ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

GEORGE CHARLES CODY PRICE,

Respondents.

Judge Brenda J. Murray

DIVISION OF ENFORCEMENT'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

February 1, 2016

Division of Enforcement
Lynn M. Dean
444 S. Flower Street, Suite 900
Los Angeles, California 90071
(323) 965-3998 (*telephone*)
(213) 443-1904 (*facsimile*)

I. INTRODUCTION

The Division of Enforcement ("Division") respectfully submits this reply in support of its motion for summary disposition of this follow-on proceeding against George Charles Cody Price ("Price") brought pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). Price's opposition does not raise any issues that preclude summary disposition. In fact, Price does not even argue against summary disposition. He merely argues that he should be barred for somewhere between 3 to 10 years rather than permanently, and that a "bad actor waiver"[1] should be "incorporated into the settlement agreement resolving this proceeding." Resp's Opp. at Section I.C. at p. 6.[2]

But this proceeding is not in a settlement posture, and based on the injunction entered in the civil proceeding, the Division requests that Price be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization.

II. ARGUMENT

A. Price Has Conceded the Facts Necessary for the Division to Prevail

To prevail on this proceeding, the Division must establish that: (1) Price has been enjoined from violating the federal securities laws, and (2) it is in the public interest to impose a bar against him. The Division has met its burden.

In his opposition brief, Price concedes that the allegations relevant to the Division's motion for Summary Disposition are "deemed true." Opp. at Section I.B, p. 4. Specifically, Price concedes that: 1) a true and correct copy of the Commission's Complaint was attached as Exhibit 1 to the

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[1] The Division assumes that Price is arguing for a waiver of the disqualifications imposed by Rule 262 of Regulation A, Rule 505(b)(2)(iii) of Regulation D, and Rule 506(d) of Regulation D under the Securities Act of 1933. 17 C.F.R. § 230.262;17 C.F.R. § 230.505(b)(2)(iii); and 17 C.F.R. § 230.506(d)(2)(ii).

[2] Respondent's Brief was filed without page numbers, so the Division has used both Section headings and natural page numbers as citations in this Reply.

Declaration of Lynn M. Dean in support of the Division's Motion; 2) the allegations in the Complaint are true; and 3) Price consented to the entry of permanent injunctions for violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) the Securities Act, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Dean Decl., Ex. 3. Respondent does not dispute that on July 16, 2015, the District Court entered an order and final judgment against Price in the case *SEC v. ABS Manager, et al.*, permanently enjoining him from violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) the Securities Act, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Dean Decl., Ex. 3; Resp's Answer ¶ 4; Resp's Opp. at Section II.A. at p. 2.

Thus, for purposes of this proceeding, the relevant facts are undisputed – permanent injunctions were issued against Price, and over a period of many years, and acting with a high level of scienter, Price made egregious and material misrepresentations and omissions to investors, and misappropriated investor funds. Dean Decl. Ex. 1. A bar is therefore warranted and in the public interest to prevent a recurrence of Price's unlawful conduct.

B. Price Cannot Re-litigate The Underlying Action In This Forum

Although Price concedes in his opposition that he cannot contest the allegations in the Complaint, he nevertheless attempts to do so. Price desperately attempts to minimize his culpability by re-litigating matters that were resolved by his decision to consent to the entry of permanent injunctions, disgorgement, and a civil penalty in the district court action. Dean Decl. Exh. B. He argues that the underlying enforcement action was "nothing more than a technical dispute about the valuation of esoteric securities that trade in opaque market,"[3] that his risk disclosures were adequate, that there is a "debate" about his employment history, that there is no evidence of misappropriation, and that the Complaint's allegations are "by no means conclusive" and are "unproven allegations." Resp's Opp. at Section II.B, pp. 8-10. He also appends a handful of

[3] Thereby admitting the SEC's underlying claim that the securities he sold carried more investment risk than was disclosed to investors.

