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.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY AFFIRMANCE

July 21, 2016

Division of Enforcement
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I. INTRODUCTION

The Division of Enforcement ("Division") respectfully moves for summary affirmance, pursuant to Rules of Practice 154 and 411(e), of the June 3, 2016 Initial Decision in this matter that barred Respondent George Charles Cody Price ("Price") from the securities industry based on the entry of a permanent injunction against him by a United States District Court. On June 30, 2016, Price petitioned the Securities and Exchange Commission ("Commission") for review of that Initial Decision. Price's petition for review should be denied, because he does not identify any factual or legal errors in the Initial Decision, or any decision of law or policy that warrants review by the Commission.

Although his petition is not a model of clarity, Price makes four arguments in favor of Commission review. He argues that:

1) the Initial Decision should be overturned to permit "consideration of the complete record of the underlying civil case and [a] pending FINRA arbitration case number 14-02711;"[1]
2) the entire matter should be stayed for "ninety (90) days or until the end of September 2016," so that the Commission may consider the decision of the FINRA arbitrators that "will conclusively determine the loss to Respondent's investors;"[2]
3) the proceedings should be stayed until "in or about September 2016" so that Price can file a supplemental brief containing evidence of unspecified "other factors relevant for consideration . . . which mitigate any harm caused Respondent's actions which have not been factored into the Initial Decision;"[3] and
4) certain unspecified portions of pages seven to nine of the Initial Decision should be stricken as "unnecessary and inflammatory."[4]

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[1] Petition pp. 2, 3.
[2] Petition pp. 2, 4.
[3] Petition p. 5.
[4] Petition p. 4.

Price's first three arguments essentially amount to a demand to submit new evidence that may (or may not) be generated in a pending FINRA arbitration so that he can re-litigate the appropriateness of the bar against him. This request should be denied for the simple reason that it is well-settled that summary proceedings are appropriate where the facts have been litigated and determined in an earlier judicial proceeding, an injunction has been entered, and the sole determination is the appropriate sanction. In addition, the Adminstrative Law Judge ("ALJ") has already considered and rejected Price's arguments regarding the FINRA arbitration, and correctly held, based on Commission precedent, that summary disposition is proper in "'follow-on' proceedings like this one, where the administrative proceeding is based on a criminal conviction or civil injunction." Init. Dec. at p. 2. As for Price's fourth request, it is insufficiently specific to warrant any kind of relief.

Because summary disposition was appropriate and Price's petition for review does not raise any issues that would warrant further briefing or hearing, the Commission should reject the petition for review and summarily affirm the Initial Decision.

II. PROCEDURAL BACKGROUND

A. The District Court Action

In February 2013, the Commission sued Price in the Southern District of California in a matter entitled *SEC v. ABS Manager, LLC, et al.*, Case No. 13 CV 0319 GPC (BGS). The Commission alleged that Price violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; and Section 17(a) the Securities Act of 1933 ("Securities Act"), and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Declaration of Lynn M. Dean ("Dean Decl."), Ex. 1.

On April 30, 2015, Price consented, on a neither admit nor deny basis, to entry of a final judgment against him in *SEC v. ABS Manager*. *Id.* Ex. 2. In addition, Price agreed in that Consent that "in any disciplinary proceeding before the [Commission] based on the entry of the injunction. . . he shall not be permitted to contest the factual allegations of the complaint. *Id.* at p. 4, lines 10-13. With Price's consent, a Final Judgment was issued by the district court on July 16, 2015, permanently enjoining Price from future 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. *Id.*, Ex. 3.

B. The Administrative Proceeding

The Division instituted an administrative proceeding against Price with an Order Instituting Proceedings ("OIP") on November 5, 2015, pursuant to Section 203(f) of the Advisers Act. The proceeding is a follow-on proceeding based on the July 16, 2015 entry of permanent injunctions against Price in the district court action.

Price was deemed served with the OIP on November 16, 2015. Price served his Answer on or about December 7, 2015. In his Answer, Price did not contest the entry of the permanent injunction against him, but he did "generally deny" the underlying factual allegations in the District Court Complaint despite his prior agreement precluding him from doing so. Resp.'s Answer ¶ 4. Price also advanced an argument that the matters alleged in the Division's OIP were "not material to any investor," and further, inexplicably asserted that he lacked "sufficient knowledge or information to form a belief as to the allegations contained in paragraph 1 or 3 of the Commission's [*sic*] OIP." *Id.* at ¶¶ 5-6.

At a prehearing conference on November 30, 2015, the ALJ granted the Division leave to file a motion for summary disposition.

On June 3, 2016, the ALJ issued an Initial Decision which granted the Division's motion for summary disposition and permanently barred Price from the securities industry.

On June 30, 2016, Price filed his petition for review of the Initial Decision.

C. The ALJ's Findings of Fact

In reviewing the record of the underlying action and Price's submissions in opposition to the Division's motion for summary disposition, the ALJ made the following findings of fact.

First, the ALJ found that Price was enjoined on July 16, 2015 from violating 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. Initial Dec. p. 2. As part of that district order, Price was also ordered to pay disgorgement of $339,900, plus prejudgment interest and a civil penalty of $150,000. *Id.* at p. 3. In addition, Price agreed in

consenting to the judgment in the district court case that "entry of a permanent injunction may have collateral consequences under federal or state law," and "that he shall not be permitted to contest the factual allegations of the complaint" in "any disciplinary proceeding before the [Commission] based on entry of the injunction." *Id.*

Second, the ALJ found that Price controlled three investment funds. Specifically, from 2009 to February 2013, Price owned, operated and controlled ABS Manager, LLC, an unregistered investment adviser. *Id.* Through ABS Manager, Price raised approximately $18.8 million from 35 investors, which was pooled into the ABS Fund, Platinum Fund and Capital Access fund—the funds which Price and ABS Manager managed and were investments advisers. *Id.* The investors received an ownership interest in the three funds, and Price invested those funds' assets in Interest Only mortgage-backed collateralized mortgage obligations ("CMOs"). *Id.* The interest-only feature of the funds' assets increased their risk of loss, because these CMOs do not have a principal component, as the mortgages in the CMO are retired or redeemed (through refinancing, payoff or default), the income stream going to the tranches decreases or stops. *Id.* Although these risky securities are sometimes called "government-backed," this "government backing" only ensured that the investors receive the interest payments from the underlying mortgage loans that have not been retired or redeemed. There was no guarantee that investors could recoup their original investment. *Id.* at pp. 3-4.

Third, the ALJ found that Price committed fraud. In particular, the ALJ found that Price, through ABS Manager, and the funds PPM's, websites, and radio advertising, made material false and misleading statements about the risk of investing in the Funds. Price claimed that the funds were "safe" and "secure" because they were invested it in "government-backed bonds," that were a "perfect fit for retirement funds," without disclosing the risks of their interest only features. *Id.* at p. 4.

