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ADMINISTRATIVE PROCEEDING
FILE NO. 3-17699

**UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION**

In the Matter of

**SHERVIN NEMAN and NEMAN
FINANCIAL, INC.**

Respondents.

The Honorable Jason S. Patil

**DIVISION OF ENFORCEMENT'S MOTION
FOR SUMMARY DISPOSITION AGAINST RESPONDENTS SHERVIN NEMAN AND
NEMAN FINANCIAL, INC. AND MEMORANDUM OF LAW IN SUPPORT**

May 19, 2017

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I. BACKGROUND

The Division of Enforcement (“Division”) moves, pursuant to Rule 250(b) of the Securities and Exchange Commission (“SEC”)’s Rules of Practice, for summary disposition of the claims in the Order Instituting Proceedings Pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940 and Notice of Hearing (the “OIP”), against respondents Shervin Neman (“Neman”) and the registered investment adviser for which he is the sole principal, Neman Financial, Inc. (“Neman Financial”) (collectively, “respondents”). The Division requests that Neman be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, and nationally recognized statistical rating organization, under Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. § 80b-3(f), and that Neman Financial’s registration with the Commission be revoked, under Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e).

In a federal court action filed by the SEC in 2012, respondents were found liable for violating numerous antifraud and other provisions of the federal securities laws, and in November 2016, both were permanently enjoined from such violations. The SEC’s action alleged that respondents raised over \$7.5 million from investors, purportedly to invest in several types of real estate and shares of currently or soon-to-be publicly traded companies, including Facebook, Inc. Instead, however, Neman and his company used investors’ funds to make Ponzi-like payments to other investors, and for various personal expenses.

Neman’s fraud did not stop after the Commission brought its enforcement action against him. After stipulating to a preliminary injunction in that action (following a TRO and asset freeze), Neman solicited another \$2 million of investor money, which he then used to make more Ponzi payments and pay his defense costs. As a result, in 2014, Neman was convicted of wire and mail fraud, sentenced to prison, and ordered to pay over \$3.2 million in restitution.

Given this record, the Division's motion should be granted. The Division has established the requirements for an industry bar against Neman and revocation of Neman Financial's registration as a matter of law. First, respondents, who are investment advisers, have been permanently enjoined from violating the antifraud provisions of the securities laws, specifically, from fraud in connection with the purchase or sale of securities. Second, a permanent bar and revocation are clearly in the public interest. Respondents were found civilly liable for a far-reaching, multi-year Ponzi scheme that resulted in significant investor harm. After being preliminarily enjoined, Neman continued his fraudulent scheme, and was criminally convicted for mail and wire fraud. Neman has not accepted responsibility, but rather continues to protest that he and Neman Financial have done nothing wrong.

The undisputed facts show that the Division's request for a permanent bar against Neman and revocation of Neman Financial's registration should be granted.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On April 11, 2012, the SEC sued Neman and Neman Financial, in a matter entitled *SEC v. Neman, et al.*, Case No. CV12-03142 BRO (PLAx) (C.D. Cal.) (the "SEC action" or "Civ. Dkt."). See Declaration of Amy Jane Longo ("Longo Decl.") filed concurrently herewith, Ex. 1 [Complaint, Civ. Dkt. No. 1]. The SEC's complaint alleged that over a two-year period, Neman misappropriated more than \$7.5 million raised from investors through Neman Financial, based on materially false and misleading representations about the use of investment proceeds. *Id.*

The SEC alleged that Neman and Neman Financial violated the antifraud provisions of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q; Section 10(b) the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5; and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4), and Rule

206(4)-8(a)(1) thereunder, 17 C.F.R. § 275.206(4)-8(a)(1). The SEC also alleged that the defendants violated two non-fraud provisions of the Advisers Act: Section 204(a), 15 U.S.C. § 80b-4(a) and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2, requiring advisers to maintain books and records, and Section 203A, 15 U.S.C. § 80b-3(a), requiring advisers to have assets under management of at least \$25 million before registering with the SEC.