investor declarations to argue that these investors "understood" all of the material facts about their investments (*see id.* at Section II.B, p. 9) – that is, all of the material facts he agreed in his consent that he cannot deny were knowingly or recklessly misrepresented or omitted when he communicated with investors. Therefore, to the extent Price offers these investor declarations to dispute these very facts, they should be disregarded.[4]

Price also argues the Hearing Officer should consider that the losses incurred by the Capital Access Fund investors are "contingent upon the separate outcome of a now pending FINRA arbitration. . . against Morgan Stanley Smith Barney." *Id.* at p. 10. But this FINRA arbitration has nothing to do with whether an injunction was entered against Price (it was) or whether the administrative remedies the Divisions seeks are in the public interest (they are). In any event, all of Capital Access Fund's assets were liquidated as a result of a margin call by Morgan Stanley after Price recklessly pledged them as security for a line of credit. Supplemental Dean Declaration (Supp. Dean Decl.") ¶¶ 5-6. That liquidation, which resulted in a 100% loss to some investors, occurred after the Complaint was filed in the underlying action, and those losses were not part of the disgorgement to which Price consented. *Id.* The future outcome of Price's attempt to fix blame on Morgan Stanley for investor losses he caused thus has no bearing on this proceeding, except to the extent those losses are yet more evidence of how Price's conduct has harmed his investors. Indeed, all of Price's arguments in favor of a lesser penalty demonstrate his failure to recognize of the wrongfulness of his conduct, and undercut the sincerity of his assurances against future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

Moreover, the Division's motion is not based on "unproven allegations" as Price claims. *See* Resp's Opp. at Section II.B, p. 10. Rather the allegations in the Complaint are facts Price cannot deny in this proceeding because he has explicitly agreed, by consent, not to do so. *See*

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[4] Price also submits the district court's orders on the parties' summary judgment motions, the order on the SEC's successful motion for reconsideration, and a self-serving declaration that he filed in the case. These are all moot for purposes of this action.

James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713 & n.13, 2007 WL 2974200, *petition for review denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Michael V. Lipkin and Joshua Shainberg*, Initial Dec. Rel. No. 317 (Aug. 21, 2006), 88 S.E.C. Docket 2346, 2006 WL 2422652 ("It is well established that the Commission does not permit a respondent to re-litigate issues decided in the underlying civil proceeding."), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

Thus, for example, Price cannot deny that: (a) he "misrepresented or omitted the disclosure of material information" to his investors (Dean Decl. Exh. 1 (Compl.) ¶ 36), (b) he "concealed the true nature of these investments in his monthly newsletters, radio programs and external emails" (*id.* ¶ 39), (c) his "representations about the Funds' performance were false and misleading" (*id.* ¶ 47), (d) he lied about his prior investment experience and "overstated the assets of the Funds" (*id.* ¶¶ 49-50), (e) he misappropriated Fund assets (*id.* ¶¶ 53-57), and (e) he "knew or was reckless in not knowing" the fraudulent nature of all this misconduct (*id.* ¶¶ 59-63). Having expressly agreed in his consent that he cannot deny these allegations (and all of the other allegations in the Complaint), he cannot try and dispute them now.

In short, Price's naked attempt to re-litigate in this forum arguments he made before the district court must be disregarded. Those arguments were abandoned when Price settled that action and agreed not to dispute the allegations against him, and so are moot in this proceeding. For purposes of this proceeding, the allegations in the Complaint are undisputed, and the Complaint alleged that over a period of many years, and acting with a high level of scienter, Price made egregious and material misrepresentations and omissions to investors, and misappropriated investor funds. Dean Decl. Exh. 1.