Price also made material misrepresentations about the funds' performance, providing monthly account statements to investors representing that each CMO held in the Funds was individually "[p]erforming at 18% or better" or "12.5% or better," writing in an October 2010 investor newsletter, that "[a]ll of the bonds are making well over 18% and will continue to do so for

quite some time," and stating on the radio that the Funds earned "extraordinary" and "double-digit" returns. These representations were false when Price made them, because the funds' assets lost value and returns were negative from 2010 to 2012. Price knew this, because he wrote an internal document in April 2010 stating that one of the funds was "upside down 5% in principal value." *Id.*

The ALJ also found that Price materially overstated the assets of the Funds' assets by claiming that two funds were worth $62.4 million and $72 million in assets, respectively, when there was no more than $18.8 million in assets at any time. *Id.* In the funds' PPMs and on ABS-run websites, Price falsely stated that he has bought and sold mortgage pools in the secondary market at Wells Fargo and Goldman Sachs. *Id.* Price repeated these misrepresentations on the radio, over the phone, and in seminars. *Id.* These representations were false; Price never worked at Goldman Sachs, and at Wells Fargo he worked in mortgage origination, and was not involved in trading mortgage backed securities or in the securitization of mortgages. *Id.*

Fourth, the ALJ found that Price misappropriated investor assets. Although the PPMs for the funds stated that ABS Manager could be compensated *only after* investors received the minimum annual return of 12.5% or 18%, and the funds' actual returns never exceeded 3%, the ALJ found that Price and ABS Manager wrongfully misappropriated $578,402 from the funds in the form of unearned management fees. *Id* at pp. 4-5.

Finally, the ALJ found that Price acted with scienter. In engaging in his fraud and misappropriation, Price acted knowingly or recklessly. *Id.* at p. 5. As the sole manager of ABS, Price knew that the made material misrepresentations, or omissions of fact to investors regarding the risks and returns of the funds and his own background were false and misleading, and knew that payments to himself or ABS were improper and misappropriated. *Id.*

III. ARGUMENT

A. Summary Affirmance Standard

Commission Rule of Practice 411(e) governs motions for summary affirmance. 17 C.F.R. § 201.411(e). Rule 411(e) permits the Commission to grant summary affirmance of an initial decision if it finds "that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument," but summary affirmance is not to be granted "upon a reasonable

showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review." *Id.* Summary affirmance is appropriate 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*, Exch. Act Rel. No. 65204, 2011 SEC LEXIS 3002, at *2 n.1 (Comm. Op. Aug. 26, 2011). Finally, summary affirmance may be granted when it is clear that submission of briefs by the parties will not benefit the Commission in reaching a decision. *Richard D. Cannistraro*, Exch. Act Rel. No. 39521, 1998 SEC LEXIS 15, at *4 n.3 (Comm. Op. Jan. 1, 1998).

Price's petition for review does not identify any factual or legal errors in the administrative proceeding, nor does he argue that the Initial Decision brings into question an important question of law or policy that should be reviewed by the Commission. Instead, Price merely seeks yet another bite at the apple, recycling arguments he made to the ALJ, and once again attempting to re-litigate the matter with hypothetical additional evidence that his petition concedes will not exist until September 2016, if ever. Because the ALJ applied well-settled law to undisputed facts to reach the conclusion that an important public policy was served in barring Price from the securities industry, summary affirmance of the Initial Decision is warranted.

B. Price Cannot Submit Further Evidence or Dispute the Underlying Facts

1. Summary Disposition Was Appropriate

As a preliminary matter, the summary disposition procedure used in the administrative proceeding is authorized by Commission Rule of Practice Rule 250. 17 C.F.R. § 201.250. Rule 250 provides that after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying, a party may move for summary disposition of any or all allegations of the OIP. A hearing officer may grant the motion for summary disposition 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.

Summary disposition was particularly appropriate here because the facts were litigated in an earlier judicial proceeding, an injunction was entered by the district court, and the sole determination concerned the appropriate sanction. *See, e.g. Omar Ali Rizvi*, Initial Dec. Rel. No. 479, 2013 SEC LEXIS 47, *9 (Jan. 7, 2013) ("Commission has repeatedly upheld use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction."), *notice of finality*, Release No. 69019 (Mar. 1, 2013), 2013 SEC LEXIS 639; *Daniel E. Charboneau*, Initial Dec. Rel. No. 276, 2005 SEC LEXIS 451 *2-3 (Feb. 28, 2005) (summary disposition granted and penny stock bar issued based on injunctions and memorandum opinion issued by trial court on Commission complaint), *notice of finality*, 85 S.E.C. 157, 2005 SEC LEXIS 705 (Mar. 25, 2005); *Currency Trading Int'l Inc.*, Initial Dec. Rel. No. 263, 2004 SEC LEXIS 2332, *6-7 (Oct. 12, 2004) (summary disposition granted and broker-dealer bar issued based on trial court's entry of injunctions and findings of fact and conclusions of law), *notice of finality*, 84 S.E.C. Docket 440, 2004 WL 2624637 (Nov. 18, 2004).

Here, Price consented to the district court injunctions and agreed that he could not contest the allegations in the district court complaint in any future proceeding before the Commission. Petition at pp. 1, 3. The only issue before the ALJ was whether it was appropriate to permanently bar Price from the securities industry. To obtain that bar, the Division needed to 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 first requirement was easily satisfied. The ALJ found 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. Init. Dec. at pp. 2-3.

The second requirement was also easily satisfied without the need for a hearing. The ALJ based her decision on the OIP, Price's Answer to the OIP, and the complete record in the administrative proceeding. In addition, the ALJ correctly took notice of Price's agreement not to contest the factual allegations of the complaint, and the fact that his Answer to the OIP "conceded those allegations '[f]or purposes of this Proceeding.'" *Id.* at p. 3. Finally, the ALJ admitted all of the

exhibits submitted by the parties into evidence, and took notice of the record in the underlying action, and her decision was "based on the entire record." *Id.* at p. 2. Based on that complete record, the ALJ determined that a permanent bar was warranted and in the public interest to prevent a recurrence of Price's unlawful conduct. The ALJ specifically rejected Price's attempts to argue for a time limited bar by "dispute[ing] the allegations of the civil complaint 'to the extent it warrants the punishment requested,'" noting that his consent in the underlying action precluded such arguments. Init. Dec. at p. 6 and n. 2, *citing Toby G. Scammell*, Advisers Act Rel. No. 3961, 2014 SEC LEXIS 4193 at *33 and n. 57 (Comm. Op. Oct. 29, 2014) (the Commission has a "well-established policy" that "a respondent in a follow-on proceeding. . . is not permitted to contest the allegations of the complaint to which he consented").

Therefore, summary disposition was appropriate, and the ALJ did not err in granting it.

2. Price's Purported New Evidence is Irrelevant

Although Price now argues that the Initial Decision should be overturned or stayed to permit him to introduce new evidence that *might* come to fruition at some unspecified time *in the future*, after the conclusion of a pending FINRA arbitration, the ALJ has already considered and rejected that argument. In assessing the possibility that Price might commit future violations of the federal securities laws, the ALJ noted that "Price's assertions that investors lost no money—or that such losses have yet to be determined in pending FINRA arbitration—do not mitigate sanctions because the Commission's focus 'is on the welfare of investors generally and the threat one poses to investors and the markets in the future.'" Init. Dec. at p. 8, *citing Gary M. Kornman*, Exch. Act Rel. 59403, 2009 SEC LEXIS 367 at *33 (Comm. Op. Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

In any case, Price's petition fails to provide any explanation as to the subject matter of this FINRA proceeding or any explanation of why it might be relevant. These failures are telling. The FINRA arbitration has nothing to do with whether an injunction was entered against Price (it was) or whether an industry bar against Price is in the public interest (it is). Price filed the arbitration against Morgan Stanley after it liquidated the Capital Access Fund's assets in a margin call. It did

so because Price recklessly pledged the assets as security for a line of credit. Dean Decl. ¶¶ 3-4. That liquidation, which resulted in a 100% loss to some investors, occurred after the complaint was filed in the underlying district court 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 additional investor losses he caused has no bearing on this proceeding, a fact expressly noted by the ALJ in the Initial Decision. Init. Dec. at p. 3, n. 1.Thus, the ALJ expressly found that she need not consider the potential losses that are the subject of the FINRA arbitration. Init. Dec. at p. 3, n. 1. Moreover, the ALJ correctly noted that "Price cannot deny[] that he misappropriated fund assets, causing harm to investors." Init. Dec. at p. 8.