Two days after the SEC filed its action, the district court granted the SEC's request for a temporary restraining order ("TRO"), imposing an emergency asset freeze and requiring Neman to surrender his passport. *See id.* Ex. 2 [TRO, Civ. Dkt. No. 12]. One week later, Neman stipulated to a preliminary injunction containing this same relief. *See id.* Ex. 3 [Preliminary Injunction, Civ. Dkt. No. 17].

Notwithstanding that he had stipulated to a preliminary injunction, Neman, in May 2012, raised \$2 million from another investor, purportedly to invest in pre-IPO shares of Facebook. *See id.* Ex. 4 [Indictment], ¶ 6. Neman used the \$2 million to, among other things, pay his legal bills and repay earlier investors. *Id.* Neman then obtained letters from these investors, which he produced to the SEC, stating they had been repaid. *Id.* Neman ultimately sent the final investor a check for \$2.235 million, purporting to represent returns on the Facebook shares. The check was returned for insufficient funds. *Id.* ¶ 7. Based on this conduct, Neman was indicted on April 24, 2013, for mail and wire fraud, in the action *USA v. Shervin Neman*, Case No. CR 13-00289 ODW (C.D. Cal.) (the "DOJ action" or "Crim. Dkt."). *Id.*

A. The Trial Courts' Civil and Criminal Findings re: Respondents' Fraud

In a series of rulings between May 2014 and November 2016, Neman was found liable for fraud in both the SEC and the DOJ actions. Neman Financial was likewise found liable for fraud in the SEC action.

First, on May 16, 2014, Neman was convicted, following a four-day jury trial, of three counts of mail and wire fraud. *See id.* Ex. 5 [Trial Transcript Excerpts, Crim. Dkt. Nos. 144-147]. According to the jury instructions, in order to find Neman guilty, the jury was required to find as a matter of fact that:

(1) Neman “knowingly devised or participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations or promises”;

(2) the “statements [Neman] made or the facts [he] omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property; and,

(3) Neman “acted with the intent to defraud; that is, the intent to deceive or cheat.”

Id. [Trial Transcript at 756, 758]. On February 23, 2015, Neman was sentenced to 135 months in prison and ordered to pay restitution of \$3,279,185.63. *See id.* Ex. 6 [Judgment, Crim. Dkt. No. 220].

Subsequently, in the SEC action (which was stayed during Neman’s criminal case), the court found Neman and Neman Financial liable for all of the SEC’s claims against them in a series of pretrial rulings. First, on December 8, 2015, Neman was found liable on the SEC’s unopposed motion for summary judgment, for antifraud violations of Securities Act Section 17(a) and Advisers Act Sections 206(1) and 206(2), and for non-fraud violations of Advisers Act

Section 204(a)/Rule 204-2 and Section 203A. *See id.* Ex. 7 [Order, Civ. Dkt. No. 108].¹ Next, on July 15, 2016, the court found Neman Financial liable on a default judgment for all six claims against it in the SEC’s complaint. *See id.* Ex. 9 [Order, Civ. Dkt. No. 123]. Lastly, on November 7, 2016, the court found Neman liable on summary judgment—after he again failed to file any opposition—for the two remaining claims in the SEC’s complaint, for antifraud violations of Exchange Act Section 10(b)/Rule 10b-5 and Advisers Act Section 206(4)/Rule 206(4)-8(a)(1). *See id.* Ex. 10 [Order, Civ. Dkt. No. 134].²

In granting summary judgment against Neman and default judgment against Neman Financial on the SEC’s fraud claims, the district court found that the evidence established, among other elements, that: (1) that Neman “engaged in a device, scheme or plan to defraud”; (2) that he used material misrepresentations to fraudulently obtain money or property from his victims; (3) that he acted with scienter; (4) that he offered or sold securities; (5) that he purchased or sold securities; (6) that his fraud was directed to investors and prospective investors in a pooled investment vehicle; and, (7) that he and Neman Financial were investment advisers. *See Longo Decl.* Ex. 7 [Order, Civ. Dkt. No. 108 at 13-16]; Ex. 9 [Order, Dkt. No. 123 at 10-13];

