UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17210

In the Matter of

PAUL LEON WHITE, II,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT AND SUPPORTING MEMORANDUM OF LAW

DIVISION OF ENFORCEMENT
Alexander Janghorbani
Margaret Spillane
Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, New York 10281
(212) 336-0177 (Janghorbani)
(703) 813-9504 (fax)

Dated: June 8, 2016

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The Division of Enforcement ("Division") moves, pursuant to Rule 250 of the Securities and Exchange Commission's ("Commission") Rules of Practice, for summary disposition on the claims in the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities and Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing, instituted on April 15, 2016 ("OIP", Ex. 1), against Respondent Paul Leon White, II, and respectfully seeks the relief further set out below.[1]

I.
PRELIMINARY STATEMENT

In December 2014, Respondent White was criminally convicted, in Suffolk County Court, of seven counts of grand larceny and one count of scheme to defraud (the "Criminal Case"). Respondent's conviction arose from his larceny of nearly $3 million from his investment clients and his false and misleading statements to those clients concerning their investments with him. Evidencing the egregiousness of his conduct, the Court in the Criminal Case sentenced White to serve a total sentence of "21 to 63 years in state prison" and to pay restitution of $2,975,000. (Ex. 2 at 56:1-2, 54:8-10 (sentencing transcript in the Criminal Case).) Based on White's conviction, and the other documents in the record, it is apparent that Respondent White should also be permanently barred by this Court from associating with any broker, dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

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[1] All exhibits in this memorandum of law are attached to the Declaration of Margaret Spillane, June 8, 2016, filed herewith.

II.
STATEMENT OF FACTS

1. Respondent White's Professional Background

A. Association With Registered Broker-Dealers

From approximately July 2003 until July 2010, Respondent was associated with five registered broker-dealers, including (during the relevant time) Alternative Wealth Strategies, Inc. ("AWSI") and Heritage Financial Systems, Inc. (Ex. 3 at 4 (FINRA BrokerCheck Report for Paul Leon White II, current as of May 12, 2016)); see also Ex. 4 at 136:9-12 (White testifying before FINRA that "My license, FINRA license or whatever you want, securities license, is with the broker-dealer AWSI.").) In 2003, Respondent White passed the Series 7, "General Securities Representative Examination," and Series 66, "Uniform Combined State Law Examination." (Ex. 3 at 3.) While associated with broker-dealers, White was the subject of a number of customer complaints. (Id. at 17-22 (BrokerCheck report detailing customer disputes involving White).)

B. White's Wholly-Owned Investment Adviser

White repeatedly held himself out as being associated with an investment adviser. Respondent White owned a company called Professional Investment Advisors Inc. ("Professional Investment Advisors" or "PIA") (Id. at 5; see also Ex. 4 at 134:4-19 (White testifying as to his ownership of PIA).) In his testimony before FINRA, White explained Professional Investment Advisors' business:

> MR. FUNKHOUSER: That's just you. What is Professional Investment Advisors, Inc.?
>
> THE WITNESS: That's the name of my company which I – that – I hold my license with AWSI, but it's the brand name of my company that I do registered investment advisory business with or I do securities business with. It's semantics.

(Ex. 4 at 134:11-19 (emphasis added); see also id. at 134:20-24 (testifying that PIA is "not a FINRA member"); id. at 135:24-25 (White testifying that, through PIA, he sold, inter alia, "[s]ecuritized real estate").)[2] White again acknowledged that he was associated with an investment adviser in additional testimony before FINRA:

> Q. So my understanding is when this flyer was sent out, you were under the understanding you were operating as a registered investment adviser?
>
> A. I am still operating as a registered investment adviser representative.

(Ex. 4 at 660:4-8.) In a sworn affidavit, dated October 12, 2010, White noted that he was a "financial investment advisor" and stated that he ran that business—PIA—separately from his association with any registered broker-dealer: "I was not operating my investment advisory business out of a registered broker-dealer." (Ex. 5, ¶¶ 4, 35.)