Since the ALJ did not rely on the loss to investors being adjudicated in the FINRA arbitration in finding that a permanent bar was warranted, any potential new evidence generated in that arbitration is irrelevant to this proceeding and cannot be the basis to overturn the initial decision or stay these proceedings.

C. The Steadman Factors Support a Permanent Bar

As set forth above, Price had an opportunity to present evidence in support of his contention that no bar or a time-limited bar was appropriate, the ALJ has considered the total record, and decided that a permanent bar is warranted. Further, Price has failed to identify any error of fact or law by the ALJ that would warrant reconsideration or additional briefing. Accordingly, there is no need for the Commission to consider whether it was appropriate to permanently bar Price from the securities industry in connection with his petition for review. Nevertheless, to the extent that the Commission elects to do so, the record more than supports the ALJ's decision.

Section 203(f) of the Advisers Act, as amended by Section 925(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 925(b), 124 Stat. 1376 (2010) [codified at 15 U.S.C. § 80b-3(f)]("Dodd-Frank"), provides that the Commission may bar a person from being associated with a "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," if such a bar "is in the public interest" and the person has enjoined from certain violations of the federal

securities laws, including, for the purposes of this proceeding, violations of the antifraud provisions. *See* Section 203(f) of the Advisers Act.

In deciding whether a bar is warranted, courts consider the factors enumerated in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). These factors are (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations). *Id.* Here, the ALJ correctly applied the Steadman factors and made a finding that "[e]ach public interest factor supports imposing an industry bar with no time limit, which will prevent [Price] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." Init. Dec. at p. 9, citing *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529 at *86-87 (Comm. Op. May 2, 2014).

First, the ALJ properly found that Price's conduct was egregious and recurrent. As an investment adviser, Price owed a fiduciary duty to his investors. Init. Dec. at p. 6; *see also 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). As a fiduciary, Price was required "to act for the benefit of [his] clients, ... to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." *SEC v. DiBella*, No. 3:04-cv-1342 (EBB), 2007 WL 2904211, at *12 (D. Conn. Oct. 3, 2007) (quoting *SEC v. Moran*, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996)), *aff'd*, 587 F.3d 553 (2d Cir. 2009); *see also SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) ("Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients."). Moreover, Rule 206(4)-8 of the Advisers Act expressly prohibits investment advisers from making misrepresentations or omissions to investors or prospective investors. *See* 17 C.F.R. § 275.206(4)-8; *SEC v. Rabinovich*

& Assocs., LP, 2008 U.S. Dist. LEXIS 93595 (S.D.N.Y. 2008); *Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles*, Advisers Act Release No. 2628 (August 3, 2007).

Despite this duty, the ALJ found that over a period of many years, Price invested millions of dollars of clients' money into risky interest only CMOs, while making material misrepresentations and omissions to investors regarding the safety of investing in the funds, their rates of return, and his own experience in managing such securities. In addition, she found that Price misappropriated investor funds. Init. Dec. at pp. 6-7. Thus, this first two *Steadman* factors are satisfied. *Steadman*, 603 F.2d at 1140.

Second, the ALJ justifiably found that "Price acted with a high degree of scienter." Init. Dec. at p. 7. "As the sole manager of the funds," she found that he was aware of the funds' holdings and performance and thus "knew, or was reckless in not knowing that his misrepresentations and omissions concerning risks, assets, and performance were misleading." *Id.* She also found that Price knew or was reckless in not knowing that his statements regarding his professional background were false, and that the compensation he took was "improper and misappropriated." *Id.* Accordingly, the third *Steadman* factor was satisfied. *Steadman*, 603 F.2d at 1140.

Third, the ALJ correctly found that Price's assurances that he would not commit future violations were insufficient to rebut "the inference that the 'existence of [his] violation' makes it likely 'it will be repeated.'" Init. Dec. at p. 7, *citing Tzemach David Netzer Korem*, Exch. Act Rel. No. 70044, 2013 SEC LEXIS 2155, at *23 n. 50 (July 26, 2013). First, the ALJ noted that Price's statements that he had complied with the district court judgment and that he had no prior violations were not mitigating, since his compliance with the judgment and the securities laws was "expected," and "should not be rewarded." *Id.* Moreover, the ALJ noted that Price did not rebut the Division's claim that in fact he failed to pay any part of the disgorgement or penalty. *Id.* Finally, the ALJ found that Price's failure to honor his agreement not to contest the allegations of the complaint "undercut[] the credibility of his assurances against future violations." *Id.* Thus, the

fourth *Steadman* factor was satisfied. *Steadman*, 603 F.2d at 1140.

Fourth, the ALJ properly found that although Price touted his cooperation with the Division and in the administrative proceeding, his arguments that he had not "engaged in conduct amounting to violations," that his disclosures to investors were "sufficient," that the district court complaint "lacked evidence," was 'plainly wrong" centered on a "technical dispute," and cannot be fully determined absent the resolution of the FINRA arbitration, "demonstrate[d] that he does not recognize the wrongful nature of his conduct." Init. Dec. at p. 8.[5] Accordingly, the fifth *Steadman* factor was satisfied. *Steadman*, 603 F.2d at 1140.

Fifth and finally, the ALJ correctly found that the fact that Price had successfully solicited investors in the past and had spent "his entire professional life" in the securities industry, coupled with his lack of remorse or understanding that his conduct violated the law, indicated a "substantial possibility of future violations and weigh in favor of an industry bar with no time limit." Init. Dec. at p. 8. The ALJ also noted that Price's arguments that a bar would cause him professional and financial hardship, and that he should receive a waiver from the "bad actor disqualification" from unregistered offerings, focused on how harm to him should be minimized, and did not minimize the gravity of his conduct or lessen the likelihood that he would commit future violations. *Id.* Therefore, the sixth *Steadman* factor was satisfied. *Steadman*, 603 F.2d at 1140.

Because the record supports the ALJ's finding that all of the *Steadman* factors militate in favor of a permanent bar, that decision should be upheld, and the Initial Decision should be affirmed.

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[5] Of course, these arguments also further violate Price's agreement not to dispute the allegations of the district court complaint. Init. Dec. at p. 8.

D. Price's Objections to Certain Pages of the Initial Decision Should Be Rejected

In his Petition, Price also argues that pages seven to nine of the Initial Decision should be stricken as "unnecessary and inflammatory." A fatal flaw in this overly broad request is that Price identifies only one word in those three pages that he claims is objectionable—the ALJ's use of the word "welshed." Init. Dec. at p. 7. These pages contain a portion of the ALJ's analysis of the *Steadman* factors; specifically, her findings that Price failed to make assurances against future violations or recognize the wrongfulness of his conduct, and that it was likely his occupation would present opportunities for future violations. Init. Dec. at pp. 4-7. Although Rule 152(f) of the Commission's Rules of Practice provides that "[a]ny scandalous or impertinent matter contained in any brief or pleading . . . may be stricken on order of . . . the hearing officer," it is axiomatic that a motion to strike must specifically identify the material to be stricken. *See, e.g.,* 10B Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE § 2738 ("[i]t follows that a motion to strike should specify the objectionable portions of the affidavit and the grounds for each objection. A motion asserting only a general challenge to an affidavit will be effective"); *L.C. Indus. v. Lewis & Clark Outdoors, Inc.*, 2009 U.S. Dist. LEXIS 76327 *3-5 (W.D. Ark. July 24, 2009)(declining to strike evidence where motion did not identify material with specificity); 17 C.F.R. § 201.152(f). It would be improper to strike or amend these pages without some specific showing by Price regarding what portion of their content is improper is improper and why.

