SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3513 / December 13, 2012

Admin. Proc. File No. 3-14162

In the Matter of

JOHN W. LAWTON

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Former associated person of investment adviser was permanently enjoined from antifraud violations of the federal securities laws. *Held*, it is in the public interest to bar former associated person from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

John W. Lawton, *pro se*.

John E. Birkenheier, *Adolph J. Dean, Jr.*, and *Merlene B. Key*, for the Division of Enforcement.

Appeal filed: May 26, 2011
Last brief received: August 31, 2011

I.

The Division of Enforcement (the "Division") appeals from the decision of an administrative law judge barring John W. Lawton from association with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent following a district court order permanently enjoining him from violating antifraud provisions of the securities laws.[1] The Division appeals the law judge's decision not to bar Lawton from association with a municipal advisor or nationally recognized statistical rating organization (NRSRO). We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

A. Civil Injunction

On February 18, 2009, the Commission filed a complaint ("Complaint") in an injunctive action in the U.S. District Court for the District of Minnesota against Lawton, Crossroad Capital Management, LLC, a Delaware limited liability company ("Crossroad"), and Paramount Partners, LP, a Delaware limited partnership ("Paramount"). We summarize the Complaint below.

During the period at issue, Lawton controlled and was 50% owner of Crossroad, an investment adviser as defined under the Investment Advisers Act of 1940.[2] Crossroad, in turn, was general partner and investment manager for Paramount, a hedge fund. As of December 2008, about fifty-four investors had invested a net amount of approximately $9 million in Paramount limited partnership interests. Through Crossroad, Lawton directed the "day to day management" of Paramount, controlled its investment decisions, and executed its securities transactions. Lawton and Crossroad's compensation was tied to Paramount's performance; they received an annual management fee of 1% of Paramount's net asset value and an annual performance fee of 25% of any positive total return received by Paramount.

Lawton marketed Paramount as a "boutique for wealthy investors," representing that the fund "maximize[d] investment returns while minimizing risks by using a 'long/short' investment strategy" involving "direct equity purchases and offsetting option based positions." Lawton promoted the fund by claiming success in generating impressive returns. For instance, in 2008 Lawton, directly and through others in his employ, marketed the fund to prospective investors

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[1] *John W. Lawton*, Initial Decision Rel. No. 419 (Apr. 29, 2011), 100 SEC Docket 40872.

[2] *See* 15 U.S.C. § 80b-2(a)(17) (defining "person associated with an investment adviser"); *Gary M. Kornman*, Securities Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14245, 14251 & nn.16-17, *petition denied*, 592 F.3d 173 (D.C. Cir. 2010) (finding that general partner of a hedge fund is an investment adviser).

through "fact sheets" touting its purported investment success. These fact sheets fraudulently claimed that Paramount had far outperformed the S&P 500 Index, had generated annual returns of between 19% and 65% since 2001, and had only one year of losses, 2004, in which the fund purportedly declined in value by approximately 5%. In a December 2008 fact sheet (the "December 2008 Fact Sheet"), Lawton represented that Paramount held $21 million in assets.

Lawton also misled Paramount's existing investors about the firm's investment success. For example, in 2007 and 2008, Lawton and others in his employ sent Paramount investors account statements showing "substantial increases" in the value of their investments. In January 2009, Lawton sent account statements to Paramount investors showing that the investor accounts purportedly were worth a total of approximately $17 million as of December 31, 2008 (the "January 2009 Account Statements"). Lawton continued to make similar oral statements to current and prospective investors regarding Paramount's trading strategy, performance, and use of investor funds as late as January 2009.

Through these marketing efforts and account statements, Lawton successfully generated new investments in Paramount. Several investors made additional investments in Paramount during 2008 based on the returns reflected on their account statements. During 2008, Paramount received approximately $5.8 million in new investor money, and as much as $2.2 million in the last three months of the year.

Lawton was dramatically overstating the value of Paramount's assets. According to Lawton, Paramount's investments were held at four brokerage firms: Merrill Lynch, Jefferies, Interactive Brokers, and Goldman Sachs. Although Lawton represented in the December 2008 Fact Sheet that Paramount held $21 million and represented in the January 2009 Account Statements that Paramount held $17 million, the four brokerage firms independently verified that Paramount's accounts at these firms held only a total of $5.3 million as of December 31, 2008. The account balances rapidly fell to less than $2 million as of February 13, 2009.

A Division investigation discovered an approximately $12 million shortfall in the firm's accounts. This $12 million shortfall represented the difference between the $17 million in cumulative total assets reflected on the January 2009 Account Statements and the $5.3 million actually held in Paramount's accounts as of December 31, 2008. In early February 2009, as part of its investigation, the Division requested documents to verify the value of the firm's assets. In response, Lawton created and produced a December 2008 account statement showing a total Paramount Goldman Sachs account balance of over $12 million, roughly the amount of the shortfall (the "Falsified Investigation Statement"). But representatives of Goldman Sachs later "informed the [Division] that the[se] documents" were not genuine. In fact, Paramount had closed its Goldman Sachs account in or about June 2008.