White also repeatedly held himself out as an investment adviser (or as associated with an investment adviser) to clients, to AWSI, and to others that he worked with. First, he sent emails and had a business card that identified him as the "President" of "Professional Investment Advisors" and sent letters to clients describing himself as an investment adviser representative. (See Ex. 6 (White's business card); Ex. 7 (Email from Paul White to Clinton Walker, Oct. 2, 2008); Ex. 8 at JCRFN000376 (Email from Paul White to Debbie Clary, Apr. 13, 2009, showing White's billing address as "Professional Investment Advisors Inc[.]"); Ex. 11 at 1332:13-20 (trial transcript describing a letter White wrote to his client Saverio Saverino stating that White had a "registered investment advisor's representative license").) Second, in his online PIA biography, White stated that he was a "Registered Investment Advisor Representative," who was a "foundation of stability, providing sound advice and logical solutions to preserve and enhance

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[2] There is no evidence that PIA was ever registered with the Commission.

[his] client's wealth." (Ex. 9 at 2.) Third, White entered into an agreement with AWSI, which stated that White was a licensed "Investment Advisor." (Ex. 16 at F000011 (Excerpt of FINRA testimony Exhibit 6, Addendum B to Independent Registered Representative's Agreement Outside Business Interests, dated July 1, 2008, and signed by Paul White).) Fourth, White told people that he worked with that he was an investment adviser. (See Ex. 11 at 48:11-20 (Nolan, an attorney White hired, testifying that White told her that he was an investment adviser).)

Finally, White acknowledged—to both FINRA and his clients—that he had a fiduciary duty to those he advised. (Ex. 4 at 660:18-19 (acknowledging that "I always hold myself to the standards of having a fiduciary responsibility"); Ex. 11 at 1332:2-4 (describing a letter from White telling a client that "[f]inancial advisors are considered fiduciaries, meaning that they are legally obligated to put their client's best interest first.").)

2. The Criminal Case

A. The Allegations of the Criminal Case

In November 2012, the Suffolk County District Attorney's Office ("District Attorney") indicted White—in a case captioned People v. White, Case No. I-2710-2012—charging him with eight counts of grand larceny and one count of scheme to defraud. (Ex. 10 (Indictment).) The District Attorney charged that White, at least from July 2008 through April 2009, unlawfully took funds from eight people or businesses and undertook "a systematic ongoing course of conduct with intent to defraud . . . or to obtain property . . . by false or fraudulent pretenses, representations or promises . . . ." (Id. at 1-6.)

The District Attorney—in its opening statements at trial—provided a fuller explanation of its charges against White. Specifically, the District Attorney alleged that White "held himself out as being a financial advisor, operating under the name of Professional Investment Advisors"

and "caused invitations to be sent in the mail to people, including those now identified in the indictment, inviting them to attend seminars at which he spoke about . . . how to get rid of income producing property and reinvest the money from the sale . . . to avoid paying capital gains taxes on the sale." (Ex. 17 at 3:3-17 (trial transcript).) According to the District Attorney, White falsely told investors: (1) that "he would place the money in safe investments" (id. at 7:6-7; see also id. at 14:15-17); (2) that he would not be taking commission (id. at 7:11-13, 12:9-10, 14:3-7, 14:19-22, 21:14-22:21); (3) that certain client money would be invested in "real estate investment trust securities" (id. at 7:13-16); (4) that the investments were liquid (id. at 7:22-8:2; see also id. at 9:16-25 (allegation that White refused to liquidate client's investments and called client "mentally incompetent"); id. at 12:16-25 (White told client investment money could be pulled out and then refused to do so when asked); and (5) that clients' investment would produce a 7% monthly return (id. at 12:3-8, 14:3-5, 14:11-19, 24:21-25:7). The District Attorney alleged that White, ultimately, stole approximately $3 million of clients' money, in part to repay other clients. (Id. at 16:24-17:5, 17:24-18:9, 19:8-13, 20:3-13, 20:19-21:1, 21:14-22:20.)