¹ Neman Financial was initially also found liable on summary judgment. *See generally, id.* However, in a subsequent ruling, the district court clarified that since corporations cannot appear *pro se* (pursuant to C.D. Cal. Local Rule 83-2.1.1.3), Neman Financial could only be found liable by default judgment. *See Longo Decl.* Ex. 8 [Order, Civ. Dkt. No. 111] at 1 n.1 (denying SEC’s motion for reconsideration of denial of summary judgment as to claims under Exchange Act Section 10(b)/Rule 10b-5 and Advisers Act Section 206(4)/Rule 206(4)-8(a)(1)).

² The court’s second summary judgment ruling found that there were no triable issues of fact as to the two claims on which the court had initially denied summary judgment, the claims under Exchange Act Section 10(b)/Rule 10b-5 and Advisers Act Section 206(4)/Rule 206(4)-8(a)(1). Thus, the court found it was undisputed that Neman committed fraud as to pooled investment vehicles under Advisers Act Section 206(4)/Rule 206(4)-8(a)(1), and that his fraud was in connection with the purchase or sale of securities under Exchange Act Section 10(b)/Rule 10b-5.

Ex. 10 [Order, Civ. Dkt. No. 134 at 6-10]. Thus, as the district court held:

Neman, through Neman Financial, operated a Ponzi scheme, using new investor funds to pay principal and purported profits to existing investors... While Neman used the bulk of investor funds to operate the Ponzi scheme, he also used these funds for various personal purchases.

Id. Ex. 9 [Order, Civ. Dkt. No. 123 at 3]. On November 16, 2016, the district court entered a permanent injunction against Neman and Neman Financial, prohibiting violations of the Securities Act, Exchange Act, and Advisers Act provisions asserted in the SEC's complaint. *Id.* Ex. 11 [Permanent Injunction, Civ. Dkt. No. 136].

Neither Neman nor Neman Financial filed any appeal of the judgment in the SEC's action, and the deadline to file such an appeal has elapsed. *See id.* ¶ 14. Neman's appeal of his criminal conviction was denied by the Ninth Circuit on December 12, 2016, and the mandate issued December 30, 2016. *See id.* Ex. 12. Though Neman alluded at the April 18, 2017 prehearing conference in this proceeding to having filed a *certiorari* petition, he has not moved to stay the mandate, and the time to file a *certiorari* petition, absent an extension, has expired. *Id.* ¶ 17.

B. The Evidence of Respondents' Fraud

Consistent with these findings, the evidence supporting Neman and Neman Financial's respective liability in the trial court actions demonstrated a multi-year Ponzi scheme executed with a high degree of scienter—including \$2 million raised and misappropriated after Neman stipulated to a preliminary injunction prohibiting securities fraud.

1. Solicitation of investor monies

Neman was the sole owner and chief executive officer of Neman Financial, a California

corporation that registered with the SEC as an investment adviser on or about September 28, 2011. *See* Longo Decl. Exs. 1, 14 [Complaint ¶¶ 3, 7; Answer, ¶¶ 3, 7, 10].³

Neman solicited investors for Neman Financial offering three categories of investments: (1) promissory notes for “flipping foreclosed houses” in California (*id.* Exs. 1, 14 [Complaint ¶ 11; Answer ¶ 11]); (2) agreements for the purchase of shares of public companies, such as Facebook (*id.* Exs. 1, 14 [Complaint ¶ 12; Answer ¶ 12]); and (3) purchase agreements for the acquisition of initial public offering shares, such as for GM. *Id.* Exs. 1, 14 [Complaint ¶ 13; Answer ¶ 13]). As relayed by thirteen investors who testified at Neman’s criminal trial, Neman represented that the investors’ proceeds would be invested either in distressed real estate, or in various companies’ public or pre-initial public offering stock, depending which type of investment they chose. *See id.* Ex. 15 [Summary compilation of investor trial testimony, derived from Ex. 5, trial testimony excerpts].