On February 18, 2009, about a week after receiving the Falsified Investigation Statement, the Division filed the Complaint against Lawton, Paramount, and Crossroad. The next day, the district court issued a temporary restraining order, ordered a sworn accounting by each defendant,

and ordered a freezing of all of the defendants' assets.[3] On July 9, 2009, Lawton consented to the entry of a permanent injunction ("Consent Agreement") by the district court. In an order that incorporated this Consent Agreement, the district court permanently enjoined Lawton from violations of Sections 17(a)(1), (2), and (3) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5; Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940 and Advisers Act Rule 206(4)-8; and from aiding and abetting violations of Advisers Act Sections 206(1), (2), and (4) and Advisers Act Rule 206(4)-8.[4]

In June 2010, Lawton moved to vacate the permanent injunction. In a memorandum opinion and order issued on February 7, 2011, the district court ruled on Lawton's motion and on a Division motion to determine disgorgement and other monetary relief. The court denied Lawton's motion to vacate. It found that Lawton "entered his consent knowingly and voluntarily and with the advice of counsel," and stated that "[i]f Lawton did not wish to be subject to the [permanent injunction], he should not have consented to it." The court found that $1,758,788 was transferred from Paramount and Crossroad accounts to Lawton between January 2006 and the freezing of his assets in February 2009, and that this amount was a reasonable approximation of his ill-gotten gains. The court ordered Lawton to disgorge these ill-gotten gains along with prejudgment interest and to pay a $100,000 penalty.[5] In May 2011, Lawton appealed the permanent injunction to the U.S. Court of Appeals for the Eighth Circuit. On January 6, 2012, the Eighth Circuit affirmed the district court injunction and disgorgement calculation.[6]

B. Criminal Conviction

On November 24, 2009, more than four months after entering into the Consent Agreement, Lawton also pleaded guilty to criminal charges of mail fraud and making a false statement in a federal government investigation.[7] In his plea colloquy, Lawton admitted that,

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[3] We take official notice of the February 19, 2009, October 19, 2010, and February 7, 2011 district court orders pursuant to Rule 323 of our Rules of Practice, 17 C.F.R. § 201.323.

[4] 15 U.S.C. § 77q(a)(1), (2), and (3); 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5; 15 U.S.C. § 80b-6(1), (2), and (4); 17 C.F.R. § 275.206(4)-8.

[5] Crossroad was also ordered to pay disgorgement of $2,075,670 and a civil penalty of $500,000.

[6] We take official notice of the January 6, 2012 and July 19, 2011 Eighth Circuit orders pursuant to Rule of Practice 323, 17 C.F.R. § 201.323.

[7] 18 U.S.C. § 1341 (mail fraud); 18 U.S.C. § 1001(a)(3) ("knowingly and willfully mak[ing] or us[ing] any false writing or document knowing the same to contain any materially

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beginning in 2006, he falsely represented Paramount's assets by overstating trading gains and understating trading losses orally and in writing. He made these false statements both to induce new investors to make investments and to encourage existing Paramount investors to maintain their investments in the fund. He specifically admitted that the January 2009 Account Statements falsely overstated the value of investors' interests in the fund. He also admitted that he knowingly prepared the Falsified Investigation Statement. After entering this guilty plea, Lawton received concurrent sentences of seventy months' imprisonment for the mail fraud count and sixty months' imprisonment for the false statement count, to be followed by three years of supervised release. He was also ordered to pay restitution in an amount of $7,091,230.75.

During the plea colloquy, Lawton acknowledged that he had no right to appeal his guilty plea. Nevertheless, Lawton later appealed the criminal conviction to the Eighth Circuit, which dismissed his appeal on July 19, 2011.

C. Institution of Administrative Proceedings and Initial Decision

Based on the permanent injunction, we issued an order instituting these administrative proceedings on December 14, 2010 pursuant to Advisers Act Section 203(f).[8] On April 29, 2011, a law judge issued an initial decision by summary disposition.[9] The law judge found that the injunction established the statutory basis for sanctions, that Lawton was estopped in this proceeding from collaterally attacking the basis for the federal court injunction, and that his Eighth Circuit appeal of the injunctive order, which was pending at the time, did not justify a delay in the follow-on proceeding.

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[7] (...continued)
false, fictitious, or fraudulent statement or entry" in a matter within the jurisdiction of the federal government). Although these administrative proceedings were instituted based on the injunction entered in the Commission's civil enforcement action against Lawton, in assessing the public interest we also consider Lawton's criminal conviction, his admissions in connection with his criminal plea agreement, and his appeals of the civil and criminal cases. *See Don Warren Reinhard*, Exchange Act Rel. No. 63720 (Jan. 14, 2011), 100 SEC Docket 36940, 36946-47 (considering a subsequent criminal conviction as part of the public interest analysis in proceedings originally instituted in connection with a civil injunction); *Robert Bruce Lohmann*, 56 S.E.C. 573, 583 n.20 (2003) (finding that matters "not charged in the OIP" may nevertheless be considered in assessing sanctions in the public interest).

[8] 15 U.S.C. § 80b-3(f).

[9] A hearing officer "may grant . . . 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." Rule of Practice 250(b), 17 C.F.R. § 201.250(b).