B. The Jury Instructions

On December 2, 2014, the Court instructed the jury, inter alia, on the law applicable to the charges of grand larceny and scheme to defraud. The Court instructed the jury on two relevant theories of larceny upon which the jury could base its decision:

> Larceny by false pretense is defined as follows: A person wrongfully takes, obtains, or withholds property from an owner when that person makes a false representation of a past or existing fact while aware that such representation is false and obtains possession and title to the property as a result of the owner's reliance upon such representation.
>
> Larceny by embezzlement is defined differently, and it is defined as follows: A person wrongfully takes, obtains, or withholds property from an owner when, having been entrusted to hold such property on behalf of the owner, such person thereafter, without

> the permission or authority of the owner, intentionally exercises control over it in a manner inconsistent with the continued rights of the owner, knowing that he has no permission or authority to do so.

(Ex. 11 at 2179:23-2180:17.)

The Court went on to explain the charge of "scheme to defraud":

> Under our law a person is guilty of a scheme to defraud in the first degree when that person engages in a scheme constituting a systematic, ongoing course of conduct with the intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations, or promises and so obtains property with a value in excess of $1,000 from one or more such persons.

(Id. at 2185:19-2186:3.)

C. The Verdict

On December 5, 2014, Respondent White was convicted of seven counts of grand larceny in the second degree and one count of scheme to defraud in the first degree. (Ex. 12 at 1-2 (Certificate of Disposition).)

D. The Sentence

On January 29, 2015, Judge James Hudson sentenced White (a) to "21 to 63 years in state prison" (Ex. 2 at 56:1-2); and (b) to make restitution of $2,975,000 to "stand as witness to the enormity of [White's] crimes." (Id. at 54:8-10; see also Ex. 12 at 1-2.)

In imposing this sentence, Judge Hudson focused on Respondent White's dishonesty, failure to appreciate the extent of his crimes, and the egregiousness of his fraud:

> They are also, as your statement today, qualifying. That limits their worth, in that you express you're sorry at having caused harm to other[s], but contend it was unintentional. I remind you that the evidence showed otherwise. The jury, those hard-working good people who gave up two months of their lives, found otherwise. It moves me to say that your remorse is not just of recent mintage, it also rings falsely like a counterfeit coin.

(Ex. 2 at 50:23-51:9.)

> Together it is a sad litany of confidence betrayed of honest, hard-working people who saved their entire lives only to see it snatched away by a man who truly cared nothing for the consequences. A man who reduced some of them to poverty. All their hopes and dreams of a comfortable retirement gone.

(Id. at 51:19-52:1.) Respondent White is currently incarcerated in the Clinton Correctional Facility in Dannemora, New York. (See Letter from Alexander Janghorbani to Hon. James E. Grimes, May 13, 2016, at 1 (providing Court with Respondent's mailing address).)

3. FINRA's Investigation & Case Against Respondent White

Between June 2009 and March 2010, White provided testimony before FINRA. (See Ex. 4 (FINRA transcript excerpts).) Following his June 2009 testimony, Respondent White sent a letter to his investors to, in his own words, "inform the investors . . . what was going on with FINRA, if [FINRA] contacted them, so they would have some exposure to it." (Id. at 661:18-22.) In that letter to his investors, however, Respondent White misleadingly characterized his FINRA testimony—not as the product of a regulatory investigation into his actions—but as that of an industry practitioner whose expertise was being sought by a regulator. He wrote:

> Several weeks ago I was fortunate enough to be selected by our SRO [Self-Regulatory Organization] FINRA to furnish them with helpful information on the subject of registered representatives, such as myself who have various professional licenses . . . and are employed by or derive income therefrom. In my opinion, the securities industry in the United States is the most regulated professional industry in the world, and rightfully so to protect investors.

(Id. at 661:23-662:11; Ex. 13 at F000184 (Excerpt of FINRA testimony Exhibit 27, White's August 12, 2009 letter to investors).)

On September 14, 2010, FINRA instituted an action against White, alleging that he, inter alia, "made unsuitable sales of securities to a non-profit animal shelter," one of White's victims in the Criminal Case. (Ex. 14, ¶ 1 (FINRA complaint).) Respondent White settled the FINRA

action on September 19, 2011. (Ex. 15 (FINRA's Order Accepting Offer of Settlement).) Pursuant to the settlement, FINRA "ordered that Respondent be barred from association with any FINRA member in any capacity." (Id. at 8.)