There is no dispute that the investor money was pooled together. Neman himself conceded this, telling investors that their monies would be pooled with other investors’ monies or in a hedge fund managed by Neman, to make such investments. *Id.*

There is also no question that Neman’s fraud was material to investors. Investors testified at his criminal trial that had they known their monies would be used to make Ponzi-like payments or to pay Neman’s personal expenses, or that Neman’s business was not profitable, they would not have invested. *Id.*

³ Neman Financial’s registration was cancelled on February 26, 2013. *See* Longo Decl. Ex. 18 [SEC Investment Adviser Firm Summary web printout].

2. Misappropriation of investors' funds

Rather than investing in real estate or in public offering shares, Neman used investor monies predominantly to pay existing investors and to pay his own expenses. A summary of respondents' financial accounts introduced at Neman's criminal trial showed that of the \$10,761,767.52 raised from investors between 2010 and 2012, he used \$8,480,649 to pay investors, and \$2,362,474.09 for other expenses. Longo Decl. Exs. 5, 16 [Trial Transcript at 562:16-563:2, 680:3-680:20, 685:23-686:4, 686:12-686:24, 688:6-689:20, 691:13-692:5, 692:12-692:23, 696:2-696:11, 675:20-676:15, and Feeney Dec. Exs. 1-7]. Among other things, Neman spent investor monies as follows:

- \$507,952 on political, charitable and religious contributions;
- \$403,083 on legal expenses;
- \$177,772.30 on cash withdrawals;
- \$151,773.35 on travel expenses;
- \$91,105.46 on wedding expenses;
- \$70,784.36 on jewelry;
- \$41,740 on automobiles;
- \$19,961.19 on hotels;
- \$6,188.25 on baby shower expenses; and
- \$671,730.18 on other expenses, including credit card payments, dining out, dry cleaning, entertainment, parking, rent, student loan payments, and taxes.

Id. The evidence further showed that Neman did not use investor monies to purchase any distressed real estate, and made few investments in stock in the relevant time period. *Id.* Exs. 5 and 16 [Trial Transcript at 660:6-661:17, 662:18-662:21, 681:1-684:9, 681:24-682:12, 684:13-

684:25, 689:21-689:23, and Feeney Dec. Ex. 7].

While many of Neman's investors received monies back, with returns, from Ponzi payments that he made, several investors—including Neman's last investor, solicited while Neman was subject to the preliminary injunction in the SEC action—received no monies back at all. Longo Decl. Exs. 5, 16 [Trial Transcript at 676:16-677:16, and Feeney Dec. Ex 7]. Also according to account records introduced at Neman's criminal trial, at the time of the SEC's civil action and the asset freeze, Neman owed investors \$2,899,142.52 in outstanding principal. *Id.* Exs. 5, 16 [Trial Transcript at 701:6-24, and Feeney Dec. Ex. 9]. Financial records introduced at trial further showed that Neman used \$1,746,000 of the \$2 million he raised while subject to the stipulated preliminary injunction in the SEC action to pay four other investors, and \$141,000 to pay his defense lawyers. *Id.* Exs. 5, 16 [Trial Transcript at 704:9-704:20, and Feeney Dec. Ex. 10].

C. The Follow-On Administrative Proceeding

On November 29, 2016, the Commission instituted this matter pursuant to Sections 203(e) and 203(f) of the Advisers Act, and the Order Instituting Proceedings ("OIP") was served by the Secretary by mail. The Division produced its Rule 230 production to respondents on December 6, 2016. *See* Longo Decl. Ex. 17 [Letter from K. Matteson to S. Neman].