The law judge barred Lawton from associating with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent but did not bar him from associating with a municipal advisor or NRSRO. She noted that the conduct on which the injunction was based occurred before the Commission was authorized under Section 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") to impose collateral bars, *i.e.*, bars from associating in capacities other than those in which the respondent was associated at the time of the violative conduct.[10] The law judge analyzed whether imposing the collateral bars requested by the Division would be impermissibly retroactive. She found no retroactive effect in barring Lawton from association with brokers, dealers, municipal securities dealers, and transfer agents, citing the Commission's pre-existing authority under the Exchange Act to impose such bars in subsequent proceedings. But because municipal advisor and NRSRO bars were not authorized when Lawton engaged in the conduct triggering the injunction, the law judge found that these bars were impermissibly retroactive. The law judge noted that the Supreme Court has recognized that certain statutes affecting the propriety of prospective relief do not have retroactive effect but declined to decide whether collateral bars are prospective rather than retroactive remedies, stating that the distinction between "prospective remedial relief [and] a punitive sanction" is "fact-specific and the case law is ambiguous." The Division contends on appeal that all of the collateral bars may be applied without retroactive effect because such bars constitute prospective remedies and that the law judge accordingly erred in declining to bar Lawton from associating with any municipal advisor or NRSRO.

III.

Advisers Act Section 203(f) authorizes the Commission to initiate administrative proceedings against a person who is, among other things, enjoined from "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security," and who was, at the time of the misconduct underlying the injunction, associated with or seeking association with, an investment adviser.[11] We find that Lawton is enjoined from conduct relating to the purchase or sale of securities, and this injunction is based on his conduct while associated with an investment adviser. Thus, the requirements for applying Advisers Act Section 203(f) sanctions have been met.

After the Division filed its opening brief in this appeal, Lawton filed a one-page document titled "Respondent's Motion to Deny Plaintiff's Petition and Motion for Summary Affirmance,"[12] to which he attached a copy of his brief to the Eighth Circuit in his appeal of the

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[10] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[11] 15 U.S.C. § 80b-3(e)(4) and (f).

[12] Although this document was filed with the law judge, under the circumstances and in recognition of Lawton's status as a *pro se* respondent, we are treating this document as his

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injunction. He suggests that his appeal should have precluded summary disposition, claiming that "there are genuine material facts in dispute" and that "unsupported inconclusive assertions based on the interpretation of the partial facts should not carry a day before this tribunal."

The record supports the law judge's summary disposition in this case. Follow-on proceedings are not an appropriate forum to "revisit the factual basis for," or legal challenges to, an order issued by a federal court,[13] and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings.[14] In the Consent Agreement, Lawton consented to entry of the permanent injunction without admitting or denying the allegations in the complaint (except as to jurisdiction) and waived findings of fact, conclusions of law, and any right to appeal from the order of permanent injunction. Having consented to the entry of an injunction on the basis of the Complaint's allegations, Lawton may not use this proceeding to collaterally attack the allegations.[15] By attaching a copy of his Eighth Circuit brief, Lawton invites consideration of his arguments for vacating the district court order, which are appropriately reserved for the federal courts. We decline to do so. In any case, the Eighth Circuit ultimately resolved these claims when it affirmed the district court order.

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[12] (...continued)
brief in opposition to the Division's petition for review.

[13] *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1109-11 (D.C. Cir. 1988); *see also Schield Mgmt. Co.*, 58 S.E.C. 1197, 1213 (2006) (declining to consider assertions "in conflict with the allegations" in the injunctive complaint); *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2605; *Sherwin Brown,* Investment Advisers Act Rel. No. 3217 (June 17, 2011), 101 SEC Docket 42692, 42697 (rejecting "attempts to relitigate the District Court's findings" in injunctive proceedings); *Joseph P. Galluzzi*, 55 S.E.C. 1110, 1116 nn.20-22 (2002) (collecting cases) (finding that respondent "cannot re-litigate the issues adjudicated by the District Court here").

[14] *See Marshall E. Melton*, 56 S.E.C. 695, 712 (2003); *see also Kornman v. SEC*, 592 F.3d 173, 183 (D.C. Cir. 2010) (finding that a summary proceeding was appropriate in a follow-on proceeding when the "record in [the respondent's] criminal case . . . disposed of the central issue regarding the nature of his 'alleged misconduct' for administrative enforcement purposes").

[15] *Martin Armstrong*, Advisers Act Rel. No. 13121 (Sept. 17, 2009), 96 SEC Docket 20556, 20560; *see also Schield Mgmt.*, 58 S.E.C. at 1213.

IV.

A. Follow-On Proceedings under the Advisers Act: Pre- and Post-Dodd-Frank

The Advisers Act authorizes us to censure, place limitations on, suspend, or bar an associated person if we find that such sanction is in the public interest.[16] Section 925 of Dodd-Frank, enacted on July 21, 2010, amended the scope of bars available in administrative proceedings under Section 203 of the Advisers Act. Prior to Dodd-Frank, in an administrative proceeding pursuant to the Advisers Act, the Commission could suspend or bar respondents only from association with an investment adviser. Dodd-Frank expanded the relief available under the Advisers Act. As amended, Section 203 of the Advisers Act authorizes the Commission to impose "collateral bars," that is, to simultaneously bar the individual from association with brokers, dealers, municipal securities dealers, municipal advisors, transfer agents, and NRSROs. Before Section 925 was enacted, if an individual was subject to an investment adviser suspension or bar and then sought to associate with a broker, dealer, transfer agent, or municipal securities dealer, the same action could also serve as a basis for an additional follow-on proceeding—this time under the Exchange Act—to address the public interest in censuring, suspending, or barring the individual from the respective capacity in which he or she was seeking to associate.[17] Section 925 authorizes such bars in proceedings predicated on a respondent's violative conduct while associated in another securities industry capacity, rather than requiring separate proceedings to impose such bars only when and if the individual later seeks to associate himself or herself in the relevant capacity.

