UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19951

In the Matter of

Sean R. Stewart,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF LAW IN SUPPORT

DIVISION OF ENFORCEMENT
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OTHER AUTHORITIES

Pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice [17 C.F.R. § 201.100 *et seq.*], the Division of Enforcement (the "Division") respectfully moves for summary disposition against Respondent Sean R. Stewart ("Respondent") and for an order barring Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, based on Respondent's conviction in *United States v. Sean Stewart*, Criminal Action No. 15-CR-287 (S.D.N.Y.) (JSR) (the "Criminal Action") and the injunction entered against him in *SEC v. Stewart, et al.*, Civil Action No. 15-CV-3719 (S.D.N.Y.) (AT) (the "Civil Action").

PRELIMINARY STATEMENT

For nearly four years, Respondent exploited his position as an investment banker to operate an illegal insider trading scheme with his father. On six separate occasions, Respondent abused the trust of his employers and clients, tipping his father confidential, market-moving information that he misappropriated from his employers in the securities industry. His father traded on this information and recruited a third individual to trade and share the profits. Respondent was able to perpetuate the scheme for so long by lying to gatekeepers working to maintain the integrity of the markets, including compliance professionals and in-house counsel responding to inquiries from FINRA. In total, the scheme generated over $1.1 million, all based on Respondent's unlawful tips.

Ultimately, Respondent's insider trading scheme earned him a felony conviction and a civil injunction based on conduct while associated with registered entities. Therefore, the only question before the Commission is whether barring Respondent from the securities industry is in the public interest. Respondent's multi-year scheme, his repeated misappropriation of sensitive confidential information from two different securities industry employers, and his attempts to cover it all up through dishonesty and evasion prove that he is unfit for the industry.

"[A]bsent extraordinary mitigating circumstances, an individual that has been convicted of fraud cannot be permitted to remain in the securities industry." *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *4 (Mar. 1, 2017) (quotation marks and citation omitted). This case presents no such extraordinary mitigating circumstances. The Division respectfully requests that Respondent be barred from the industry.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Respondent spent over a decade working in the securities industry. Stewart CRD [Ex. 3[2]] at 6. From October 2008 through October 2011, Respondent worked at J.P. Morgan Securities LLC ("J.P. Morgan"), which was dually registered with the Commission as an investment adviser and a broker-dealer. *Id.* at 7; J.P. Morgan CRD/IARD [Ex. 4]. From October 2011 until June 2015, Respondent worked at Perella Weinberg Partners ("Perella Weinberg"), which was registered with the Commission as a broker-dealer. Stewart CRD [Ex. 3] at 6; Perella Weinberg CRD [Ex. 5]. At the time of his departure from Perella Weinberg in 2015, Respondent held the position of Managing Director. Answer [Ex. 2] ¶ 1. In each of these roles, Respondent had access to material nonpublic information ("MNPI"), which he had a duty to keep confidential. Comp. [Ex. 6] ¶¶ 2, 108, 110.

A. The Insider Trading Scheme

From 2010 through 2014, Respondent funneled MNPI about clients of J.P. Morgan and Perella Weinberg to his father in knowing violation of his duties to his employers and their clients, with the expectation that his father would benefit from trading on the information. Comp. [Ex. 6]

[1] The facts described in this section are taken from the following sources: the Civil Action complaint (the "Complaint"); the Criminal Action record, including Respondent's own sworn testimony; the Civil Action record; and FINRA's Central Registration Depository ("CRD") and Investment Advisers Registration Depository ("IARD").

[2] All exhibits referenced herein are attached to the Declaration of Julia C. Green dated November 13, 2020 ("Green Dec.").

¶¶ 2, 23-104.[3] Respondent's father, Robert Stewart, traded based on the MNPI that he received from Respondent and tipped Richard Cunniffe ("Cunniffe")[4] who traded and shared the profits with Robert Stewart. *Id.* The scheme involved six instances of unlawful tipping—three while Respondent was working at J.P. Morgan and three while Respondent was working at Perella Weinberg.