On March 22, 2017, following an initial prehearing conference on March 2, 2017, respondents answered the OIP, stating that they "deny any and all allegations." Resps.' Answer at 1. In their answer, respondents purport to raise challenges to Neman's criminal conviction and the judgment in the SEC action, such as concerning the adequacy of Neman's representation and alleged collusion between his attorney and the prosecutor. *Id.* at 1-3. For example, Neman asserts that "the Public Defender worked with the prosecutor to put me in jail" (*id.* at 2), and that

he “tried to get rid of another gov[ernment] lawyer during [his] appeal TWICE FOR LYING to [him] and the Court rejected it.” *Id.* at 3 (emphasis in original).

The parties attended a second prehearing conference on April 18, 2017. Following the second prehearing conference, Neman submitted an additional “Reply to April 18th Call” dated May 3, 2017, repeating many of the allegations as respondents’ answer, including that the FBI, Neman’s public defender, and the Division attorneys in this proceeding have all “lied,” and asserting that “this process is rigged...” Resps.’ May 3, 2017 Reply at 1-2.

III. ARGUMENT

A. Summary Disposition Is Appropriate

Rule 250(b) of the Commission’s Rules of Practice, 17 C.F.R. § 201.250(b), 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 the “undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.” SEC Rule of Practice Rule 250(b), 17 C.F.R. § 201.250(b).⁴

Summary disposition is “generally proper in ‘follow-on’ proceedings like this one, where the administrative proceeding is based on a criminal conviction or a civil injunction.” *George Charles Cody Price*, Initial Dec. Rel. 1018, 2016 WL 3124675 (June 3, 2016); *accord Omar Ali*

⁴ Under Rule 323, a hearing officer may take notice of “any material fact which might be judicially noticed by a district court of the United States...” 17 C.F.R. § 201.323; *see, e.g. David S. Cacchione*, Release No. 2152, 2014 SEC LEXIS 4868, at *8 n.4 (Dec. 19, 2014) (taking official notice of criminal case docket and record).

Rizvi, Initial Dec. Rel. No. 479, 2013 WL 64626 (Jan. 7, 2013) (the “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*, 105 S.E.C. Docket 3126, 2013 WL 772514 (Mar. 1, 2013); *Daniel E. Charboneau*, Initial Dec. Rel. No. 276, 84 S.E.C. Docket 3476, 2005 WL 474236 (Feb. 28, 2005) (summary disposition granted and penny stock bar issued based on injunction), *notice of finality*, 85 S.E.C. Docket 157, 2005 WL 701205 (Mar. 25, 2005); *Currency Trading Int’l Inc.*, Initial Dec. Rel. No. 263, 83 SEC Docket 3008, 2004 WL 2297418 (Oct. 12, 2004) (same), *notice of finality*, 84 S.E.C. Docket 440, 2004 WL 2624637 (Nov. 18, 2004). In addition, under SEC precedent, the circumstances when summary disposition is not appropriate “will be rare” where, as here, the bar is sought in a follow-on proceeding in a matter involving fraud. *Robert J. Lunn*, Initial Dec. Rel. No. 887, 2015 WL 5528212, at *1 (Sept. 21, 2015), *notice of finality*, Release No. 4270, 2015 WL 7253000 (Nov. 17, 2015) (citing *John S. Brownson*, Exchange Act Release No. 46161, 2002 SEC LEXIS 3414, at *9 n.12 (July 3, 2002), *pet. denied*, 66 F. App’x 687 (9th Cir. 2003)).

Moreover, where, as here, facts have been litigated and determined in an earlier judicial proceeding, a respondent may not revisit them in an administrative proceeding. *See Peter J. Eichler, Jr.*, Initial Dec. Rel. No. 1032, 2016 WL 4035559 (July 8, 2016) (“It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial”) (collecting cases); *accord Robert Burton*, Initial Dec. Rel. No. 1014, 2016 WL 3030850 (May 27, 2016); *James E. Franklin*, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713 & n.13, 2007 WL 2974200, *petition for review denied*,

285 F. App'x 761 (D.C. Cir. 2008).⁵

B. Following Neman's Conviction, the District Court Found that Neman and Neman Financial Knowingly Made Material Misrepresentations to Investors

That Neman made materially false representations to Neman Financial's investors, with the intent to deceive, has already been determined by not one, but two triers of fact.