C. Price's Arguments Do Not Mitigate the Steadman Factors

To the extent Price's arguments disputing the underlying factual allegations of the Complaint are intended to mitigate against a finding that sanctions against him are in the public interest, that effort too fails. A permanent industry bar for Price pursuant to Section 203(f) is warranted under the factors set forth in *Steadman*, 603 F.2d at 1140. In deciding whether an administrative sanction is in the public interest, a court must consider the respondent's past conduct,

i.e., the egregiousness of his actions, the isolated or recurrent nature of the infraction, and the degree of scienter involved, plus the three factors going to the likelihood a violation might occur in the future, i.e., the sincerity of the respondent's assurances against future violations, his recognition of the wrongfulness of his conduct, and the likelihood that hiss occupation will present future opportunities for violations. *Id.* The Commission also considers whether the sanction will have a deterrent effect. *Michael V. Lipkin and Joshua Shainberg*, Initial Dec. Rel. No. 317 (Aug. 21, 2006), 88 S.E.C. Docket 2346, 2006 WL 2422652 *4.

Here, all of the *Steadman* factors weigh in favor of a permanent bar. Price's conduct was egregious and took place over many years, Price continues to deny the wrongfulness of his conduct, his assurances against future violations are insufficient, and he appears to plan to work in the securities industry in the future. *Steadman*, 603 F.2d at 1140. Thus, Price should be permanently barred from the securities industry.

1. Price's Conduct was Egregious and Recurrent, and He Acted with Scienter

The first three *Steadman* factors support a permanent bar against Price. His conduct was egregious and recurrent, and he acted with a high degree of scienter. Price cannot dispute that he knowingly made material misrepresentations and omissions to investors and misappropriated investor funds over a period of four years. Under the clear terms of his consent, nothing submitted with his opposition papers denying these facts – nor his arguments attempting to minimize his misconduct – should be considered.

The Commission's Complaint alleged that from 2009 to February 2013, Price, and ABS Manager, which was controlled by Price, misrepresented the performance of the investment funds Price managed, made material misrepresentations and omissions about the safety of those investments, misrepresented Price's investment advisory experience, overstated assets under management, misappropriated investor funds, and otherwise engaged in a variety of conduct that operated as a fraud and deceit on investors. The Complaint further alleged that Price "knew, or was reckless in not knowing that the representations he made to investors. . . were false and misleading," and Price cannot deny his scienter. *Id.* at ¶¶ 59-63. Price's conduct violated the fiduciary duty he

owed both to the funds he managed and to his investors. *See Transamerica Mortgage Adviser, Inc. v. Lewis*, 444 U.S. 11, 17 (1979) (holding that Section 206 of the Advisers Act establishes a statutory fiduciary duty for investment advisers to act for the benefit of their clients); 17 C.F.R. § 275.206(4)-8.

Moreover, Price's actions caused serious harm to investors. The Complaint alleged, and Price cannot deny, that he misappropriated fund assets. The PPMs for the funds stated that ABS Manager could be compensated *only after* investors received the minimum annual return promised – either 12.5% or 18%. Dean Decl. Ex. 1, at ¶ 53. The Complaint alleged that the funds' actual returns between 2010 and 2012 never exceeded 3%, and the portfolio of bonds held by ABS Manager lost value. *Id.* at ¶¶ 47. Despite these facts, the Complaint alleged that Price wrongfully misappropriated over half a million dollars from the funds in the form of unearned fees.[5] *Id.* at ¶¶ 54-57, 63.

The egregious nature of this conduct, which took place over several years and caused harm to investors, support the entry of a permanent bar.

2. A Bar is Necessary to Prevent Future Violations

The remaining *Steadman* factors go to the likelihood that a respondent will violate the law in the future, and here, too, they militate in favor of a permanent bar. Price has not recognized the wrongfulness of his conduct, his current assurances of future good behavior ring false, and he plans to work in the securities industry in the future.

First, Price's attempts to re-litigate the underlying SEC enforcement action demonstrate conclusively that he has failed to recognize the wrongfulness of his actions. Price's arguments that the SEC's case against him was "nothing more than a technical dispute about the valuation of esoteric securities that trade in an opaque market," that his risk disclosures were adequate, that there

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[5] The Complaint alleged that Price misappropriated $578,402. Dean Decl. Exh. 1, ¶ 56. In settlement, the SEC accepted Price's offer to pay $339,900, plus prejudgment interest of $22,748.83, and a civil penalty of $150,000, for a total of $512,648.83. *Id.* Exh. 3, p. 4.

is merely a "debate" about his employment history, and that there is no evidence of misappropriation, are flat denials of wrongdoing. Resp's Opp. at Section II.B., pp. 8-10.