4. The SEC's OIP

On April 15, 2016, the Commission issued the OIP in this matter. The OIP requires this Court to determine whether the OIP's allegations against the Respondent are true and what remedial action is appropriate in the public interest against him pursuant to Section 15(b)(6) of the Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). (Ex. 1 at 2.) Respondent has been served with the OIP. (Order, May 5, 2016, at 1.) On May 13, 2016, the Court issued an order setting a schedule for the parties to move for summary disposition. (Order, May 13, 2016, at 1.)

III. ARGUMENT

1. Summary Disposition Is Appropriate Pursuant To Rule 250

Rule 250(a) of the Commission's Rules of Practice permits the Division, with leave of the hearing officer, to move for summary disposition of any of the OIP's allegations. Rule 250(b) provides 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." Summary disposition is particularly appropriate here as the underlying facts at issue have already been litigated and determined in the Criminal Case, and the sole issue for the Court "concerns the appropriate sanction." In the Matter of Toby G. Scammell, IA Rel. No. 3961, 2014 WL 5493265, at *3 n.17 (Comm. Op. Oct. 29, 2014) ("We have repeatedly upheld the use of summary disposition in circumstances where a respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction"); see also In the Matter of Peter Siris,

IA Rel. No. 3736, 2013 WL 6528874, at *11 n.68 (Comm. Op. Dec. 12, 2013) ("recognizing that a 'summary proceeding was appropriate' in a follow-on proceeding when the respondent's criminal case 'disposed of the central issue regarding the nature of his 'alleged misconduct' for administrative enforcement purposes'"), quoting Kornman v. SEC, 592 F.3d 173, 183 (D.C. Cir. 2010)); In the Matter of Jeffrey L. Gibson, IA Rel. No. 2700, 2008 WL 294717, at *5 (Comm. Op. Feb. 4, 2008) (upholding grant of summary disposition based on injunction or conviction).

2. The Verdict in the Criminal Case Establishes the Basis for Administrative Relief

Exchange Act Section 15(b)(6) provides that the Commission may bar from association with various securities-related industries or from participating in penny stock offerings (1) a respondent who at the time of the alleged misconduct was associated with a broker or dealer (Exchange Act, § 15(b)(6)); (2) if such bar is in the public interest (id.); and (3) respondent has, inter alia, been convicted, "within 10 years of the commencement of the proceedings" (§ 15(b)(6)(A)(ii)) of "any felony or misdemeanor . . . which the Commission finds" (id., § 15(b)(4)(B)):

- "involves the larceny, theft . . . fraudulent concealment . . . or misappropriation of funds . . . ." (Id., § 15(b)(4)(B)(iii); or
- "arises out of the conduct of the business or a broker, dealer . . . investment adviser . . . [or] fiduciary . . . ." (Id., § 15(b)(4)(B)(ii).)

Advisers Act Sections 203(e)-(f) contain analogous provisions applicable to a respondent who, at the time of the violations, was an investment adviser or associated with an investment adviser. See Advisers Act, § 203(f); see also id., § 203(e)(2). The Advisers Act also allows for bars based on conviction of "any crime that is punishable by imprisonment for 1 or more years . . . " Id., § 203(e)(3)(A). The bar provisions of the Advisers Act apply equally to registered and unregistered investment advisers. See Advisers Act, § 203(f); see also Teicher v. SEC, 177 F.3d

1016, 1017-18 (D.C. Cir. 1999) ("No language" in Advisers Act Section 203(f) "remotely suggests that its application is limited to 'registered' investment advisers."); In the Matter of Michael Batterman, ID Rel. No. 246, 2004 WL 2387487, at *8 (Feb. 12, 2004) ("A bar prohibiting an individual from associating with an investment adviser applies to associations with all investment advisers, registered and unregistered") (citations omitted), aff'd In the Matter of Michael Batterman, IA Rel. No. 2334, 2004 WL 2785527 (Comm. Op. Dec. 3, 2004). Here, each statutory element is satisfied.