The Dionex Tender Offer: In October 2010, Thermo Fisher engaged J.P. Morgan to advise on a tender offer for Dionex Corp. ("Dionex"). Respondent tipped his father that Dionex was likely to be acquired. On December 9, 2010, Robert Stewart bought Dionex stock, which he sold at a profit after Thermo Fisher announced the tender offer four days later. Comp. [Ex. 6] ¶¶ 26-32.

The Kendle Transaction: In December 2010, Kendle International, Inc. ("Kendle") retained J.P. Morgan to advise on a potential sale of Kendle. Respondent tipped his father that Kendle was likely to be acquired. From February 7 to March 4, 2011, Robert Stewart bought Kendle stock, which he sold at a profit after the announcement of the Kendle acquisition. Comp. [Ex. 6] ¶¶ 33-45.

The Kinetic Transaction: In March 2011, J.P. Morgan began advising Kinetic Concepts, Inc. ("Kinetic") concerning an offer to acquire Kinetic. Respondent tipped his father that Kinetic was likely to be acquired. Robert Stewart asked Cunniffe to purchase Kinetic options for him. From April 25 to June 27, 2011, Cunniffe purchased Kinetic call options, most of which he sold at a profit after the public announcement of the Kinetic acquisition. Comp. [Ex. 6] ¶¶ 46-60.

The Gen-Probe Transaction: In March 2012, Hologic engaged Perella Weinberg, to advise on a potential acquisition of Gen-Probe, Inc. ("Gen-Probe"). Respondent tipped his father that

[3] The Complaint refers to J.P. Morgan and Perella Weinberg as Investment Bank #1 and Investment Bank #2, respectively.

[4] The Complaint refers to Cunniffe as "Trader1."

Gen-Probe was likely to be acquired. From April 19 to 27, 2012, Cunniffe purchased Gen-Probe call options, which he sold at a profit after the deal was announced. Comp. [Ex. 6] ¶¶ 70-78

The Lincare Tender Offer: In May 2012, the Linde Group engaged Perella Weinberg to advise on an acquisition of Lincare Holdings, Inc. ("Lincare"). Respondent tipped his father that Lincare was likely to be acquired. In May and June 2012, Cunniffe purchased Lincare call options, most of which he sold at a profit after the tender offer was announced. Comp. [Ex. 6] ¶¶ 79-90.

The CareFusion Transaction: In the spring of 2014, CareFusion Corp. ("CareFusion") retained Perella Weinberg to advise on a potential acquisition of CareFusion. Respondent tipped his father that CareFusion was likely to be acquired. From August 19 to October 2, 2014, Cunniffe bought CareFusion call options, most of which he sold at a profit after the announcement of the CareFusion acquisition. Comp. [Ex. 6] ¶¶ 91-104.

In sum, Respondent's tipping generated approximately $1.1 million in illicit proceeds. Comp. [Ex. 6] ¶ 2.

B. The Deception of Compliance Officials and FINRA

In the summer of 2011, FINRA conducted an inquiry into trading in advance of the Kendle transaction.[5] Comp. [Ex. 6] ¶¶ 65-69. On July 19, 2011, FINRA sent J.P. Morgan a list of individuals and entities it identified as having traded Kendle securities in the period leading up to the announcement of the transaction. Comp. [Ex. 6] ¶ 65. FINRA asked J.P. Morgan to circulate the list among the individuals who had worked on the transaction and ask them to identify anyone with whom they had a relationship. *Id.* The list included Robert Stewart's name and location. *Id.* J.P. Morgan circulated the list to Respondent, and Respondent failed to identify his own father. Comp.

[5] The Complaint refers to FINRA as "a regulator."