As to his lone specific objection, Price's petition states that he is of Welsh descent, and argues that the ALJ's use of the word "welshed" to describe his failure to keep "his promise not to contest the civil complaint's allegations" is "racially offensive." Petition at p. 4; Init. Dec. at p. 7. While this statement may be true, Price provides no evidence to support it, and Price's heritage was not raised in either the district court action or the administrative proceeding. Dean Decl. ¶ 5. Moreover, the Oxford Dictionary defines "welsh" as a verb meaning "fail to honor (a debt or obligation incurred through a promise or agreement)." *Id.* The word dates to the19th century, but

the Oxford Dictionary has no data on derivation, though it indicates that "welch" is an alternate spelling. *Id.* Price himself offers no authority for the proposition that the word "welshed" is derived from the proper noun "Welsh" or refers to persons from Wales.[6] *Id.*

There is thus no reason for the Commission to consider further briefing on this issue, and the Initial Decision should be affirmed as it stands. Alternatively, if the Commission finds it necessary, the Initial Decision could be affirmed in all respects, with one modification—replacing the word "welshed" with some other synonym, like "reneged." The Division would have no objection to such a change.

IV. CONCLUSION

Because Price has failed to raise any issue that requires further briefing or hearing, his petition for review should be denied and the Commission should summarily affirm the determination of the ALJ that Price should be permanently barred from the securities industry.

Dated: July 21, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT

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[6] Dictionary.com contains the following usage note: "Use of this verb is sometimes perceived as insulting to or by the Welsh, the people of Wales. However, its actual origin may have nothing to do with Wales or its people; in fact, the verb is also spelled *welch*." Dean Decl. ¶ 5.

Certificate of Service

I certify that on July 21, 2016, I caused the foregoing to be served on the following persons by the method of delivery indicated below.

Brent J. Fields, Secretary Securities and Exchange Commission 100 F. Street, N.E., Mail Stop 1090 Washington, D.C. 20549	(by United Parcel Service) (original and three copies)
Honorable Brenda J. Murray Administrative Law Judge 100 F Street, N.E., Mail Stop 2557 Washington, D.C. 20549-2557	(by United Parcel Service and by email to alj@sec.gov)
John E. Dolkart, Jr., Esq. 1750 Kettner Blvd, Suite 416 San Diego, CA 92101 Counsel For Respondent George Charles Cody Price	(by United Parcel Service and email to john@dolkartlaw.com)

Lynn M. Dean

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ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946

ORIGINAL

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **GEORGE CHARLES CODY PRICE,** **Respondent.**	Hearing Officer: Hon. Brenda J. Murray

DECLARATION OF LYNN M. DEAN IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE

July 21, 2016

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SUPPLEMENTAL DECLARATION OF LYNN M. DEAN

I, Lynn M. Dean, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney at law admitted to practice law in the State of California and before the United States District Court for the Southern District of California. I am employed as Senior Trial Counsel for the Los Angeles Regional Office of the U.S. Securities and Exchange Commission ("Commission"), 444 Fifth Street, 9th Floor, Los Angeles, California 90071, Telephone: (323) 965-3998.

2. I am the trial counsel assigned to litigate this matter on behalf of the Division of Enforcement. I have personal knowledge, or knowledge based upon my review of the record, of the facts set forth in this Declaration, and, if called and sworn as a witness, could and would competently testify thereto.

3. With respect to the FINRA arbitration that Price discusses in his opposition, in June 2012, one of the underlying funds, the Capital Access Fund, began allowing investors to obtain a line of credit from ABS Manager of up to 70% of the value of their investment. To fund these loans, ABS Manager obtained a "non-purpose loan" from its broker-dealer and clearing firm, Morgan Stanley. Price falsified the loan application with Morgan Stanley by claiming that he intended to use the proceeds of the loan to purchase commercial and residential real estate.[1] He pledged the Capital Access bonds as collateral for the loan.

---

[1] Price repeated that lie about real estate purchases at least three more times: On May 23, 2012 he wrote to Morgan Stanley: "I also have 2mm in value of new bonds coming over later today....I will be utilizing them right away for the express credit line. ... I have a large real estate purchase coming and want to use about $1.4mm of the 2mm in value. On October 12, 2012, Price sent Morgan Stanley a letter in which he certified that the line of credit draws had been used "to complete asset transactions," including international and domestic real estate. Then, on January 14, 2013, when he was trying to move the bonds assets, Price falsely represented to another broker that the line of credit was used "to draw down the funds to buy real estate." Confronted with this last statement in deposition, Price was forced to admit that the money was loaned to investors and he had never asked how they had used the money.

4. The addition of the line of credit to the Fund's brokerage account made the account susceptible to a "margin call" that would either need to be satisfied immediately in the form of additional cash, the payoff of the entire amount borrowed, or a liquidation of securities. That risk was realized in October 2012, Morgan Stanley notified Price that it had concerns about the credit risk associated with the bonds securing this loan. After months of negotiation, on December 17, 2012, Morgan Stanley gave Price notice that it intended to terminate the lending facility, and gave him until January 31, 2013 to move the account to another broker. Price held a telephone conference with investors in January 2013 in which he told them that he had decided to move assets from Morgan Stanley, but he did not tell them that Morgan Stanley had demanded it. Price was unable to move the account in time, and between February 23 and February 28, 2013, the assets of Capital Access were liquidated by Morgan Stanley. As a result of Price's reckless borrowing against the bonds held by Capital Access, some Capital Access investors suffered a total loss. However, those losses occurred after the Complaint was filed in the underlying action, and were not part of the disgorgement to which Price consented.

5. Price's petition states that he is of Welsh descent, and argues that the ALJ's use of the word "welshed" to describe his failure to keep "his promise not to contest the civil complaint's allegations" is "racially offensive." Petition at p. 4; Init. Dec. at p. 7. While this statement may be true, Price provides no evidence to support it, and that fact of Price's heritage was not raised in either the district court action or the administrative proceeding. Moreover, I personally conducted a search of various online dictionaries, and was unable to find any entry that definitively connects the verb "welshed" to the proper noun "Welsh," which describes a person from Wales. For example, the online Oxford Dictionary defines "welsh" as a verb meaning "fail to honor (a debt or obligation incurred through a promise or agreement)." The word dates to the 19th century, but the Oxford Dictionary has no data on derivation, though it indicates that "welch" is an alternate spelling. <http://www.oxforddictionaries.com/us/definition/ameican_english/welsh> Similarly, Dictionary.com contains the following usage note: "Use of this verb is sometimes perceived as insulting to or by the Welsh, the people of Wales. However, its actual origin may have nothing to

do with Wales or its people; in fact, the verb is also spelled *welch*."

<http://www.dictionary.com/browse/welsh>

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 21, 2016 in Los Angeles, California.

Lynn M. Dean

Certificate of Service

I certify that on July 21, 2016, I caused the foregoing to be served on the following persons by the method of delivery indicated below.