A. White was Associated with a Broker-Dealer

White was associated with a registered broker-dealer "at the time of the alleged misconduct." Exchange Act, § 15(b)(6). The District Attorney charged White with carrying out his crimes from at least July 2008 through April 2009. (Ex. 10 at 6.) During this period, White was associated with Alternative Wealth Strategies, Inc., a broker-dealer registered with the Commission. (Ex. 3 at 4.)

B. White was Associated with an Investment Adviser

An investment adviser is

> any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities . . . .

Advisers Act, § 202(a)(11).

An entity (or individual) which holds itself (or himself) out as an investment adviser meets the statutory definition of "investment adviser" irrespective of whether it actually manages any money or has any clients. See In the Matter of Anthony Fields, IA Rel. No. 4028, 2015 WL 728005, at **2, 14 (Comm. Op. Feb. 20, 2015) (finding that respondent—who held himself out as an investment adviser—met the definition of investment adviser despite having no clients,

assets under management, or revenues from advisory services); see also In the Matter of Alexander V. Stein, IA Rel. No. 1497, 1995 WL 358127, at *2 (Comm. Op. June 8, 1995) ("While Stein claims that there is insufficient evidence on this record from which to conclude that he acted as an investment adviser, we cannot agree. The record reflects that Stein held himself out as an investment adviser to members of the public when he recommended, in the course of his business activities undertaken through the AVS companies he controlled, that clients invest their funds in his 'fully hedged arbitrage program.' Stein received the requisite compensation for his services when he subsequently diverted certain of these funds for his personal use.").

Here, White—who owned and operated Professional Investment Advisors, Inc.—repeatedly held himself out as either an investment adviser or as associated with an investment adviser. (See Section II.1.B supra.) He repeatedly testified to FINRA and swore in his October 2010 affidavit that (1) Professional Investment Advisors, Inc. was an investment adviser; (2) that he operated "as a registered investment adviser representative"; (3) that he was a "financial investment advisor"; and (4) that his investment advisory business was separate from his work with any registered broker-dealer. (Id.) Moreover, his website, emails, and business cards told clients and prospective clients that he was an "Investment Advisor Representative" and ran a company called "Professional Investment Advisors." (Id.) Moreover—as in the Stein case—White's larceny of his clients' investment money satisfied the Advisers Act's compensation element. In the Matter of Alexander V. Stein, 1995 WL 358127, at *2 (Stein received the requisite compensation for his services when he subsequently diverted certain of these funds for his personal use).

Finally, in addition to being associated with PIA, White was himself an investment adviser by dint of his control over his advisory firm. See, e.g., Abrahamson v. Fleschner, 568 F.2d 862, 871 (2d Cir. 1977) (in holding that the individual general partners "are investment advisers within the meaning of Section 202(a)(11)," the Court found that the "plain language" of that section covers "any person who 'advises' others with respect to investments"); see also In the Matter of Lisa B. Premo, ID Rel. No. 476, 2012 WL 6705813, at *19 (Dec. 26, 2012) ("[a] person who was not registered as an investment adviser has been found liable pursuant to Advisers Act Section 206 based on compensation received for services provided to clients . . . . This situation often occurs where the investment adviser is deemed to be the alter ego of the associated person or the investment adviser is controlled by the associated person") (emphasis added and citations omitted) (collecting cases); In the Matter of Montford and Company, Inc., ID Rel. No. 457, 2012 WL 1377372, at *14 (Apr. 20, 2012) (Montford was investment adviser because he was 100 percent owner of the adviser, its president, CEO, and chief compliance officer).

C. White's Crimes Make Him Eligible for Bars

White was convicted of seven counts of "grand larceny" and one of "scheme to defraud." (Ex. 12 (Certificate of Disposition in the Criminal Case).)[3] By their very terms, such convictions