Section 203, as amended by Dodd-Frank, also authorizes suspensions and bars from association with municipal advisors and NRSROs—remedies not previously available under the securities laws. This was one of many provisions in Dodd-Frank devoted to expanding regulatory investor protections regarding municipal advisors and NRSROs. For instance, Subtitles IX.C. and IX.H. of Dodd-Frank, respectively, significantly increase the regulation of NRSROs and create a regulatory regime for municipal advisors that did not previously exist. The collateral bar authority in Section 925 reflects Dodd-Frank's broader recognition of the public interest in creating regulatory requirements—including registration, licensing, and associational restrictions—for persons associated with municipal advisors and NRSROs comparable to the regulatory requirements for broker-dealers, municipal securities dealers, and investment advisers.[18]

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[16] 15 U.S.C. § 80b-3(f).

[17] Exchange Act §§ 15(b)(6)(A) (also covers penny stock bar), 17A(c)(4)(C), 15B(c)(4); 15 U.S.C. §§ 78*o*(b)(6)(A), 78q-1(c)(4)(C), 78*o*-4(c)(4).

[18] *See, e.g.*, Dodd-Frank § 931 (making statutory findings regarding the public interest in NRSRO regulation); § 936 (imposing NRSRO training and substantive qualification

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The Division seeks a full collateral bar against Lawton, *i.e.*, a bar from association with any broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. As the law judge noted in considering the appropriate remedies, the injunction underlying these proceedings was based on Lawton's conduct in 2008 and 2009—prior to the passage of the Dodd-Frank amendment authorizing such relief. Accordingly, we must determine whether the remedies Dodd-Frank added to Section 203 are available in this proceeding.

B. Standards for Determining Retroactivity

The leading case for determining when a federal statute may be applied to events predating the statute's enactment is the Supreme Court's decision in *Landgraf v. USI Film Products.*[19] *Landgraf* sets forth a two-part analysis for determining whether applying a statute would be impermissibly retroactive. The first part analyzes whether Congress expressly prescribed the temporal scope of the statute. If the statute does not clearly state whether it is to be applied retroactively, we proceed to the second part of the *Landgraf* analysis to consider whether the proposed interpretation would have a "genuinely retroactive effect."[20] A presumption against retroactivity counsels against application of a statute that would result in such a genuinely retroactive effect if there is no evidence of contrary Congressional intent.[21]

The *Landgraf* court acknowledged that remedies do not operate retroactively "merely because [they are] applied in a case arising from conduct antedating the statute's enactment."[22] Among other examples, *Landgraf* explained that applying a new statute "passed after the events in suit is unquestionably proper" when the statute "authorizes or affects the propriety of

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[18] (...continued)
requirements); § 975(a) (adding municipal advisor registration requirements); § 975(g) (authorizing deregistration of municipal advisors); § 975(c) (authorizing suspensions and bars of persons associated with municipal advisors).

[19] 511 U.S. 244 (1994).

[20] *Id.* at 268.

[21] *Id*.

[22] *Id*. at 269; *see also id.* at 270 n.24 (stating that "a statute 'is not made retroactive merely because it draws upon antecedent facts for its operation'" (quoting *Cox v. Hart*, 260 U.S. 427, 435 (1922))).

prospective relief," such as an injunction.[23] This is the case even though "uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct."[24]

More recently, in *Vartelas v. Holder*, the Supreme Court affirmed that statutes authorizing prospective remedies may consider conduct pre-dating the statute without a genuinely retroactive effect.[25] *Vartelas* addressed a provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) restricting the ability of lawful permanent residents who have been convicted of certain crimes to return to the United States after foreign travel. A majority of the Court held that applying IIRIRA against a lawful permanent resident based on his pre-statute conviction was impermissibly retroactive. The majority found that applying the law to a pre-enactment conviction imposed a new disability in the form of a restraint on travel, and that Vartelas's post-enactment travel was an "'innocent' act, burdened only because of his pre-IIRIRA offense." [26]

The dissent disagreed, stating that it could "imagine countless laws that, like [IIRIRA], impose new disabilities related to 'past events' and yet do not operate retroactively."[27] As examples, the dissent listed laws that disqualify sex offenders from working in jobs involving contact with minors, prevent the mentally unstable from purchasing guns, and restrict the student loan eligibility of persons convicted of drug crimes. The majority agreed that the dissent's examples were prospective. The majority noted that, although pre-enactment conduct may be the predicate for these prospective limitations, their purpose is not to address the harm already caused by the completed conduct but rather to "address dangers that arise postenactment," such as the risks of sex offenders working in close proximity to children or mentally unstable persons

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[23] *Landgraf*, 511 U.S. at 273-74, describing *Am. Steel Foundries v. Tri-City Cent. Trades Council*, 257 U.S. 184, 201 (1921) (explaining that a statute "govern[ing] the propriety of injunctive relief against labor picketing" could be applied to modify a pre-enactment injunction because "relief by injunction operates in futuro" and the plaintiff "had no 'vested right' in the [injunctive] decree" that was entered by the court before the statute's enactment); *see also Cookeville Reg'l Med. Ctr. v. Leavitt*, 531 F.3d 844, 847 (D.C. Cir. 2008) (noting that *Landgraf* discusses a "host of exceptions that weaken the anti-retroactivity principle").