[Ex. 6] ¶ 66. On August 23, 2011, J.P. Morgan submitted its response to FINRA, indicating that no one at J.P. Morgan knew Robert Stewart. *Id.*

On August 26, 2011, FINRA asked J.P. Morgan to confirm that Respondent had reviewed the list and that J.P. Morgan's response to FINRA included a response from Respondent. Comp. [Ex. 6] ¶ 67. Following the request from FINRA, J.P. Morgan interviewed Respondent about the FINRA inquiry. Comp. [Ex. 6] ¶ 68.

Respondent later admitted, during sworn trial testimony, that he repeatedly lied to J.P. Morgan's Executive Director for Compliance and in-house counsel in connection with this FINRA inquiry.[6] Respondent told them: that there was no way that his father could have gotten information regarding Kendle from him; that he had not gone on vacation with his parents; that he exchanged only occasional emails with his parents; and that he spoke with his parents one or two times a week. Stewart Tr. [Ex. 7] at 1236-37, 1345-47, 1369-72. Each of these statements was a lie. *Id.* In fact, Respondent later admitted that he spoke with his parents frequently and spent a weekend on vacation with them immediately before his father purchased Kendle stock. *Id.* at 1346-47. Most importantly, Respondent told his parents that he was working on a deal to sell Kendle. *Id.* at 1185-87, 1236-37.

On August 31, 2011, J.P. Morgan transmitted Respondent's lies to FINRA in a supplemental response to the FINRA inquiry. Comp. [Ex. 6] ¶ 68. J.P. Morgan stated that, during a second review, Respondent had identified his father. *Id.* J.P. Morgan also reported that Respondent stated that he did not discuss the Kendle transaction with his father and that he did not know of any circumstances under which his father would have gained any knowledge of Kendle's business activities. *Id.* Thus, Respondent caused J.P. Morgan to convey false information to FINRA.

[6] Respondent testified during the first trial in Criminal Action in August 2016. The descriptions herein of Respondent's admitted lies are taken from Respondent's sworn testimony.

Respondent also lied on multiple occasions to J.P. Morgan and Perella Weinberg compliance personnel in annual mandatory affirmations confirming that he was in compliance with company policies concerning the use of confidential information. Stewart Tr. [Ex. 7] at 1354-60.

C. The Civil and Criminal Actions

On May 14, 2015, the Commission filed a complaint against Respondent for insider trading in violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 [15 U.S.C. § 78 *et seq.*] ("Exchange Act") and Rules 10b-5 and 14e-3 of the Rules and Regulations thereunder [17 C.F.R. §§ 240.0-1 *et seq.*] (the "Complaint"). Civ. Dkt. [Ex. 10]. That same day, Respondent was arrested on criminal charges for substantially the same conduct.[7] Crim. Dkt. [Ex. 8]. The Civil Action was stayed pending resolution of the Criminal Action. Civ. Dkt. [Ex. 10] No. 30.

As Respondent subsequently admitted, following his arrest in May 2015, Respondent knowingly violated the terms of his bail conditions. Stewart Tr. [Ex. 7] at 1315-16, 1361. In May 2015, Respondent signed a bond agreement, under penalty of perjury, as a condition of his release on bail. *Id.* The agreement required that Respondent secure the bond with an account containing at least $250,000. *Id.* Only a few months later, in August 2015, the account was liquidated, and Respondent spent the money without notifying the court. *Id.* at 1315-17; 1361-1366, 1369.

In July of 2016, Respondent went to trial in the Criminal Action. Crim. Dkt. [Ex. 8]. Over two days in August 2016, Respondent testified under oath. Stewart Tr. [Ex. 7]. As described above, Respondent admitted that he lied in connection with the 2011 FINRA inquiry and on annual affirmations to J.P. Morgan and Perella Weinberg. Respondent admitted that he told his father confidential information that he learned through his work for J.P. Morgan and Perella Weinberg

[7] The Criminal Action concerned five of the six instances of insider trading at issue in the Civil Action. The Criminal Action did not involve charges relating to Dionex. Indictment [Ex. 9]; 2016 Jury Charge [Ex. 11]; 2016 Verdict [Ex. 12]; 2019 Verdict [Ex.13].

clients, including information about Kendle, KCI, Lincare, Gen-Probe, and CareFusion. *Id.* at 1185-87, 1248, 1250, 1252, 1255. But Respondent claimed that he never intended that his father trade on the tips and maintained that he was "innocent." *Id.* at 1256, 1366. The jury rejected Respondent's claim, finding Respondent guilty of all charges against him. 2016 Verdict [Ex. 12].

