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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 OPPOSITION TO GEORGE CHARLES CODY PRICE'S PETITION FOR REVIEW AND REQUEST TO DISMISS PETITION

October 7, 2016

Division of Enforcement
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I. INTRODUCTION

The Division of Enforcement ("Division") respectfully opposes Respondent George Charles Cody Price's ("Price") Petition for Review of the June 3, 2016 Initial Decision that barred him from the securities industry based on the entry of a permanent injunction against him by a United States District Court and requests that the Commission dismiss the petition. Price's petition for review should be dismissed because he has abandoned it by not filing a brief in support as required by the Rules of Practice and the briefing schedule set by the Commission on July 21, 2016, as amended September 2, 2016. Pursuant to Rule of Practice 180(c),[1] failure to file a brief in support of a petition for review may result in dismissal of this review proceeding.

In addition, the Division renews its request that the Initial Decision be affirmed because the underlying record amply supports the Initial Decision.[2] Price's petition for review was little more than 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. Because summary disposition was appropriate and Price has failed to support his petition for review, the Commission should dismiss Price's petition and affirm the Initial Decision.

II. PROCEDURAL BACKGROUND

A. Price's Petition for Review

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

On June 30, 2016, Price petitioned the Commission for review of that Initial Decision.

On July 1, 2016, the Division opposed Price's petition for review and informed the Commission that it intended to move for summary affirmance of the Initial Decision. It filed that motion on July 21, 2016.

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[1] 17 C.F.R. § 201.180(c).

[2] The Division briefed these issues in full in its July 21, 2016 Motion for Summary Affirmance. The Division incorporates and attaches that motion and the accompanying Declaration of Lynn M. Dean to this opposition as Exhibit A.

Later that same day, July 21, the Commission granted Price's petition for review and set a briefing schedule that mandated that Price file a brief in support of his petition by August 22, 2016.

Price did not file his brief on August 22, 2016, the date his brief was due. Instead, he filed a request for a 30 day extension of time. The Division opposed that request with an opposition it filed the next day, August 23. On September 2, 2016, the Commission granted price an extension until September 7, 2016 to file his opening brief.

On September 7, 2016, Price filed a second request for an extension, this time requesting an additional 21 days to file his opening brief.

On September 8, 2016, the Division opposed that request, and on September 12, 2016, the Commission denied it.

Price has filed nothing further.

B. 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.

C. 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. The Division filed that motion on December 21, 2016.

On June 3, 2016, the ALJ issued an Initial Decision granting 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.

D. 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, based upon the unopposed allegations of the district court Complaint and Price's Consent, in which he agreed not to contest the allegations.

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 court 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 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 three funds, ABS Fund, Platinum Fund and Capital Access fund. Price and ABS Manager controlled, managed and were investment advisers for each fund. *Id.* 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.

The ALJ also found that the record supported the conclusion that Price 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 further 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. Price's Petition for Review Should Be Dismissed Because He Abandoned It

Price's petition for review should be dismissed because he has abandoned it by not filing a brief in support of the petition. *Adam Harrington aka Adam Rukdeschel*, Exch. Act Rel. No. 70149, 2013 SEC LEXIS 2309, at *2-3 (August 8, 2013) (failure to file an opening brief constituted abandonment of petition for review and warranted dismissal). In setting the briefing schedule for

Price's petition, the Commission specifically called Price's attention to Rule of Practice 180(c), noting the "failure to file a brief in support of [his] petition may result in dismissal of this review proceeding." July 21, 2016 Order at p. 1. Rule 180(c) provides in relevant part that "[t]he Commission. . . may enter a default pursuant to § 201.155, dismiss one or more claims, decide the particular claim(s) at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that claim if a person fails. . . to make a [required] filing." 17 C.F.R. § 201.180(c).

The Commission set a briefing schedule that mandated that Price file a brief in support of his petition for review by August 22, 2016. July 21, 2016 Order. Thereafter, Price waited a full month, and on the date his brief was due, filed a request for a 30 day extension of time. The Commission granted price an extension until September 7, 2016 to file his opening brief. Instead of filing as required, on September 7, 2016, Price filed a second request for an extension. The Commission denied that request, and Price has filed nothing since that last extension request. Under the circumstances, dismissal of Price's petition is appropriate. *Robert D. Tucker*, Exch. Act Rel. No. 71972, 2014 SEC LEXIS 1370, at *5-6 (April 18, 2014) *citing Steven Neil Barbot*, Order Dismissing Application, Exch. Act Rel. No. 69263, 2013 WL 1290210, at *1 (Apr. 1, 2013) (dismissing FINRA appeal for failure to file supporting brief, as stated in the Commission's scheduling order); *Kent D. Sweat*, Order Dismissing Review Application, Admin. Proc. File No. 3-14317 (June 10, 2011) (same); *cf. Apollo Publ'n Corp.*, Order Dismissing Review Proceeding and Notice of Finality, Securities Act Rel. No. 8678, 2006 WL 985307, at *1 (Apr. 13, 2006) (dismissing appeal of initial decision on similar ground).