[24] *Landgraf*, 511 U.S. at 270 n.24.

[25] 132 S. Ct. 1479 (Mar. 28, 2012). The *Vartelas* decision was issued after the initial decision in this proceeding.

[26] Id. at 1490. Dodd-Frank Section 925 protects the regulated securities professions from persons who have demonstrated unfitness for the industry. As discussed, collateral bars are appropriate when a respondent's future entry into the industry in a collateral capacity would not be an "innocent act" but would expose the investing public to future risks.

[27] *Id*. at 1495.

purchasing guns.[28] Because these statutes consider the public interest in remedying future risks, their remedies may consider pre-enactment conduct without raising retroactivity concerns.[29]

C. Retroactivity Analysis of Collateral Bars

Dodd-Frank does not unambiguously state whether its collateral bar provision may be applied in cases involving pre-enactment conduct.[30] The Division argues that the presumption against retroactivity does not apply because the relief authorized under the statute is prospective. The Division contends that collateral bars are prospective relief that we may impose under the amended statute because such limitations would protect the public from a risk of future harm. Lawton has not challenged the application of Section 925 to this proceeding.

In *Landgraf* and *Vartelas*, the Supreme Court stated that prospective relief does not implicate retroactivity concerns because it addresses future risks and applies to future actions—not to events that were already past when the statute was enacted. Collateral bars address future risks and apply to future actions: the harm to the investing public posed by the future securities industry association of a person who has demonstrated unfitness to act as a securities professional. The Commission is authorized to impose a bar not to punish the respondent for past misconduct or to remedy past harms suffered by victims of that misconduct, for example, in the form of disgorgement or damages. Rather, the Commission's bars are authorized to protect the investing public from the respondent's possible future actions by restricting access to other areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm.

The language and structure of the securities statutes, both pre- and post-Dodd-Frank, show that Congress has authorized the Commission to bar individuals from areas of the securities industry to protect investors from future harm. The Commission has long had authority to bar individuals based on past misconduct and a determination that such misconduct, among other factors, demonstrates a sufficient future risk to the investing public to justify exclusion from the

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[28] *Id*. at 1489 n.7.

[29] The majority distinguished statutes addressing post-enactment dangers from the travel restriction at issue in *Vartelas*, observing that it was not "plausible that Congress' solution to the problem of dangerous lawful permanent residents would be to pass a law that would *deter* such persons from ever leaving the United States." *Id*. at 1489 n.7 (emphasis added).

[30] Under Section 4 of Dodd-Frank, the collateral bar provision was effective on July 22, 2010. The Dodd-Frank collateral bar provision affected only the remedies for a pre-existing cause of action, not the legal basis or defenses for the cause of action.

industry.[31] Reflecting the prospective rather than retrospective focus of the statute, this authority includes the ability to impose bars in proceedings predicated on misconduct unrelated to the securities laws and outside the scope of the individual's participation in the securities industry—such as criminal convictions for non-securities related larceny, theft, or robbery and other crimes punishable by imprisonment for a year or more[32]—even though the Commission is not authorized to punish the underlying criminal activity or remedy the harm suffered by its victims.[33] This statutory authority constitutes further evidence that Congress intended the Commission's administrative bars to provide prospective relief from harm to investors and the markets.[34] Otherwise stated, the relevant events for purposes of a retroactivity analysis are not

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[31] *See infra* note 33.

[32] *See* Investment Advisers Act Section 203(f); 15 U.S.C. § 80b-3(f) (incorporating Section 203(e)(2)(C) (covering any felony or misdemeanor involving "larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation") and 203(e)(3)(A) (covering "any crime that is punishable by imprisonment for 1 or more years")); Exchange Act Section 15(b)(6)(A); 15 U.S.C. § 78*o*(b)(6)(A) (incorporating Section 15(b)(4)(B)(iii) (covering any felony or misdemeanor involving "larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation")).

[33] *See McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) (quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940)) (stating that the Exchange Act "authorizes an order of expulsion not as a penalty but as a means of protecting investors, if in the Commission's opinion such action is necessary or appropriate to that end. . . . The purpose of the order is remedial, not penal."). The "relevant activity that the [statute] regulates" in these cases is future conduct in the securities industry rather than the past, non-securities related conduct. *See Landgraf*, 511 U.S. at 291 & 293 (Scalia, J., concurring) (stating that "[t]he critical issue . . . is not whether the rule affects 'vested rights,' or governs substance or procedure, but rather what is the relevant activity that the rule regulates" and that because "the purpose of prospective relief is to affect the future rather than remedy the past, the relevant time for judging its retroactivity is the very moment at which it is ordered").