Respondent appealed his conviction to the United States Court of Appeals for the Second Circuit. The Second Circuit vacated Respondent's judgment of conviction, finding that the district court had erred in allowing the government to enter certain audio recordings of Robert Stewart's meetings with Cunniffe without allowing Respondent to enter Robert Stewart's post-arrest statements as impeachment material. *United States v. Stewart*, 907 F.3d 677, 686-92 (2d Cir. 2018).[8] The Second Circuit remanded the Criminal Action to the district court for further proceedings. *Id.*

In September 2019, the government retried Respondent. Crim Dkt. [Ex. 8]. Again, the jury found him guilty of all charges against him, including six counts of securities fraud, in violation of Exchange Act Section 10(b) and one count of securities fraud in connection with a tender offer, in violation of Exchange Act Section 14(e).[9] Crim. Dkt. [Ex. 8]; Indictment [Ex. 9].

In convicting Respondent of securities fraud, the jury determined that Respondent provided his father, Robert Stewart, MNPI concerning Kendle, Kinetic, Gen-Probe, Lincare, and CareFusion, with the expectation that his father would use that information to buy or sell securities and/or would induce someone else to use such information to buy or sell securities, and that Robert Stewart and/or his acquaintances then in fact did use this information to purchase securities. 2019 Jury Charge [Ex. 14] at 17-21; 2019 Verdict [Ex. 13].[10] The jury found that, when he engaged in this

[8] The Division has not relied on those audio recordings in this description of the conduct at issue.

[9] The jury also convicted Respondent of one count of conspiracy to commit securities fraud and/or tender offer fraud in violation of 18 U.S.C. § 371 and 15 U.S.C. § 78; and one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349. Indictment [Ex. 9]; Crim. Dkt. [Ex. 8].

[10] With respect to each of these instances, the jury found that Respondent engaged in an insider trading scheme in which for his personal benefit, he took material confidential information that he

scheme, Respondent acted unlawfully, knowingly, intentionally, and with specific intent to defraud his employers. 2019 Jury Charge [Ex. 14] at 17-18, 21; 2019 Verdict [Ex. 13].[11]

In convicting Respondent of tender offer fraud, the jury found that Respondent provided Robert Stewart with MNPI about Lincare, which was the subject of a tender offer, and that Robert Stewart communicated such information to Cunniffe, who purchased Lincare call options. 2019 Jury Charge [Ex. 14] at 23-24; 2019 Verdict [Ex. 13].[12] The jury determined that Respondent acted willfully—deliberately and with a bad purpose, rather than innocently. *Id.* The jury found that Respondent knew the fraudulent nature of the scheme and acted with the conscious objective that it succeed. *Id.*

On December 5, 2019, the district court entered judgment in the Criminal Action against Respondent. Crim. Dkt. [Ex. 8]. The court sentenced Respondent to a 24-month prison term followed by three years of supervised release. *Id.*

In the Civil Action, Respondent consented to final judgment on May 31, 2020. Consent [Ex. 15]. The consent provided, that "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, [Respondent] understands that he shall not be permitted to

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had received from his employer pursuant to a duty to keep it secret and disclosed it to his father, with the expectation that his father would purchase or sell securities based on that information. 2019 Jury Charge [Ex. 14] at 17-20; 2019 Verdict [Ex. 13].

[11] The jury also found that in furtherance of the scheme there occurred at least one use of any means or instrument of transportation or communication in interstate commerce, or the use of the mails or the use of any facility of any national securities exchange. 2019 Jury Charge [Ex. 14] at 17-18, 22; 2019 Verdict [Ex. 13].