Despite being granted over six weeks and an extension of time to do so, Price failed to heed the Commission's admonition that failure to file could result in dismissal, and has not filed any brief in support of his petition. Therefore, his petition should be dismissed.

B. The Commission Should Affirm the Initial Decision

In addition, the Commission should affirm the Initial Decision because the relevant facts are disputed, and the Steadman factors warrant the bar imposed in the Initial Decision.

1. The Relevant Facts are Undisputed

This is a "follow-on" proceeding to a district court action, and is based upon the entry of a permanent injunction by the district court. Price has not and cannot dispute the existence of the injunction or the factual findings made by the District Court. In granting the Division's motion for summary disposition,[3] the ALJ applied the public interest factors to the undisputed facts to determine whether, based on the entry of the injunction against him, Price should be barred from the securities industry.

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. 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.

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[3] It is well established 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. *See, e.g. Omar Ali Rizvi*, Initial Dec. Rel. No. 479 (Jan. 7, 2013), 2013 WL 64626 ("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 WL 772514; *Daniel E. Charboneau*, Initial Dec. Rel. No. 276 (Feb. 28, 2005), 84 S.E.C. Docket 3476, 2005 WL 474236 (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 WL 701205 (Mar. 25, 2005); *Currency Trading Int'l Inc.*, Initial Dec. Rel. No. 263 (Oct. 12, 2004), 83 S.E.C. Docket 3008, 2004 WL 2297418 (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).

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 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, such that 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").

The Initial Decision should be affirmed because the facts supporting it are beyond dispute and soundly support the relief imposed by that ruling.

2. Price's Purported New Evidence Is Irrelevant

In his petition, Price argued 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. But 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 failed 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 the two issues relevant to Price's petition—whether an injunction was entered against him (it was) or whether an industry bar against him 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. ¶¶ 6-7. 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. Init. Dec. at p. 3, n.1. The Division alleged and "Price cannot deny[] that he misappropriated fund assets, causing harm to investors." *Id.* at p. 8. Thus, any potential new evidence generated in the FINRA arbitration is irrelevant to this proceeding and cannot be the basis to overturn the initial decision. Init. Dec. at p. 3, n. 1.

3. 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 considered the total record, and decided that a permanent bar is warranted. The record supports the ALJ's conclusion, and Price failed to identify any error of fact or law by the ALJ that would warrant reconsideration of that 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, 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, 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, Price acted with a high degree of scienter. Init. Dec. at p. 7. "As the sole manager of the funds," the ALJ found that Price 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.* Price also 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 record demonstrates 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, Price's statements that he had complied with the district court judgment and that he had no prior violations are not mitigating, since his compliance with the judgment and the securities laws was "expected," and "should not be rewarded." *Id.* Moreover, Price failed to pay any part of the disgorgement or penalty. *Id.* Finally, Price's failure to honor his agreement not to contest the allegations of the complaint "undercuts the credibility of his assurances against future violations." *Id.* Thus, the fourth *Steadman* factor is satisfied. *Steadman*, 603 F.2d at 1140.

Fourth, the record demonstrates 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 that he does not recognize the wrongful nature of his conduct." Init. Dec. at p. 8. Accordingly, the fifth *Steadman* factor was satisfied. *Steadman*, 603 F.2d at 1140.

Fifth and finally, Price successfully solicited investors in the past and had spent "his entire professional life" in the securities industry, lacked remorse or understanding that his conduct violated the law. These facts indicate a "substantial possibility of future violations and weigh in favor of an industry bar with no time limit." Init. Dec. at p. 8. 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.

IV. CONCLUSION

Because Price has failed to raise any issue that requires further briefing or hearing, his petition for review should be dismissed and the Initial Decision be affirmed.

Dated: October 7, 2016

Respectfully submitted,
DIVISION OF ENFORCEMENT

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Certificate of Service

I certify that on October 7, 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)
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Lynn M. Dean

EXHIBIT A

ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

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DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY AFFIRMANCE

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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.

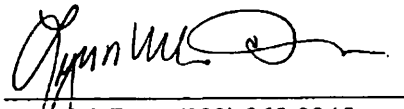
IV. CONCLUSION

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

ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946

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

Division of Enforcement
Lynn M. Dean
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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.

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[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.

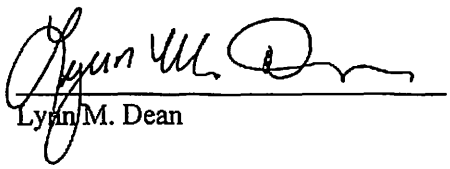
5. Price's petition states that he is of Welsh descent, and argues that the ALJ's use of the word "welshed" to describe his failure to keep "his promise not to contest the civil complaint's allegations" is "racially offensive." Petition at p. 4; Init. Dec. at p. 7. While this statement may be true, Price 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.

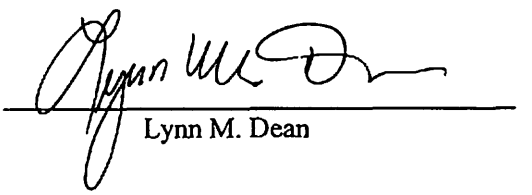


Lynn M. Dean

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