Neman's conviction for mail and wire fraud in May 2014, after his jury trial, included the necessary factual findings that Neman "knowingly" engaged in a scheme to defraud, to obtain money or property by "false pretenses," through material misrepresentations or omissions, with the "intent to defraud." Longo Decl. Ex. 5 [Trial Transcript at 750:8-11, 756:2-18, 758:9-21, 761:3, 763:6-16]. Similarly, the district court in the SEC action found, in its pretrial rulings against Neman and Neman Financial, that they misappropriated investor monies, through a Ponzi scheme, while selling securities. *See id.* Ex. 7 [Order, Civ. Dkt. No. 108 at 13-16]; *see also id.* Ex. 9 [Order, Dkt. No. 123 at 10-13].

Thus, for purposes of this proceeding, respondents cannot dispute that they made materially false representations to investors, acting with scienter, and misappropriated funds from Neman Financial's investors.

C. Imposition of a Permanent Bar Against Neman, and the Revocation of Neman Financial's Registration, Are Warranted

Based on this misconduct, Neman should be permanently barred from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization, and the registration of Neman Financial

⁵ Thus Neman cannot relitigate here, for example, whether his criminal conviction should be reversed based on his not being provided new criminal defense counsel in the DOJ action (*see Resps.' Answer at 2-3*), a claim the Ninth Circuit rejected. *See Longo Decl. Ex. 12 [Judgment on appeal, at 3-4]*.

should be permanently revoked.

Advisers Act Section 203(f) authorizes the Commission to impose an associational bar against Neman, if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he has been enjoined from any action, conduct, or practice specified in Advisers Act Section 203(e)(4); and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). Advisers Act Section 203(e) empowers the Commission to revoke Neman Financial's registration if: (1) the sanction is in the public interest and (2) the investment adviser is permanently enjoined by any court of competent jurisdiction from "engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4). These conditions are met here.

1. Respondents were enjoined while acting as investment advisers

The first requirement for a bar or a revocation—an injunction against an investment adviser or someone associated therewith—is easily satisfied. On November 16, 2016, the district court entered an order against respondents in the SEC action, permanently enjoining respondents from violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 203A, 204(a), 206(1), 206(2), 206(4), and Rule 206(4)-8(a)(1) thereunder, of the Advisers Act. *See* Longo Decl. Ex. 11. Neither respondent has appealed this order, and the time to appeal has expired. *Id.* ¶ 14. Neman's appeal of the related criminal conviction was denied, and the time to move to stay the appellate mandate has elapsed. *Id.* ¶¶ 15-17.

While Neman denies this allegation (and every other allegation of the OIP—*see* Resps.' Answer at 1), the findings of fact and conclusions of law made in a prior injunctive action are immune from attack in a follow-on administrative proceeding. *See Ted Harold Westerfield*, Release No. 41126 (Mar. 1, 1999), 69 S.E.C. Docket 622, 1999 WL 100954, n.22 (1999)

(collecting cases); *Robert J. Lunn*, 2015 WL 5528212, at *4 (a collateral attack on the findings and conclusions of the district court is impermissible), *notice of finality*, Release No. 4270 (Nov. 17, 2015), 2015 WL 7253000. Moreover, even if Neman has filed or does file a petition for *certiorari* review of his criminal conviction, this does not preclude the Commission from sanctioning him based on the injunction entered against him. *See James E. Franklin*, 2007 WL 2974200, at *4 & n.15.

There is also no dispute that Neman's misconduct occurred while he was associated with a broker-dealer and investment adviser. The term "associated" with, as used in the Advisers Act, includes situations when a person is "directly or indirectly controlling or controlled by" an investment adviser. *See* Advisers Act, Section 202(a)(17). In his answer to the SEC's complaint, Neman admitted that he was the sole owner and CEO of Neman Financial, a then-registered financial adviser. *See* Longo Decl. Exs. 1, 14 [Complaint ¶¶ 3, 7; Answer, ¶¶ 3, 7, 10].