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, D.C. 20549

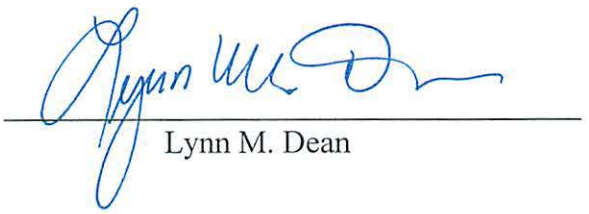
(by United Parcel Service)
(original and three copies)

Honorable Brenda J. Murray
Administrative Law Judge
100 F Street, N.E., Mail Stop 2557
Washington, D.C. 20549-2557

(by United Parcel Service and by email to alj@sec.gov)

John E. Dolkart, Jr., Esq.
1750 Kettner Blvd, Suite 416
San Diego, CA 92101
Counsel For Respondent
George Charles Cody Price

(by United Parcel Service and by email at john@dolkartlaw.com)



Lynn M. Dean

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16946

In the Matter of

GEORGE CHARLES CODY PRICE

Respondent.

DIVISION OF ENFORCEMENT'S NOTICE OF OPPOSITION OF PETITION FOR REVIEW

July 1, 2016

Division of Enforcement
Lynn M. Dean, Esq.
Email: deanl@sec.gov
Telephone: (323) 965-3245
John B. Bulgozdy, Esq.
Email: bulgozdyj@sec.gov
Telephone: (323) 965-3322
Los Angeles Regional Office
Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071-9591
Facsimile: (213) 443-1905

The Division of Enforcement ("Division") opposes the petition for review filed by Respondent George Charles Cody Price ("Price" or "Respondent") and respectfully requests that the Securities and Exchange Commission ("Commission") affirm the Initial Decision of the Administrative Law Judge issued on June 3, 2016, which barred Respondent from the securities industry based on the entry of permanent injunctions against him by the United States District Court of the Southern District of California. Pursuant to Rules of Practice 154 and 411(e), the Division intends to separately move for summary affirmance of the Initial Decision. Because summary disposition was appropriate in this matter and Price's petition for review does not raise any substantive issues or dispute the entry of the permanent injunctions against him, the Commission should reject the petition for review and summarily affirm the Initial Decision.

Dated: July 1, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT

Lynn M. Dean
John B. Bulgozdy
Counsel for the Division of Enforcement
Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071-9591

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:

NOTICE OF APPEARANCE

was served on July 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: (202) 772-9324
(Original and three copies)

By Email
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
Counsel For Respondent
George Charles Cody Price
Attorney for Respondent

Dated: July 1, 2016

Lynn M. Dean

HARD COPY

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **GEORGE CHARLES CODY PRICE,** **Respondent.**	**ADMINISTRATIVE PROCEEDING** **FILE NO. 3-16946**

RESPONDENT'S MOTION FOR LEAVE TO FILE SURREPLY

Respondent George Charles Cody Price ("PRICE") files this Motion for Leave to File a Surreply (the "SURREPLY") to the Division of Enforcement's (the "DIVISION") Reply Memorandum in support of its' Motion for Summary Disposition (the "MOTION") in the above captioned Administrative Proceeding (the "PROCEEDING") initiated by the Securities and Exchange Commission (the "SEC") in its Order Initiating Proceeding (the "OIP") dated November 5, 2015.

Specifically, Respondent Price seeks to record his opposition to the supplemental declaration of Lynn M. Dean (the "SUPPLEMENTAL DECLARATION") as improper with regard to the assertions made at paragraphs 3, 4, 5, 6 and 7 therein which essentially amount to new facts, including several factually misleading assertions.

The decision to grant or deny leave to file a surreply is committed to the sound discretion of the court. *American Forest & Paper Ass'n, Inc., v. U.S. Environ. Protection Agency*, No. 93- cv-0694 (RMU), 1996 WL 509601, *3 (D.D.C. 1996) (granting leave). Granting leave to file a surreply is appropriate when a reply leave a party unable to contest matters presented to the court for the first time. *Ben-Kotel v. Howard Univ.*, 319 F.3d 532, 536 (D.C. Cir. 2003) (citation omitted); *Alexander v. FBI*, 186 F.R.D. 71, 74 (D.D.C. 1998) (granting leave).

Additionally, a surreply may become necessary whether the new matter raises a new legal argument, or in this instance, new facts. See *American Forest & Paper*, 1996 WL 506601 at *3. standard. The Respondent's proposed Surreply, attached hereto as Exhibit A is appropriate under these circumstances.

I. ARGUMENT

The Reply includes several misstatements referenced throughout which are contained in the Supplemental Declaration by Lynn M Dean at paragraphs 3, 4, 5, 6 and 7. These misstatements include new allegations that Respondent Price engaged in subsequent misconduct and collectively imply that Price has ulterior motives in defending himself in this proceeding and in complying with the judgment entered in the underlying civil proceeding.

Essentially these new contentions fall into three categories of new arguments: (1) that Price committed additional misdeeds after the SEC initiated the underlying civil complaint (para. 3, 4 and 7) ; (2) that Price is – to this day – misleading investors (See, Supplemental Declaration paras. 4 and 7); and (3) that Price misled Morgan Stanley about loans extended to ABS Fund, LLC (See, Supplemental Declaration paras. 5 and 6).

In the Reply itself, these facts appear at page 7 where it states, "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." The Reply Memo goes on at footnote 6 to state: "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 (sic) custodied fun assets, failed to disclose to investors the imminent threat the funds 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."

These contentions contain new factual information, not previously presented by the Division in its OIP or in its Motion. More troubling is these so-called "facts" distort the factual record of this proceeding by creating new information which Respondent Price, absent the opportunity to file a

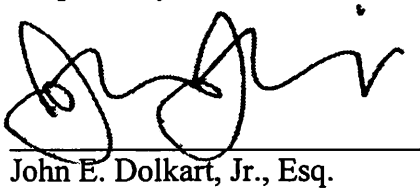
Surreply has no ability to object to prior to the court's decision on the Division's Motion for Summary Disposition. The Respondent's Surreply is necessary to correct these errors and to raise evidentiary objections to the admissibility of this evidence for the record.

II. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests the Court issue an order granting leave to the Respondent to file its proposed Surreply.

DATED: February 10, 2016

Respectfully submitted,



John E. Dolkart, Jr., Esq.
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1750 Kettner Blvd, Suite 416
San Diego, CA 92101
Tel: (702) 275-2181

COUNSEL FOR RESPONDENT GEORGE CHARLES CODY PRICE

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:

MOTION FOR LEAVE TO FILE SURREPLY BY RESPONDENT GEOREGE CHARLES CODY PRICE

On February 10, 2016.

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: (202) 772-9324
(Original and three copies)

By: Email
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 Overnight Mail
Lynn M. Dean, Esq.
Division of Enforcement, Los Angeles Regional Office Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071-9591
Email: deanl@sec.gov

DATED: February 10, 2016

BY: _____
John E. Dolkart, Jr., Esq.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **GEORGE CHARLES CODY PRICE,** **Respondent.**	**ADMINISTRATIVE PROCEEDING** **FILE NO. 3-16946**

RESPONDENT'S SURREPLY

The Division of Enforcement (the "DIVISION") has submitted a Reply (the "REPLY") that contains, at page 7 thereof, new factual allegations in support of its' Motion for Summary Disposition (the "MOTION") in the above captioned Administrative Proceeding (the "PROCEEDING"). The contentions appear for the first time in the Reply are and are not contained in the Division's Motion or in the underlying Order Instituting Administrative Proceedings (the "OIP") in the above captioned matter.

Specifically, these new contentions of fact are sourced from a supplemental declaration (the "SUPPLEMENTAL DECLARATION") by attorney Lynn M. Dean, filed in support of the Division's Motion at paragraphs 3, 4, 5, 6 and 7 contains new facts, including several factually misleading assertions.

