Adondakis et al.*, 12 Civ. 0409 (S.D.N.Y.). *See* Decl. Ex. 3. The defendants included, *inter alia*, Chiasson, Level, and Spyridon Adondakis, an analyst at Level who reported to Chiasson.

With respect to Chiasson, the 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 to place trades based on the material nonpublic information he received from Adondakis.

On October 4, 2013, a final judgment was entered 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. Decl. Ex. 4. The Court also found that Chiasson may be held liable for disgorgement, prejudgment interest and civil penalties (based on a motion the Commission may file at a later date).

The OIP Against Chiasson

On October 21, 2013, the Commission issued the OIP in this matter, and Chiasson was served with the OIP shortly thereafter. During a prehearing conference on October 31,

2013, the Court granted the Division's request for leave to file this motion for summary disposition, and waived the requirement that Chiasson file an Answer to the OIP.

ARGUMENT

I. SUMMARY DISPOSITION IS APPROPRIATE

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. 17 C.F.R. § 201.250(a). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. 17 C.F.R. § 201.250(b).

The Commission has repeatedly upheld use of the summary disposition procedure in cases such as this one where the respondent has been enjoined and/or convicted and the sole determination concerns the appropriate sanction. *See In re Jeffrey L. Gibson*, 2008 SEC LEXIS 236 (Feb. 4, 2008). The facts underlying a criminal conviction are immune from attack in a follow-on administrative proceeding. *See In re Ted Harold Westerfield*, 1999 SEC LEXIS 433, at *16 n. 22 (Mar. 1, 1999) (citing cases). The Commission does not permit a respondent to relitigate issues that were addressed in a previous proceeding against the respondent. *See In re James E. Franklin*, 2007 SEC LEXIS 2420 (Oct. 12, 2007). Nor does the pendency of an appeal preclude the Commission from action based on an injunction. *See id.*, 2007 SEC LEXIS 2420, at *12.

II. CHIASSON SHOULD BE BARRED FROM ASSOCIATION WITH ANY INVESTMENT ADVISER, BROKER, DEALER, MUNICIPAL SECURITIES DEALER, MUNICIPAL ADVISOR, TRANSFER AGENT, OR NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION

Under Section 203(f) of the Advisers Act, the Commission has statutory authority to impose a collateral industry bar, if it finds that it is in the public interest to do so and that a person has either been convicted of any felony or misdemeanor involving the purchase or sale of securities or been enjoined from engaging in conduct in connection with the purchase or sale of a security, and, at the time of the misconduct underlying the conviction or injunction, the person was associated with an investment adviser.

A. Chiasson Has Been Convicted and Enjoined and at the Time of His Illegal Conduct Was Associated with an Investment Adviser

The amended judgment against Chiasson in the criminal case was entered on July 16, 2013. *See* Decl. Ex. 2. The Final Judgment permanently enjoining Chiasson was entered on October 4, 2013. *See* Decl. Ex. 4. During the period of his illegal conduct, Chiasson was employed as Level's Director of Research and the Sector Head of the technology, media and telecommunications sector and had authority to trade in certain accounts of the hedge funds that Level, an unregistered investment adviser, managed. *See* Decl. Ex. 5 ¶¶ 18, 25.

As Chiasson has been convicted and enjoined, and the record clearly shows that Chiasson was associated with an investment adviser at the time of the misconduct, the only remaining issue is the appropriate sanction.

B. The Public Interest Requires a Collateral Industry Bar Against Chiasson

A collateral industry bar should be imposed against Chiasson. The criminal charges of which Chiasson was convicted confirm the necessity of a permanent bar to

promote the public interest. *See In re Jerry W. Anderson and Robert M. Kerns*, 2000 SEC LEXIS 1092, at *12-14 (May 31, 2000) (bar was in the public interest where conduct was egregious and committed with a "high degree of scienter").

To determine whether sanctions under Section 203(f) of the Advisers Act are appropriate, the Commission considers six factors: (i) the egregiousness of respondent's actions; (ii) the isolated or recurrent nature of the infractions; (iii) the degree of scienter involved; (iv) the sincerity of the respondent's assurances against future violations; (v) the respondent's recognition of the wrongful nature of his conduct; and (vi) the likelihood that respondent's occupation will present opportunities for future violations. No one factor is controlling. *In re Kent D. Nelson,* 2009 SEC LEXIS 440, at *10 (Feb. 24, 2009) (citing to *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). In light of the record in this matter, it is clear that all of these factors weigh in favor of imposing a collateral industry bar against Chiasson.

1. Chiasson's Actions Were Egregious, Intentional and Repeated

The criminal charges against Chiasson – and upon which he was convicted on all counts – showed that Chiasson's insider trading was egregious and involved a high degree of scienter. During 2008 and 2009, Chiasson received material nonpublic information regarding Dell and Nvidia – including quarterly earnings information – from Adondakis. Chiasson used the Dell and Nvidia inside information to trade Dell and Nvidia securities in multiple quarters on behalf of hedge funds managed by Level, reaping millions of dollars in illicit profits for those funds in 2008 and 2009. *See* Decl. Ex. 1 at ¶¶ 17, 20, 26. In August 2008 alone, Chiasson caused Level funds to sell short at least 800,000 shares of Dell securities after receiving the material nonpublic information from Adondakis. *See id.* ¶ 35.

In addition to being egregious and intentional, Chiasson's illegal conduct was repeated; indeed, it occurred on at least five separate occasions from at least May 2008 through May 2009. *See id.*

2. Chiasson Has Offered No Assurance Against Future Violations and He Continues to Deny Any Wrongdoing

Chiasson's failure to accept the wrongful nature of his conduct and to give any assurance against future misconduct also supports the imposition of a collateral industry bar against him. Chiasson refuses to acknowledge any wrongdoing and is appealing his criminal conviction. At no time has Chiasson indicated any remorse for his actions, nor has he offered any assurance that he will not engage in future violations. Chiasson's failure to recognize the wrongfulness of his conduct presents a significant risk that, given the opportunity, he would commit further misconduct in the future, and further underscores the need for a bar. *In re Michael J. Markowski*, 2001 SEC LEXIS 502, at *17 (Mar. 20, 2001).

CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted, and that an order issue permanently barring Chiasson from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Dated: November 22, 2013.

Respectfully submitted,
DIVISION OF ENFORCEMENT

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