[12] The Jury found that Respondent communicated MNPI relating to the Lincare tender offer, which Respondent knew had been acquired directly or indirectly from Linde or Lincare, or any officer, director, partner, employee or any other person acting on behalf of the Linde or Lincare. 2019 Jury Charge [Ex. 14] at 23; 2019 Verdict [Ex. 13]. The jury also found that Respondent made this communication at a time when Linde had taken substantial steps to commence the tender offer, and it was reasonably foreseeable to Respondent that the communication would likely induce his father to trade in the issuer's securities or induce another person to do so. *Id.*

contest the factual allegations of the complaint in this action." *Id.* ¶ 10. On August 12, 2020, the district court entered judgment in the Civil Action, permanently restraining and enjoining Respondent from violating Exchange Act Section 10(b) and Rule 10b-5 thereunder and Exchange Act Section 14(e) and Rule 14e-3 thereunder. Civ. Judgment [Ex. 16].

D. This Follow-On Administrative Proceeding

On September 1, 2020, the Commission issued the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing (the "OIP"). OIP [Ex. 1]. On September 8, 2020, the Division made documents related to this matter available to Respondent. Green Dec. ¶ 3. On September 10, 2020, Respondent filed his answer to the OIP. Answer [Ex. 2].

ARGUMENT

I. This Case May Be Resolved by Summary Disposition

This case is ripe for summary disposition. Rule 250(b) of the Commission's Rules of Practice allows a party to move for summary disposition in cases, such as this one, in which Respondent's answer has been filed and documents have been made available to Respondent for inspection and copying pursuant to Rule 230. Under Rule 250, the Commission may grant 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." The Commission has repeatedly upheld the use of summary disposition in cases "where the respondent has been enjoined or convicted of an offense listed in Exchange Act Section 15(b) and Advisers Act Section 203, the sole determination is the proper sanction, and no material fact is genuinely disputed." *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635 at *10 & n.58 (Feb. 13, 2009) (collecting cases), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

This case presents no material questions of fact. The facts discussed herein are subject to official notice or derive from sources that Respondent cannot dispute. Under Rule 323, "[o]fficial notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body." Pursuant to this provision, the Commission takes official notice of information reflected in FINRA's CRD and IARD and of criminal and civil court records. *See, e.g.*, *Eric David Wanger*, Exchange Act Release No. 79008, 2016 WL 5571629, at *2 & n.11 (Sept. 30, 2016) (taking official notice of information reflected in the CRD); *Duane Hamblin Slade*, Initial Decision Release No. 799, 2015 WL 2457670, at *1 & n.1 (ALJ May 26, 2015) (taking official notice of information reflected in the IARD), *vacated in part on other grounds*, Advisers Act Release No. 5277 (July 2, 2019); *Robert Burton*, Initial Decision Release No. 1014, 2016 WL 3030850, at *2 (ALJ May 27, 2016) (taking official notice of docket reports and court orders from criminal and civil cases).[13] Moreover, where "respondents consent to an injunction, they may not dispute the factual allegations of the injunctive complaint in a subsequent administrative proceeding." *Peter Siris*, Exchange Act No. 71068, 2013 WL 6528874, at *8 (Dec. 12, 2013) (quotation marks and citation omitted) (collecting cases), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Thus, all of the facts described above—including from the CRD and IARD showing Respondent's association with registered entities, from the Criminal Action docket showing Respondent's felony conviction, from the Civil Action docket showing Respondent's permanent injunction, from the Complaint describing Respondent's insider trading scheme, and from Respondent's own sworn testimony admitting his lies and deception—are beyond dispute.

[13] Respondent may not attack his criminal conviction or civil injunction in this administrative proceeding. *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 WL 1941502, at *3 & n.20 (Aug. 23, 2002).