[34] *Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996), found that a Commission suspension was a "penalty" for purposes of the statute of limitations under 28 U.S.C. § 2462. It based this conclusion on its finding that the rationale for the sanction was "solely in view of Johnson's past misconduct" and was "not focused on Johnson's current competence or the degree of risk she posed to the public." *Id.* at 489, 490. In this case, our focus is on the risk of future harm Lawton poses to the public. As *Johnson* acknowledged, occupational bars are not necessarily punitive in contexts other than the statute of limitations, particularly when such a bar is "motivated by a *bona fide* goal of protecting the public." *Id*. at 491 (citing*, e.g.*, *United States*

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the past misconduct but the ongoing regulation of the securities industry and certain persons' future association with the industry.

We find further support for the prospective nature of the municipal advisor and NRSRO bars in the extensive provisions in Dodd-Frank creating and overhauling, respectively, the municipal advisor and NRSRO regulatory regimes. Through this legislation, Congress directed the Commission to increase its regulatory presence in these industries. At the time Lawton engaged in the misconduct that was the subject of the injunctive proceeding, the securities laws did not did authorize the Commission to bar him or others from association with municipal advisors and NRSROs. Section 925 of Dodd-Frank, which confers this authority, however, does not reflect a decision by Congress to increase the penalty for Lawton's misconduct or any other conviction or injunction triggering follow-on proceedings under Section 203 the Advisers Act. Rather, it makes the Commission's ability to protect the public in the municipal advisor and NRSRO areas of the securities industry more consistent with the protections available in other areas of the industry.[35] As a result of his misconduct, Lawton could not have reasonably expected that he could seek to enter those other areas of the securities industry, and therefore Dodd-Frank's only effect was to include municipal advisors and persons associated with NRSROs as part of the regulated securities industry from which he could be excluded. Congress's decision to authorize the Commission to bar individuals from future participation in these capacities is, therefore, best viewed as having a "prospective thrust" like the examples of statutes the Supreme Court deemed to be without retroactive effect in *Vartelas*.[36]

The United States Court of Appeals for the District of Columbia Circuit decision in *Boniface v. Homeland Security* provides further support for our conclusion that collateral bars may be imposed based on pre-Dodd Frank conduct. *Boniface* held that denying future occupational opportunities based on a prior court order did not trigger "any of the effects deemed retroactive in *Landgraf*."[37] *Boniface*, who had been criminally convicted for possession of an unregistered explosive device more than thirty years earlier, "sought a renewed" authorization

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[34] (...continued)
v. Stoller, 78 F.3d 710, 724 (1st Cir. 1996) (finding that bar of individual from banking industry was not punishment for purposes of the double jeopardy clause)).

[35] *See, e.g.*, Dodd-Frank § 931 (finding that "the activities of credit rating agencies . . . should be subject to the same standards of liability and oversight as apply to auditors, securities analysts and investment bankers"); Dodd-Frank § 975(a) & (c) (amending Exchange Act Section 15B to make the municipal advisor registration and disciplinary requirements comparable to those applicable to municipal securities dealers).

[36] *See supra* note 28 and accompanying text.

[37] 613 F.3d 282, 288 (D.C. Cir. 2010); *see id*. at 290 (remanding to the agency to consider evidence submitted by Boniface in support of a waiver of the rule).

from the TSA to transport hazardous material in 2008 because his commercial driver's license was set to expire. The agency denied the renewal application under a newly enacted rule that created an "evidentiary presumption" that a past conviction demonstrates "a security threat in the present."[38] On appeal, the court rejected Boniface's claim that applying this rule to consider his thirty-year-old conviction was impermissibly retroactive under *Landgraf*. Applying *Landgraf*'s guidance that a "regulation is not retroactive in effect 'merely because it draws upon antecedent facts for its operation,'"[39] the court found that it was appropriate to consider the past conviction during the proceeding as evidence of the future risk posed by the respondent.[40]

Our analysis of when a bar is in the public interest is similar to the framework described in *Boniface*. In each case in which an administrative bar is sought, we consider the record evidence to determine whether such a remedy is necessary or appropriate to protect investors and markets from the risk of future misconduct by the respondent and to preserve the fair and effective functioning of the securities markets.[41] As in *Boniface*, a court order establishes part of the statutory predicate for instituting the follow-on proceeding, and also may be considered as evidence of the future risk posed by the respondent. But, as the courts have held, the existence of a past violation, without more, is not a sufficient basis for imposing a bar.[42] Rather, during this proceeding we consider pre-enactment actions as evidence in a broader inquiry into whether a person presents a future risk to the public interest because, as the Supreme Court has recognized,

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[38] *Id.* at 288.

[39] *Boniface*, 613 F.3d at 288 (citing *Landgraf*, 511 U.S. at 270 n.24).

[40] *Id.* at 288.

[41] *See Paz Sec., Inc. v. SEC*, 566 F.3d 1172, 1175 (D.C. Cir. 2009) (indicating that an administrative bar or suspension "may be used to protect investors but not to punish a regulated person or firm"); *Kornman*, 592 F.3d at 188 (bars may be appropriate for occupations presenting "opportunities for future misconduct").