Second, Price's assurances of future good conduct are specious. Price argues in his opposition that he has worked cooperatively with the SEC, complied with the sanctions in the judgment against him, made sincere assurances against future violations, and that it is unlikely his future employment will present opportunities for future violations. *Id.* at Section I.C-D., pp. 5-6. These representations are false. Although Price states that he has complied with the district court judgment against him, he has yet to pay a single dime toward the disgorgement and civil penalty he was ordered to pay in that judgment. Supplemental Declaration of Lynn M. Dean, ¶ 7. Further, while Price makes assurances against future violations in his opposition, Price continues to make misrepresentations to investors. Recently, the Division was informed that Price told at least one investor that he was not obligated to pay the monetary relief ordered by the district court against him. *Id.* ¶ 7.[6] Now Price offers to provide copies of the "Consent Decree [sic], Final Judgment and Settlement of this proceeding [sic] to any interested persons for the next 10 years," but his track record of misrepresentation, obfuscation, and failure to comply with court orders render that assurance, or any others he might make, insufficient to protect the investment public. Resp's Opp. at Section I.D, p. 6.

Finally, without a permanent bar, it is likely that Price will be in a position to violate the securities laws in the future. Indeed, Price's opposition expressly contemplates his return to the securities industry, since he argues that he is should receive less than a permanent bar and a waiver of the disqualifications imposed by Rule 262 of Regulation A, Rule 505(b)(2)(iii) of Regulation D, and Rule 506(d) of Regulation D under the Securities Act of 1933. 17 C.F.R. § 230.262;17 C.F.R.

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[6] Price's conduct in this regard is consistent with his conduct throughout these offerings and the proceedings against him. He made misrepresentations to investors before the SEC action against him, made misrepresentations to Morgan Stanley in connection with the brokerage account in which he custodied fund assets, failed to disclose to investors the imminent threat that fund assets might be sold, and after preliminary injunctions were entered against him, told investors that if they cooperated with the SEC, they would not get their investment back. *Id.* ¶¶ 3-6.

§ 230.505(b)(2)(iii); and 17 C.F.R. § 230.506(d)(2)(ii). Price argues that a permanent bar will preclude him from participating "in the profession he has worked in his entire professional life," and that he should have the "right to apply" for readmission "at the end of the limited ban." Resp's Opp. at Section I.D, p. 6. Simply put, if he does not intend to be in the securities industry, Price does not need to preserve his ability to be involved in offerings under Regulations A and D of the Securities Act.

Based on the egregious and repeated nature of Price's conduct, his denials of the wrongfulness of his conduct, his misrepresentations and failure to pay the sanctions against him, and his attempts to preserve his right to work in the securities industry in the future, it is clear that a permanent bar is warranted. *Steadman*, 603 F.2d at 1140.

III. CONCLUSION

Price does not dispute that the District Court entered a permanent injunction against him, and he cannot deny the allegations in the SEC's Complaint, which establish that barring him from the securities industry is in the public interest. Accordingly, the Division's motion for summary disposition should be granted and Price should be barred pursuant to Section 203(f) of the Advisers Act.

Dated: February 1, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT

Lynn M. Dean (323) 965-3245
Counsel for the Division of Enforcement
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036
(323) 965-3998 (*telephone*)
(323) 965-3908 (*facsimile*)

In the Matter of George Charles Cody Price
Administrative Proceeding File No. 3-16946
Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached was served on February 1, 2016 upon the following parties as follows:

By Facsimile and Overnight Mail
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793
(Original and three copies)

By Email and Overnight Mail
Honorable Brenda P. Murray
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

By Email and U.S. Mail
John E. Dolkart, Jr., Esq.
1750 Kettner Blvd., Suite 416
San Diego, CA 92101
Email: john@dolkartlaw.com
Attorney for Respondent

Dated: February 1, 2016

Angela L. Hill