[3] The Commission has long held that a respondent, in a follow-on proceeding, has been "convicted" when a jury issues a guilty verdict and that verdict is entered by the Court. See In the Matter of Alexander Smith, Exchange Act Rel. No. 37885, 1946 WL 24891, at *6 (Comm. Op. Feb. 5, 1946) (stating that "it is clear that when there has been a verdict or plea of guilt or a plea of nolo contendere accepted by the Court, there is the 'conviction' contemplated by [Exchange Act Section 15(b)] as the starting point for an inquiry into the fitness of the person involved to engage in the securities business"); In the Matter of Eric S. Butler, IA Rel. No. 3262, 2011 WL 3792730, at *3 n.17 (Comm. Op. Aug. 26, 2011) (finding that a jury verdict is a conviction under the Exchange Act); see also Advisers Act, § 202(a)(6) (defining conviction to include "a verdict . . . if such verdict . . . has not been reserved, set aside, or withdrawn, whether or not sentence has been imposed); see also Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994)

can form the basis for a bar. See Exchange Act, § 15(b)(4) (allowing bars based on conviction for "larceny", "fraudulent concealment", "fraudulent conversion", and "misappropriation of funds"); Advisers Act, § 203(e)(2)(C) (same); Advisors Act, § 203(e)(3) (bars may be based on conviction for "any crime punishable by imprisonment for 1 or more years" in addition to those explicitly enumerated).

In addition, White's crimes—arising out of his work as an investment adviser and registered representative of a registered broker-dealer—arose "out of the of the business of a broker, dealer . . . investment adviser." Exchange Act, § 15(b)(4)(B)(ii); Advisers Act, § 203(e)(2)(B). White also acknowledged that he had a fiduciary relationship to his clients—see Section II.1.B supra—and his crimes, therefore, also arose "out of the business of a . . . fiduciary." (Id.)

3. Associational and Penny Stock Bars Are in the Public Interest

Once the above elements are satisfied, the Commission shall, if the public interest so requires:

> censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or national recognized statistical rating organization, or from participating in an offering of penny stock . . . .

Exchange Act, § 15(b)(6); see also Advisers Act, § 203(f).

In determining whether a particular sanction is in the public interest, the Commission considers six factors: (1) the egregiousness of Respondent's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) Respondent's recognition of the

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("Nothing in the statute's language prevents a bar to be entered if a criminal conviction is on appeal").

wrongful nature of his conduct; (5) the sincerity of the Respondent's assurances against future violations and (6) the likelihood that Respondent's occupation will present opportunities for future violations. See In the Matter of Edgar R. Page, IA Rel. No. 4400, 2016 WL 3030845, at *5(Comm. Op. May 27, 2016). The inquiry is "flexible, and no one factor is dispositive." Id. However, Respondent—who has been convicted of multiple crimes arising from his dealings in the securities industry—faces an extremely high bar to remaining in the industry. It is well established that "[a]bsent extraordinary mitigating circumstances" a conviction for offenses involving fraud necessitates a bar. In the Matter of Eric S. Butler, 2011 WL 3792730, at *3; In the Matter of Gilles T. de Charsonville, ID Rel. No. 996, 2016 WL 1328931, at *4 (Apr. 5, 2016) ("The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business."). So it is here, where all six factors require full associational and a penny stock bars against Respondent.

First, Respondent's conduct was egregious, and recurrent. Over more than a year, Respondent carried out a scheme to defraud—and to steal from—his clients, bilking them of nearly $3 million. The jury found, inter alia, that Respondent White

> engage[d] in a scheme constituting a systematic, ongoing course of conduct with the intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations, or promises . . . .

(Ex. 11 at 2185:19-2186:1 (jury instruction on scheme to defraud charge).) Respondent's conduct, therefore, also constituted extended participation in an ongoing fraud. See ,e.g., In the Matter of Gilles T. de Charsonville, 2016 WL 1328931, at *4 (year-long fraud was recurrent); see also In the Matter of Evelyn Litwok, ID Rel. No. 426, 2011 WL 3345861, *4 (Aug. 4, 2011) ("The Commission also considers . . . the degree of harm to investors and the marketplace resulting from the violation").)