[42] *See, e.g.*, *McCarthy*, 406 F.3d at 189 (finding that sanctions determinations should show "individual attention to the unique facts and circumstances of [the] case" or "findings that would indicate any additional protection the trading public would receive" as a result of the sanction); *Paz*, 566 F.3d at 1175-76 (citing *McCarthy*, 406 F.3d at 189) (indicating that the Commission must make "findings regarding the protective interests to be served" by expulsion); *see also* Exchange Act § 203(f) (stating that the basis for a Commission bar are findings that such sanction, as relevant here, "is in the public interest *and* that such person . . . is enjoined from any [specified] action, conduct, or practice" (emphasis added)). *Cf. Boniface*, 613 F.3d at 288 (finding that the evidentiary presumption of future risk created by a past conviction under the rule could be rebutted through the waiver process).

the "degree of intentional wrongdoing evident in a defendant's past conduct" is an important indication of the defendant's propensity to subject the trading public to future harm.[43]

Our public interest analysis traditionally considers, among other things: 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, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[44] We consider the nature of the respondent's past violative conduct—e.g., its egregiousness, recurrence, and scienter—not to evaluate whether such conduct merits punishment but rather to evaluate the risk of future harm to the public and remedies that will protect investors and the markets from such future harm.[45] The risk of future harm similarly drives our consideration of more recent conduct, such as any assurances against future violations, subsequent disciplinary history, the likelihood that the respondent would be presented with opportunities for similar misconduct in a collateral capacity, and any other evidence of the public interest in limiting association in that capacity. This same analysis is used in determining whether to impose a collateral bar. In order to impose a collateral bar, the Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors.

This finding is also consistent with the Supreme Court's longstanding view that statutes barring individuals from a profession or other activity based on prior convictions are not unconstitutional under the Ex Post Facto Clause. For instance, in *Hawker v. New York*, the Court upheld a law barring a doctor from a medical profession based on a prior conviction, reasoning that such limitations, rather than serving as a punishment for past conduct, come about as a "relevant incident to a regulation of a present situation, such as the proper qualifications for a profession."[46] Similarly, in *DeVeau v. Braisted*, the Court upheld a statute barring individuals who had been convicted of certain crimes from holding union positions.[47]

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[43] *Aaron v. SEC*, 446 U.S. 680, 701 (1980).

[44] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

[45] *See, e.g., Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004) (finding that egregious violative conduct supported an inference that violative conduct was likely to be repeated).

[46] 170 U.S. 189, 200 (1898).

[47] 363 U.S. 144, 159-160 (1960).

Retroactivity decisions involving other Commission remedies are not to the contrary. In *Koch v. SEC*,[48] the court found that an Exchange Act amendment authorizing penny stock bars was impermissibly retroactive as applied to a person enjoined from violating the securities laws. *Koch* acknowledged the prospective relief exception to the presumption against statutory retroactivity, but explicitly declined to address whether the exception was relevant to the facts of that case because that argument was not before the court.[49] Based on the retroactivity analysis in *Koch*, the court in *Sacks v. SEC* found that applying a Financial Industry Regulatory Authority (FINRA) rule that prohibited non-attorneys who had been banned from the securities industry from representing parties in securities-related arbitration was impermissibly retroactive.[50] Neither of these decisions addressed whether the amended provision authorized prospective relief or whether the relief at issue would have remedied a risk of future misconduct by the respondents.[51]

* * *

Accordingly, we find that collateral bars imposed pursuant to Section 925 of Dodd-Frank are not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct because such bars are prospective remedies whose purpose is to protect the investing public from future harm.[52]

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[48] 177 F.3d 784 (9th Cir. 1999) (noting that the Commission was not authorized to impose a penny stock bar when the respondent engaged in the violative conduct).

[49] 177 F.3d at 289 n.7; *see also SEC v. Platform Wireless Intern., Corp.*, 2007 U.S. Dist. LEXIS 47775, Fed. Sec. L. Rep. (CCH) P94,423 (S.D. Cal. 2007) (noting that *Koch* did not address the prospective relief exception to the presumption against retroactivity and concluding that "since the penny stock bar affects prospective relief, the exception is applicable").

[50] 648 F.3d 945 (9th Cir. 2011) (noting that banned non-attorneys could represent parties in FINRA proceedings before the rule was adopted).

[51] While we therefore find these cases inapposite, we also note that any reliance interest claimed by respondent here is even more attenuated than that of Koch and Sacks, who, unlike respondent, had been associated in each of the professional capacities for which the bar at issue in the case was sought.

[52] The law judge declined to decide whether collateral bars are "prospective remedial relief or a punitive sanction." Instead, the law judge found that the collateral bars from association with brokers, dealers, municipal securities dealers, and transfer agents are not retroactive because prior to Dodd-Frank, the Commission could impose such bars in a subsequent follow-on proceeding if the person sought to associate in such a capacity. The law judge found that authorizing bars in a single proceeding (rather than requiring separate

(continued...)

V.