II. Respondent Should Be Barred from the Securities Industry

Respondent's conduct warrants removal from the industry. Section 15(b)(6) of the Exchange Act and Section 203(f) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-1 *et seq.*] ("Advisers Act") authorize the Commission to bar a person from the securities industry if such a bar is in the public interest and the person (i) was associated with a broker or dealer (Section 15(b)(6)) or an investment adviser (Section 203(f)) at the time of the alleged misconduct and (ii) was convicted within ten years of the commencement of the proceeding of, among other offenses, a felony involving the purchase or sale of a security or was enjoined from engaging in any conduct or practice in connection with the purchase or sale of a security. *See* Exchange Act §§ 15(b)(4)(B)(i), 15(b)(4)(C), 15(b)(6); Advisers Act §§ 203(e)(2)(A), 203(e)(4), 203(f). Exchange Act Section 15(b)(6) also authorizes a penny stock bar on these grounds.

A. This Case Meets the Threshold Requirements for a Bar

There can be no genuine issue that Respondent has both a qualifying felony conviction and a qualifying injunction. Nor can there be any genuine issue that Respondent was associated with a broker or an investment adviser at the time of the misconduct at issue: three of the instances of unlawful tipping occurred while Respondent was employed by J.P. Morgan, a dually-registered broker-dealer and investment adviser, and three instances occurred while Respondent was employed by Perella Weinberg, a registered broker-dealer. *See* Exchange Act § 3(a)(18) (defining "person associated with a broker or dealer" to include any employee of such broker or dealer); Advisers Act § 202(a)(17) (defining "person associated with an investment adviser" to include any employee of such investment adviser). Thus, the only question before the Commission is the public interest.

B. A Bar Would Serve the Public Interest

Without question, public interest considerations support a bar. The criteria for assessing the public interest are set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other*

grounds, 450 U.S. 91 (1981). Those factors include: 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 of future violations. *Id.* at 1140. The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under securities laws." *Siris*, 2013 WL 6528874, at *6 (quotation marks and citation omitted). Precedent supports a bar.

First, Respondent's conduct was egregious. "Insider trading constitutes clear defiance and betrayal of basic responsibilities of honesty and fairness to the investing public." *Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 WL 21468604, at *5 (June 26, 2003) (quotation marks and citation omitted). *Cf. Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 WL 5172974, at *3 (Sept. 4, 2015) (permanently disqualifying accountant from appearing or practicing before the Commission pursuant to Rule 102(e), and noting that insider trading "is especially serious and warrants the severest of sanctions") (quotation marks and citation omitted). Respondent was a securities industry professional, entrusted by his employers and their clients with very sensitive, market-moving information. He violated that trust again and again to benefit his own family.

Respondent not only launched a $1.1 million insider trading scheme, he blatantly lied about it to thwart FINRA's inquiry into the conduct. Such "deliberate deception of regulatory authorities justifies the severest of sanctions." *Kornman*, 2009 WL 367635, at *7 (barring an individual who was convicted of making false statements to Commission staff during an insider trading investigation). Not surprisingly, the district court concluded that Respondent's conduct warranted a two-year prison sentence.

Second, far from an isolated incident, Respondent engaged in a serial insider trading scheme, involving six instances of unlawful tipping over nearly four years and misconduct at two different registered entities.

Third, Respondent acted with a high degree of scienter. In convicting Respondent of securities fraud, the jury found that he acted "knowingly and intentionally . . . with a specific intent to defraud his employer . . . by misappropriating to his own use information he knew the company required him to keep confidential." 2019 Jury Charge [Ex. 14] at 21; 2019 Verdict [Ex. 13].[14] Respondent's admitted lies to his employer in response to the 2011 FINRA inquiry and his false compliance affirmations manifest his scienter—as does the fact that Respondent tipped his father *three more times* after the FINRA inquiry. *See Thomas C. Gonnella*, Exchange Act Release No. 78532, 2016 WL 4233837, at *12 (Aug. 10. 2016) (finding respondent's scienter was amply demonstrated where respondent hid his conduct and misled his supervisors), *pet. denied*, 954 F.3d 536 (2d Cir. 2020).