This Surreply is necessary to make the appropriate evidentiary objections as part of the record in this proceeding and to respond accordingly with information, which further explains the factual context of the new contentions and clarifies their meaning. Accordingly, the Respondent moves to strike those portions of the Supplemental Declaration, as further identified below, to preserve the record from unverified heresy allegations which at the very least at misleading and perhaps more troubling, false entirely.

I. ARGUMENT

The Reply and Supplemental Declaration filed by Lynn M Dean at paragraphs 3, 4, 5, 6 and 7 on behalf of the Division contains several misstatements which amount to new allegations that Respondent Price engaged in subsequent misconduct and collectively imply that Price has ulterior motives in defending himself in this proceeding and in complying with the judgment entered in the underlying civil proceeding. There is no evidence, other than the declaration itself that any of these events actually took place. More troubling, is mischaracterization of certain events by the Division in the Supplemental Declaration to the extent it warrants this Surreply by the Respondent.

Essentially these new facts and contentions fall into three categories of new arguments: (1) that Price committed additional misdeeds after the SEC initiated the underlying civil complaint (para. 3, 4 and 7) ; (2) that Price is – to this day – misleading investors (See, Supplemental Declaration paras. 4 and 7); and (3) that Price misled Morgan Stanley about loans extended to ABS Fund, LLC (See, Supplemental Declaration paras. 5 and 6).

In the Reply itself, these facts appear at page 7 where it states, "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." The Reply Memo goes on at footnote 6 to state: "Price's conduct in this regard is consistent with his conduct throughout these offerings and the proceedings against him. He mad misrepresentations to investors before the SEC action against him, made misrepresentations to Morgan Stanley in connection wit the brokerage account in which he (sic) custodied fun assets, failed to disclose to investors the imminent threat the funds 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."

These contentions contain new factual information, not previously presented by the Division in its OIP or in its Motion. More troubling is these so-called "facts" distort the factual record of this proceeding by creating new information which Respondent Price, absent the opportunity to file a Surreply has no ability to object to prior to the court's decision on the Division's Motion for Summary Disposition. The Respondent's Surreply is necessary to correct these errors and to raise

evidentiary objections to the admissibility of this evidence for the record. In addition, the Respondent has provided a Declaration, attached hereto as Exhibit B, in support of this Surreply.

II. OBJECTIONS

The Respondent makes the following objections to the Supplemental Declaration:

Paragraph 3 – Hearsay; Speaker lacks personal knowledge of new assertions of fact.

Paragraph 4 – Misstates facts not in evidence. The Division does not include a copy of the actual letter and instead mischaracterizes its contents.

Paragraph 5 – This paragraph contains new facts/arguments, which are controverted by the transcript of the deposition of Respondent Price on this particular issue. The transcript at issue or relevant portions thereof have been omitted from the Division's Reply.

Paragraph 6 – This paragraph contains new facts/arguments about post-complaint conduct which has not previously been alleged in the OIP or Motion.

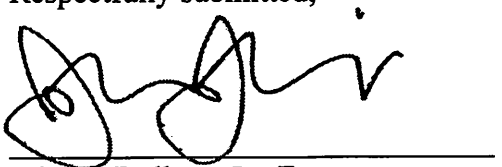
Paragraph 7 – This is a hearsay statement, which contains a new assertion of fact, not previously mentioned in the OIP or Motion.

III. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests the Court consider the foregoing points in its decision to grant/deny the Division's Motion for Summary Disposition.

DATED: February 10, 2016

Respectfully submitted,



John E. Dolkart, Jr., Esq.
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San Diego, CA 92101
Tel: (702) 275-2181

COUNSEL FOR RESPONDENT GEORGE CHARLES CODY PRICE

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:

SURREPLY BY RESPONDENT GEOREGE CHARLES CODY PRICE; WITH SUPPLEMENATAL DECLARATION OF GEORGE CHARLES CODY PRICE IN SUPPORT THEREOF

On February 10, 2016.

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: (202) 772-9324
(Original and three copies)

By: Email
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 Overnight Mail
Lynn M. Dean, Esq.
Division of Enforcement, Los Angeles Regional Office Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071-9591
Email: deanl@sec.gov

DATED: February 10, 2016

BY: _____
John E. Dolkart, Jr., Esq.

EXHIBIT B

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **GEORGE CHARLES CODY PRICE,** **Respondent.**	**ADMINISTRATIVE PROCEEDING** **FILE NO. 3-16946**

DECLARATION OF RESPONEDENT GEORGE CHARLES CODY PRICE

I, George Charles Cody Price, hereby declare pursuant to 28 U.S.C §1746, as follows:

1. I am the Respondent in the above captioned matter. I have personal knowledge of the facts underlying this proceeding, the facts underlying the prior civil proceeding, and the facts pertinent to the underlying events at issue due to my role as founder of the ABS Fund, LLC and Capital Access Fund, LLC and later due to my involvement therein as an individually named Defendant and Respondent.

2. I have personal knowledge of the facts set forth in this Declaration and if called upon to testify as a sworn witness, I could and would testify competently thereto.

3. The statement made in Lynn M. Dean's supplemental declaration at paragraph 3 is false. Ms. Dean is referring to a statement I made in my deposition where I was asked if I had told investor's about an SEC investigation in May of 2012. I had no knowledge of the investigation until I was informed via subpoena on July 25th, 2012. Ms. Dean is referring to voluntary informal and off the record phone call where I voluntarily participated in answering several questions for the Division prior to the commencement of any investigation I was made aware of. I did in fact only tell my brother about the call because I was subsequently visiting the town where he lives at the same time.

4. Attached hereto as Exhibit 1 are true and correct copies of deposition testimony regarding the opening of the ABS Manager, LLC account with Morgan Stanley Smith Barney, also note the Jeffery Prince deposition at page 112 lines 4-22.

5. Attached hereto as Exhibit 2 are true and correct copies of excerpts of my deposition taken by Lynn M. Dean on behalf of the Division in the underlying civil action. Due to the size of the full transcript (122 pages) it has not been provided, although it can be upon the request of this court. The deposition will show that I at all times made reference to the Morgan Stanley line of credit being used for real estate. Note Page 209, lines 1-12; also note Page 320, lines 14-21.

6. Attached hereto as Exhibit 3 are true and correct excerpts from the transcript of the deposition of Jeffrey L. Prince, an employee of Morgan Stanley Smith Barney with personal knowledge of the facts surrounding the liquidation of ABS Manager's account. The transcript shows that I was trying to move my account from MSSB prior to them asking me to move. This shows that I was in fact being truthful when I told investors we were trying to move the account during calls taken in January 2013 with all investors. Note Price deposition at page 51, lines 4-14.

7. I have not told any investors to not cooperate with the Division or not to cooperate with Lynn M. Dean personally. I have told investors to be truthful and forthright as possible at all times when talking to the SEC. Nor am I aware of any facts which would substantiate the claims made by her at paragraphs 4 and 7 of her declaration, that I told investors not to cooperate with the Division; that I told investors that they would not get their money back if they cooperated; or that I told investors that I did not have to pay civil fines and penalties as a result of the judgment.

8. I declare under penalty of perjury that the foregoing facts are true and correct, executed this 10th day of February 2016.