Second, Respondent committed his crimes with a high degree of scienter. The crimes of which Respondent was convicted required the jury to determine that White acted intentionally and, therefore, "necessarily involved knowing wrongfulness." In the Matter of Robert J. Lunn, ID Rel. No. 887, 2015 WL 5528212, at *7 (Sept. 21, 2015); see also Ex. 11 at 2179:23-2180:17, 2185:19-2186:3 (jury instruction that intent was an element of the charged crimes); see also In the Matter of Eric S. Butler, 2011 WL 3792730, at *3 n.23 ("In the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment"), citing United States v. Fabric Garment Co., 366 F.2d 530, 534 (2d Cir. 1966). As the Court in the Criminal Case found, Respondent is a "man who truly cared nothing for the consequences" that his actions visited upon his victims and his crimes were "a sad litany of confidence betrayed." (Ex. 2 at 51:19-52:1.)

Third, there is also no reason to credit the sincerity of the Respondent's assurances, were he to provide any, against future violations or any recognition by of the wrongful nature of his conduct. Respondent has shown his willingness to mislead to avoid facing the consequences of his action. As discussed above, White misled his clients about the purpose of his FINRA testimony. (See Section II.3 supra.) He has also attempted to mislead this Court about FINRA's action against him. On May 1, 2016, Respondent told the Court that "he was thoroughly investigated by" FINRA, which found no "wrongdoing by Respondent." (Resp.'s Motion to Waive Requirements Pursuant to 17 C.F.R. 201.152(a)(2), 5, (d) and Dismiss Petitioner's Order Instituting Proceedings Grounded Upon Violations of 17 C.F.R. 201.151(a), (c), (d); 152(a)(2), (a)(5), (b), (d), May 1, 2016 ("Resp. Motion to Dismiss"), at 1.) This statement is contradicted by the fact that FINRA sued, and later barred, Respondent White. (Exs. 14-15.) In addition, even after being convicted in the Criminal Action, Respondent has refused to accept

responsibility, repeatedly maintaining that he "truly did not commit" his crimes and is "truly innocent." (Resp. Motion to Dismiss at 1 (emphasis in original).) Thus—as the Court in the Criminal Case noted at sentencing—any protestations of remorse by Respondent "rings falsely like a counterfeit coin." (Ex. 2 at 51:6-9.) Thus, even now, Respondent fails to "recognize the wrongfulness of his conduct," which "presents a significant risk that, given th[e] opportunity, he would commit further misconduct in the future." In the Matter of Michael J. Markowski, Exchange Act Rel. No. 44086, 2001 WL 267660, at *4 (Comm. Op. Mar. 20, 2001).

Fourth, while he is presently incarcerated, Respondent has presented no reason to believe that he would not seize another opportunity to prey upon clients, if it were to present itself. To the contrary, his cavalier attitude regarding his prior crimes suggests just the opposite. See In the Matter of Glenn M. Barikmo, ID Rel. No. 436, 2011 WL 4889086, at *5 (Oct. 13, 2011) (where no assurance provided that respondent would not return to the industry, court found that respondent "may commit future violations"). Thus, the Court should impose the full range of bars against Respondent.

IV.
CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court grant its motion for summary disposition and issue an order imposing the full range of associational and penny stock bars against Respondent.

Dated: June 8, 2016
New York, New York

Respectfully submitted,

Alexander Janghorbani
Margaret Spillane
U.S. Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, New York 10281
Tel. (212) 336-0177 (Janghorbani)
Fax (703) 813-9504
Email: JanghorbaniA@sec.gov

DIVISION OF ENFORCEMENT

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17210

In the Matter of

PAUL LEON WHITE, II,

Respondent.

Certificate of Service

I hereby certify that I served (1) the Division of Enforcement's Motion for Summary Disposition Against Respondent and Supporting Memorandum of Law, dated June 8, 2016 (the "Motion"); and (2) the Declaration of Margaret Spillane, dated June 8, 2016, and all exhibits attached thereto on this 8th day of June, 2016, on the below parties by the means indicated:

Paul Leon White
[redacted]
: P.O. Box [redacted], Zip [redacted]
Dannemora, New York [redacted]
(By UPS)

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-2557
(By UPS (original and three copies))

The Honorable James E. Grimes
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
(By Email and UPS)

I also certify that the Motion complies with the length limitations set forth in Securities and Exchange Commission Rule of Practice 154(c). According to the word count, as calculated by Microsoft Word, the Motion contains 5,689 words.

Alexander Janghorbani
Senior Trial Counsel