Fourth and fifth, Respondent has neither assured the Commission that he will refrain from future wrongdoing nor recognized his past misdeeds. "Failure to make assurances against future violations and to recognize wrongdoing elevates the threat of future violations." *Joseph Contorinis*, Initial Decision Release No. 503, 2013 WL 4478642, at * 6 (ALJ Aug. 22, 2013), *aff'd*, Exchange Act Release No. 72031, 2014 WL 1665995 (Apr. 25, 2014).

Sixth, the Commission should bar Respondent to reduce the risk of further violations. The securities industry "presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence." *Siris*, 2013 WL 6528874, at *7

[14] Similarly, in convicting Respondent of tender offer fraud the jury found that he acted "deliberately and with a bad purpose" and that he '[knew] of the fraudulent nature of the scheme and acted with the conscious objective that it succeed." 2019 Jury Charge [Ex. 14] at 24; 2019 Verdict [Ex. 13].

(quotation marks and citation omitted) (imposing collateral bar on individual who engaged in misconduct that included numerous instances of insider trading over almost two years resulting in over half a million dollars of illicit profits). His extended participation in a serial insider trading scheme, and his "deliberate attempt to deceive" J.P. Morgan, Perella Weinberg, and FINRA indicate "a lack of honesty and integrity, as well as a fundamental unfitness to transact business associated with a broker or dealer and to advise clients as a fiduciary." *Kornman*, 2009 WL 367635, at *7.

The Commission should impose a collateral bar, preventing Respondent from associating with all classes of securities market participants—not just with the types of entities that Respondent exploited for his insider trading scheme.[15] "[T]he securities business is one in which opportunities for dishonesty recur constantly." *Justin F. Ficken*, Exchange Act Release No. 58802, 2008 WL 4610345, at *3 (Oct. 17, 2008) (quotation marks and citation omitted). As the Commission noted in *Siris*, various classes of securities market participants "routinely learn confidential and potentially market-moving information about securities, issuers, and potential transactions and securities professionals must take on heightened responsibilities to safeguard that information and to avoid temptations to fraudulently misuse their access for inappropriate—but potentially lucrative or self-serving—ends." 2013 WL 6528874, at *7 n.47 (quoting *Alfred Clay Ludlum, III*, Advisers Act Release No. 3628, 2013 WL 3479060, at *5 (July 11, 2013)). Respondent's "repeated insider trading is

[15] A "collateral bar" is a tool by which the Commission can ban a market participant from associating with all classes of securities market participants based on misconduct regarding only one class. *See Bartko v. SEC*, 845 F.3d 1217, 1220 (D.C. Cir. 2017). In *Bartko*, the D.C. Circuit described the history of the collateral bar provisions of Section 15(b)(6) and Section 203(f). Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), "the Commission is now able to bar a securities market participant from the six listed classes—broker-dealers, investment advisers, municipal securities dealers, transfers agents, municipal advisors and NRSROs—based on misconduct in only one class." *Bartko*, 845 F.3d at 1220–21.

exactly the type of egregious behavior that supports a collateral bar." *Siris*, 2013 WL 6528874, at *7 n.47.

In sum, this case does not present the "extraordinary mitigating circumstances" that would be needed to depart with precedent and allow Respondent to remain in the industry that he has abused. *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *4 (Mar. 1, 2017) (quotation marks and citation omitted). Rather, Respondent repeatedly exploited his access to sensitive information for his own family's gain and deceived the professionals working to protect market integrity. Respondent should be barred.

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Commission grant this Motion for Summary Disposition and bar Respondent from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

Dated: November 13, 2020
Philadelphia, Pennsylvania

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 13, 2020, I caused a true and correct copy of the Division of Enforcement's Motion for Summary Disposition and Memorandum of Law in Support to be filed and served by email to the following:

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