2. A permanent bar and a revocation are in the public interest

Whether an administrative sanction based upon an injunction is in the public interest turns on the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, recognition of the wrongful conduct, and the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Lonny S. Bernath*, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (April 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of

administrative sanctions. *Id.* at **4, 11. “[N]o one factor is dispositive.” *Michael C. Pattison, CPA*, No. 3-14323, 2012 WL 4320146, at *8 (Comm. Op. Sept. 20, 2012); *ZPR Investment Management, Inc.*, No. 3-15263, 2015 WL 6575683, at *27 (Comm. Op. Oct. 30, 2015) (inquiry into the public interest is “flexible”).

As to whether a permanent bar is appropriate in a follow-on proceeding, precedents hold that, “[v]iolations involving the antifraud provisions of the federal securities laws are especially serious and merit the severest of sanctions.” *Vinay Kumar Nevatia*, Initial Dec. Rel. No. 1021, 2016 WL 3162186, at *5 (June 7, 2016), citing *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *accord Eichler*, 2016 WL 4035559, at *6 (“The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions...Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on antifraud injunctions in which the Commission issued opinions, and all of the respondents were barred...”), internal citations omitted. Moreover, “[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry.” *Michael V. Lipkin and Joshua Shainberg*, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

a. Respondents’ violations were egregious, recurrent and intentional

In both the SEC and the DOJ actions, Neman was found liable for intentional fraud, as was Neman Financial in the SEC action. These findings alone render Neman’s violations, which he committed through Neman Financial, severely egregious. Additional findings by the court further establish the intentionality and duration of respondents’ fraud:

- the jury’s verdict reflected findings that Neman knowingly, with intent to defraud,

engaged in a scheme obtain money or property, based on materially false representations or omissions;

- the district court in the SEC action found that respondents engaged in a multi-year Ponzi scheme;
- the district court in the SEC action found that respondents misappropriated investor funds to make Ponzi payments and for their own uses; and
- Neman's criminal conviction derived from his having raised \$2 million in investor funds after agreeing to a preliminary injunction in the SEC action—funds he misappropriated to make additional Ponzi payments to investors, from whom he then obtained letters he sent to the SEC, stating the investors had been paid.

The evidence of respondents' conduct supported these findings, showing that of the \$10,761,767.52 raised from investors between 2010 and 2012, respondents used \$8,480,649 to pay other investors, and \$2,362,474.09 for non-investor purposes, including, among other things, political and charitable contributions, legal fees, cash, travel, wedding costs, jewelry, cars, hotels, and other expenses.

Not only was respondents' fraud carried out with a high degree of scienter, but it was recurrent. The scheme spanned several years, and was only halted—temporarily—when respondents' assets were frozen by the TRO in the SEC action. Respondents misled more than a dozen investors, utilizing multiple forms of fraudulent investment offering. And once enjoined, respondents resumed their fraudulent solicitations, Ponzi payments, and misappropriation, resulting in Neman's criminal conviction for mail and wire fraud. These factors clearly favor a permanent bar under *Steadman*.

b. Based on the undisputed facts, the remaining *Steadman* factors favor a permanent bar and revocation

Respondents' lack of assurances against future violations, lack of recognition of their wrongful conduct, and the likelihood that Neman's occupation and Neman Financial's registration will present future opportunities for violation, all favor the relief sought by the Division. *See Steadman*, 603 F.2d at 1140.