By: 

George Charles Cody Price

Exhibit 1 to Declaration

Page 109

You don't know one way or the other if Mr. Krueger provided a reason why that Morgan Stanley was requesting this?
A I don't recall that as part of the consideration.
Q Okay. So, therefore, you don't recall hearing any type of explanation as to why Morgan Stanley was asking ABS Manager to move its account out of the firm?
MR. WORDEN: Asked and answered.
THE WITNESS: No.
BY MR. CHESTER:
Q Okay. Do you remember anything else that Mr. Price said during that phone call other than the fact that he didn't want to transition his account to another firm?
A Really specifically it was just, you know, "Can you work with me? I'd like to stay," which is just what you're referring to now. That's all I remember.
Q Okay. Do you remember if he offered to add cash to the account or to buy treasuries, Ginnie Mae securities, or things other than what were already in the account?
A I believe that was part of the same thing I was just referring to working on.
Q So during the conversation between you and

Page 110

Mr. Krueger and Mr. Price in which Mr. Price was informed that Morgan Stanley wanted him to transition the account to another firm, Mr. Price asked if he were to add cash to the account or add other securities to the account, would Morgan Stanley reconsider its decision?
A Yes.
Q And did you or Mr. Krueger respond to that?
A I believe we actually got the call, inquired, and then called him back with a response.
Q Okay. Were you involved in that inquiry?
A I believe so.
Q And who did you speak with?
A The regional risk people.
Q Do you remember specifically who it might have been?
A No.
Q And can you tell us about the conversation that you had with the regional risk people after your conference with Mr. Price?
A Very short lived as far as the call. Just basically stating the client -- we inquired if he did this, and the answer was no.
Q At that point, did you come to understand why the firm was asking ABS Manager to transition its

Page 111

account to another firm?
A No.
MR. WORDEN: Can I hear the question one more time, please.
(The record was read.)
BY MR. CHESTER:
Q After you spoke to someone from -- after speaking to somebody at risk and finding out that the answer was no, did you contact Mr. Price?
A We called him right back, yes.
Q Okay. And what did you tell Mr. Price?
A That the answer was no.
Q And, again, did he ask for an explanation?
A I don't recall what he asked at that point.
Q Did either you or Mr. Krueger provide him with an explanation as to why Morgan Stanley wanted him to transition his account to another firm even after offering to add cash or securities to the account?
A Not that I recall.
MR. CHESTER: Can we take a quick five-minute break.
(A brief recess was taken.)
BY MR. CHESTER:
Q So, Mr. Prince, after informing Mr. Price that he would have to transition the ABS Manager account from

Page 112

Morgan Stanley to another firm, do you know if he made any attempts to transfer the account to another firm?
A I believe he did.
Q Okay. And what attempts are you aware of that Mr. Price made to transition the account from Morgan Stanley to another firm?
A Specifically a firm that was associated with New York Bank, I believe -- or Bank of New York. I believe he mentioned that one, that he had several things lined up that he was trying to get approved.
Q Okay. And over what time frame did you have discussions with him in which he informed you that he was attempting to transfer the account to another firm?
A Through the rest of December, early January more than likely.
Q And would he discuss this with you over the phone?
A Possibly. I think via E mail as well.
Q And do you recall Mr. Price asking you to speak with representatives from other firms that were contemplating transferring the account?
A He did. He did.
Q And do you recall who you may have had discussions with at other firms regarding the transfer of the ABS Manager account?

Exhibit 2 to Declaration

were discussed recently.
Q When you say "recently" -- well, actually let me ask you this.
Saturday, March 2nd at 10:00 a.m., you had a phone call with investors.
When you said "discussed recently," are you talking about that phone call?
A Yes.
Q Okay. And then there was also a phone call in January, you say?
A Multiple phone calls in January.
Q And were they initiated in the same way with an e-mail invitation and then investors attended by telephone?
A No.
Q How were those calls initiated?
A By myself calling them individually.
Q Okay. So in January, you made individual calls to investors, correct?
A That's correct.
Q Did you actually speak to every one of your investors in January?
A I did.
Q In those January phone calls with Capital Access investors, did you inform them that Smith

Barney had asked you to move the Capital Access assets from Smith Barney to another brokerage house?
A Not particularly.
Q What did you tell them about your communications with Smith Barney in the January phone call?
A Told them that --
MR. CHESTER: You say "phone call."
MS. DEAN: Calls. I'm sorry.
THE WITNESS: I informed them generally that we were unhappy with Smith Barney, and they were no longer providing us any lending or lines of credit and that we were going to be moving our account to a prime brokerage firm.
BY MS. DEAN:
Q Did you tell clients that Smith Barney had actually asked you to move the assets?
A I can't be certain.
Q But you definitely recall telling your clients that you were unhappy with the service you were getting from Smith Barney?
A Correct.
Q When did Smith Barney stop providing the lending facility that it had previously provided to Capital Access investors?

A I believe it was somewhere in November 2012.
Q Did they inform you that they intended to stop providing that lending facility?
A They did.
Q How did they inform you of that fact?
A Via phone call.
Q Who did you speak to at Smith Barney on that subject?
A Jeff Prince.
Q During that call when Mr. Prince informed you that Morgan Stanley would no longer be provided the lending facility, did he also tell you that Morgan Stanley Smith Barney wanted you to move fund assets?
A No.
Q When did Morgan Stanley tell you they wanted to move the fund assets?
A There was a phone call on December 16th that was a heated phone call, and a lot was said on it, but I don't remember them telling me that they wanted me to close my account. I was more expressing my displeasure for their service on that call.
Q Let me go back and clean a couple things

up.
In the November call that you had with Jeff Prince, was anyone on the telephone line other than yourself and Mr. Prince?
A I don't believe so.
Q Was there anyone from ABS Manager or any of the ABS Funds on the line other than you?
A Just myself.
Q The December 16th phone call that you described as a heated call, who was on that telephone call?
A Brian Krueger.
Q And that's Mr. Krueger from Morgan Stanley Smith Barney?
A Correct.
Q And you were on the call?
A Correct.
Q And was anyone on the call other than Mr. Krueger and yourself?
A Jeffrey Prince.
Q Who initiated that call?
A I don't recall.
Q Other than you expressing your dissatisfaction, can you remember what else was discussed in that December 16th telephone call with

assets under management at ABS Manager?
A Correct.
Q And if you look at the Excel spreadsheet that's attached here, there are five columns to it -- actually there's six, I guess.
There's one that starts on the left side that says "SYM," but it's blank.
Do you see that?
A Yes.
Q Then there's a column for name. To the right of that is a column for CUSIP, and to the immediate right of that is a column that says, "IDC Online Pricing."
Do you see that?
A Correct.
Q Did you prepare this spreadsheet?
A I downloaded it from Smith Barney's website.
Q Okay. And in providing this spreadsheet to Mr. Hersch, was it your intention to provide him with asset values for assets held by ABS Manager for the benefit of ABS Fund investors?
A Capital Access.
Q ABS Fund and Capital Access?
A Yes, but we didn't include every position.

Q So it was just a sample of the assets that were held, correct?
A Correct.
Q And are these assets that were only held by Capital Access or are there ABS Fund Arizona assets in here as well?
A I can't be sure of that.
Q When you were writing to Mr. Hersch, it was your intention to move all of the assets, including assets owned for the benefit of fund investors in ABS Arizona and Capital Access, correct?
A Possibly. We hadn't made that determination yet.
Q So it's possible that there are funds assets here for both funds, but you just can't be sure, as you sit here today?
A I can't be sure.
Q A couple questions about the e-mail that I wanted to ask you.
If you look at the first page, there's a paragraph that starts "Our fund is now primed."
Do you see that?
A Yes.
Q And then about two-thirds of the way across on that line, there's a reference to something

called Hedgeco?
A Correct.
Q What is Hedgeco?
A They are one of the nation's leading providers of performance statistics for hedge funds, and they report returns. And if you get approved as an accredited investor with a secure log-in and password and gain access to Hedgeco, you can see how different hedge funds compare to others.
Q As of January 14, 2013, had Hedgeco actually agreed to begin sending institutional clients to ABS Manager to invest in either ABS Fund Arizona or Capital Access Fund?
A Yes, that commitment was made sometime in September.
Q Who at Hedgeco made that commitment?
A The president.
Q What's his name?
A Evan.
Q What's his last name?
A It may be Rappaport, but I may be mistaken.
Q Another question about this e-mail in the second paragraph, the one that starts "Our structure currently," do you see that?
A Yes.

Q The second sentence, there is a reference to using bonds as collateral for a line of credit, and it indicates that the line of credit was used to draw down funds to buy real estate.
Do you see that?
A Correct.
Q Isn't it true that the line of credit that was being used by investors at Capital Access was being used for whatever purpose the investor wanted and not necessarily to buy real estate?
A Real estate has been the primary reason typically.
Q Aren't there investors in Capital Access who drew down the line of credit to do things other than buy real estate?
A Well, it's a -- we classify it as a nonpurpose loan, the same way Smith Barney does. So we don't ask our clients what they're going to spend it on.
Q So the clients have discretion to spend the money they take as part of a line of credit to spend it on anything they want, correct?
A Correct.
MS. DEAN: Let's go off the record.
(Recess taken.)

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Q. Sure.

Who initiated the payments or, as you've called them, the dividends to the investors out of the ABS Fund checking account?

A. Myself.

Q. And you did that every month?

A. With the exception of the business relationship manager from time to time.

Q. Did -- once the money, then, hit -- once the money hit the ABS Manager checking account, how did you receive your compensation?

A. Receiving money into the ABS Manager checking account actually was the form of compensation that I received.

Q. Okay.

A. So there wasn't a secondary step after that necessarily that needed to take place.

Q. Okay. Did money flow from the ABS Manager checking account into your own personal accounts?

A. At times it did.

Q. Okay. And who initiated those transfers?

A. I did.

Q. Okay. And under what circumstances would money stay in the ABS Manager account or be transferred to your personal account?

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MR. CHESTER: Objection. Vague, ambiguous.

THE WITNESS: Can you -- can you be more specific on "circumstances"?

BY MR. PUATHASNANON:

Q. Sure. Let me go back for a second.

Did you use the ABS Manager account to pay personal expenses or obligations?

A. Yes.

Q. Directly from that account?

A. Yes.

Q. Did you also pay personal expenses and obligations out of your personal accounts?

A. Yes.

Q. Okay. You mentioned that there are times in which money went from the ABS Manager account to your personal account; right?

A. Yes.

Q. Why would that happen if you were paying out of both?

A. It had to do with real estate loan approvals for personal reasons.

Q. What do you mean by "real estate loan approvals"?

A. The underwriters, if you go to get a purchase on a primary residence, want to see if you're self-employed, not just how much the company has made that you own but how much do you on a consistent track record over a period of time personally in your account make. Although I don't agree with that distinction, that's what most underwriters would like to see. So I followed that process over a period of time.

Q. Were the transfers that were made from the ABS Manager account to your personal account, did they happen on a schedule?

A. Can you define "schedule"?

Q. Yeah.

Was it -- were you -- did those transfers occur every two weeks? twice a month? every month? once a quarter?

A. It was -- to my recollection, it was sporadically. I'm not sure if there was a set pattern.

Q. There's been -- I know you've been present for, I think, many, if not all, of the depositions in this case, and there's been discussion in various depositions, including your last deposition, about a reserve fund that the funds maintain -- or that -- it's not clear to me. Was that -- strike that.

Do you know what I'm referring to when I say "the reserve fund"?

A. I think I know what you're referring to.

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Q. Okay. What is it that -- what do you -- what do you think that that reserve fund refers to?

A. In certain instances I would move money from ABS Manager checking to ABS Manager savings as a way of safekeeping some additional funds that weren't necessarily needed at the time, and that savings account would have an ongoing balance of accruing more -- more dollars in it over -- over time.

Q. Okay. Was money transferred -- and is it okay if I refer to that savings account as "the reserve," or do you -- would you prefer that I refer to it as the checking -- the savings account?

A. Well, I don't know that anything to do with ABS Manager can be called a fund account --

Q. Okay.

A. -- because ABS Manager was not a fund. The only funds were the funds that we've spoken of today. So it would just be a reserve account, not a fund account.

Q. Fair enough.

So if I reserve -- refer to it as "the reserve account," you'll know what I'm referring to?

A. Or savings account, to be more specific.

Q. Okay. When -- who decided how much money went into the reserve or savings account?

Exhibit 3 to Declaration

Brian M. Krueger
Executive Director
Complex Manager

Wealth Management
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Suite 2300
Woodland Hills, CA 91367

fax 818 713 0470
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toll free 800 755 2550

brian.krueger@morganstanley.com

Morgan Stanley

December 17, 2012

George Charles Cody Price
ABS Manager LLC
10692 Vista Del Agua Way
San Diego, CA 92121

RE: Morgan Stanley Account Numbers: 549-179455 & 549-179460(ECL) for ABS Manager, LLC.

Dear Mr. Price,

Thank you for speaking with Jeff and I on Friday about your accounts. As discussed, this will confirm that you will immediately begin to transition your accounts to another firm, with that process being completed by the end of January 2013 at the latest. In the interim, your accounts will continue to be governed by the terms of all Agreements governing those accounts, including all agreements relating to the Express Credit Line (ECL) taken on your accounts. We will work with you as appropriate to effectuate market sensitive transactions pending the transfer out of the accounts. We appreciate your understanding and, as always, please feel free to contact me if I can be of assistance.

Cordially,

Brian Krueger
Complex Manager

cc: Jeff Prince

From: Charles Price [redacted]
Sent: Thursday, January 31, 2013 7:29 PM
To: brian.krueger@morganstanley.com
Subject: approval letter from Celadon
Attach: KMBT35020130131181332.pdf

This account is fully submitted and pre-approved. We have ben working with them for 3 weeks now to get the account set up. Please allow the time it takes to have them have the account transitioned. If I hear any more updates you will be the first to know. See attached.

--
Humbly Yours,

Chuck Price

Celadon
FINANCIAL GROUP

ABS Manager, LLC
4225 Executive Square
Suite 600
La Jolla, Ca 92037

Attn : C. Price

Dear Mr. Price,

Subject to the terms and conditions previously discussed and the completion of our due diligence, Celadon Financial Group, LLC would be happy to assist your fund in its endeavors.

As previously discussed, Celadon will introduce your account to ICBCFS who will in turn provide clearing services. ICBCFS has also confirmed that they will offer 75% (seventy five) financing through repos on the portfolio that you provided at a rate of 2.50%.

Since you have already spoken with Stephen Bologna and James Davis, you are acquainted with the persons you will be dealing with on a daily basis.

Upon acceptance of the account, I will be happy to introduce you to the other persons you may have dealings with here at Celadon. We will of course, confirm with you upon approval of your account.

In the interim, should you have any questions or concerns, please feel free to contact us at your earliest convenience.

Welcome aboard.

Sincerely,

Daryl S. Hersch
Managing Member

Headquarters 19 Center Street, Chatham, New Jersey 07928
Phone 973-701-8033 **Facsimile** 973-701-8353 **Email** customerservice@celadonfinancial.com **Web** www.celadonfinancial.com