Respondents' three page answer to the OIP, and their more recent "reply" submission, contain no assurances against future violations, nor any recognition of their wrongful conduct. *See Resps.' Answer* at 1-3, *Resps.' May 3, 2017 Reply* at 1-3. Rather, their filings raise challenges to Neman's criminal conviction, his jury trial, his representation at his criminal trial, and to aspects of the case against him in the SEC action. *Id.* The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. *Jonathan D. Havey, CPA*, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow-on proceeding to civil injunction, that, "[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct"); *Delsa U. Thomas and The D. Christopher Capital Management Group, LLC*, Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181, at 24 (Nov. 4, 2014) (imposing permanent bar and revoking adviser's registration on summary disposition following civil fraud injunction, noting that "Respondents do not recognize the wrongful nature of their conduct. Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission's witnesses of bias or lying"); *Terrence O'Donnell*, Initial Dec. Rel. No. 334, 2007 SEC LEXIS

2148, at *14 (Sept. 20, 2007) (weighing in favor of bar respondent’s “protest” that the securities laws were not sufficiently clear, finding this “evidence that [respondent] still seeks to minimize his misconduct”); *Steadman*, 603 F.2d at 1140.

Even if respondents had offered any assurances against further wrongdoing or recognition of their conduct—which neither has done—the efficacy of such promises in precluding future violations would need to be considered in the context of their prior actions. After stipulating to a preliminary injunction following the TRO in the SEC action, Neman went on to raise and misappropriate additional funds, for which he was criminally convicted. As the district court in the SEC action noted:

[W]hile Neman is currently incarcerated, his sentence is for eleven years and three months. Thus, Neman could conceivably commit future harm. This is particularly true given that even after the Court issued a temporary restraining order and preliminary injunction prohibiting future wrongful conduct, Neman solicited \$2,000,000 [] that gave rise to his second count of wire fraud in the related criminal action...

Longo Decl. Ex. 7 at 20. A respondent’s violation of an existing order nullifies assurances against future violations, even where offered. *See, e.g., Jerry W. Anderson and Robert M. Kerns*, Initial Dec. Rel. No. 166, 2000 SEC LEXIS 1092, at *14 (May 31, 2000) (“Illegal conduct by Respondents did not cease, even after the entry of the Preliminary Injunction ... [r]ather, Respondents continued to commit acts, which violated the antifraud provisions The continuing nature of these violations indicates a lack of remorse, and would negate any assurances made by Respondents that they would not violate the antifraud provisions again”); *Siming Yang*, 2015 SEC

LEXIS at **6-7 (in issuing permanent bar following Division's motion for summary disposition, noting that district court had found, in imposing permanent injunction, that respondent had twice violated the court's asset freeze, increasing the likelihood of future violations). Were Neman permitted to remain associated with an investment adviser or other industry entity, or were Neman Financial permitted to be registered with the SEC, the likelihood of future violations would thus persist, notwithstanding Neman's current incarceration.

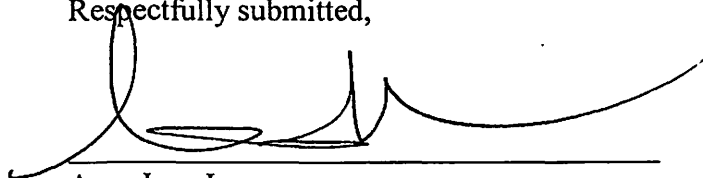
Given the absence of genuine factual disputes concerning respondents' lack of recognition of wrongdoing and the likelihood of recurrence, these factors, too, favor a permanent bar and a revocation under *Steadman*.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted, a permanent collateral bar should be imposed against Neman, and the registration of Neman Financial as an investment adviser should be revoked.

Dated: May 19, 2017

Respectfully submitted,



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Certificate of Service

I certify that on May 19, 2017, I caused the foregoing to be served on the following persons by the method of delivery indicated below:

By Facsimile and UPS (Original & three copies):

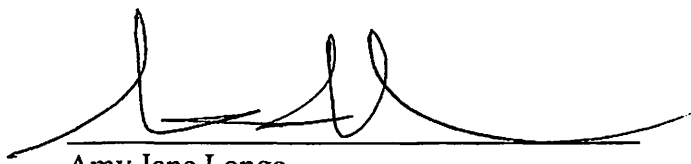
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