In analyzing the public interest, we consider, among other things: 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, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[53] While "no one [Steadman] factor is dispositive,"[54] we consider these factors to determine whether the proposed remedy would "protect[] the trading public from further harm."[55] The Division seeks a collateral bar that would bar Lawton from associating with brokers, dealers, municipal securities dealers, municipal advisors, transfer agents, and NRSROs. For the reasons set forth below, we find the collateral bars sought by the Division are warranted here.

A. Fraudulent Statements to Investors and Potential Investors

Lawton's fraudulent conduct was egregious, repeated, and conducted with a high degree of scienter. As an associated person of an investment adviser, he owed a fiduciary duty to the Paramount investors, including an "affirmative duty of 'utmost good faith and full and fair disclosure of all material facts,' as well as [an] affirmative obligation to employ reasonable care to avoid misleading clients."[56] Lawton breached his duties to the investors by repeatedly and

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[52] (...continued)
proceedings) does not attach new legal consequences because Lawton could not have reasonably expected to associate in those capacities in light of his injunction. As a result, the law judge concluded that these collateral bars were not impermissibly retroactive. *See Landgraf*, 511 U.S. at 278 (explaining *Bradley v. School Bd. of Richmond*, 416 U.S. 696 (1974) (finding statute authorizing attorney fees not retroactive given the "the prior availability of a fee award" under equitable principles and the "likelihood that fees would be assessed under pre-existing theories")). We agree that such bars do not impose new or unforeseeable legal consequences.

[53] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

[54] *David Henry Disraeli*, Exchange Act Rel. No. 57027 (Dec. 21, 2007), 92 SEC Docket 852, 875, *petition denied*, 33 F. App'x 334 (D.C. Cir. 2008) (per curiam).

[55] *McCarthy*, 406 F.3d at 188 (quoting also *Rubin*, 58 SEC Docket at 1479 ("When we suspend or bar a person, it is to protect the public from future harm at his or her hands.")); *see also Paz*, 566 F.3d at 1175-76.

[56] *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *see, e.g.*, *Brown*, 100 SEC Docket at 42700; *Conrad P. Seghers*, Advisers Act Rel. No. 2656 (Sept. 26, (continued...)

knowingly sending them false account statements inflating the value of their Paramount investments accounts. Lawton also "egregious[ly] abuse[d] the trust placed in him as a securities professional" by sending prospective investors fraudulent marketing materials.[57] He used these fraudulent account and marketing statements to attract and maintain millions of dollars under his management in a pattern of fraud that began in 2006, continued for years, and ended only after a federal court issued a temporary injunctive order in February 2009.

This ongoing fraud financially enriched Lawton while he knowingly concealed millions of dollars in Paramount losses. The civil proceedings found that, as a result of his fraudulent conduct, Lawton was unjustly enriched by approximately $1.76 million, and the criminal proceedings found the investors entitled to more than $7 million in restitution from Lawton for their net Paramount losses from January 2006 to February 2009.

The proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors. Here, the longstanding pattern, self-serving nature, and egregiousness of Lawton's fraud demonstrates his ongoing unfitness to participate in the securities markets in any capacity. Moreover, Lawton violated anti-fraud provisions of the securities laws, including the Securities Act and Exchange Act, that apply broadly to all securities-related professionals, and his injunction applies to any future securities-related conduct. He also engaged in criminal mail fraud. This was not a technical or isolated violation based solely on his status as an investment adviser.

We have long held that a history of egregious fraudulent conduct demonstrates unfitness for future participation in the securities industry even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding.[58] The industry relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants.

Lawton's occupation as an investment adviser presents opportunities for future illegal conduct in the securities industry. Municipal advisors, like investment advisers, are bound by

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[56] (...continued)
2007), 91 SEC Docket 2293, 2304 n.44, *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

[57] *John S. Brownson*, 55 S.E.C. 1021, 1029 (2002), *petition denied*, 66 F. App'x 687 (9th Cir. 2003) (unpublished).

[58] *See, e.g.*, *Kornman*, 95 SEC Docket at 14255-56 & n.28 (citing cases).

fiduciary duties to their clients.[59] Lawton's willingness to violate his fiduciary duty to his clients is more than sufficient to demonstrate his unfitness to take on another role as a fiduciary. His fraudulent conduct also demonstrates unfitness for other associations in the industry. Brokers, dealers, municipal securities dealers, and transfer agents routinely gain access to sensitive financial and investment information of investors and other market participants, and persons associated with municipal advisors and NRSROs routinely learn confidential and potentially market-moving information about securities, issuers, and potential transactions. In order to gain access to such information, 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. Lawton is unfit for such heightened responsibilities.

B. Preparing the Falsified Investigation Statement to Subvert the Fraud Investigation

During the Division's investigation, Lawton attempted to conceal his fraud by creating the Falsified Investigation Statement.[60] Lawton's admissions in district court confirm that his criminal conduct was egregious, that he acted with a high degree of scienter, and that his fraudulent activity was recurrent. In offering his guilty plea, Lawton admitted that he prepared the Falsified Investigation Statement knowing it to be false and that he gave it to his attorney so that it could be provided to the Division during its investigation of his conduct. As we have previously held, the egregiousness of such dishonest conduct is compounded when it involves a "false statement to Commission staff during an ongoing investigation."[61] Moreover, if accepted as genuine, the Falsified Investigation Statement would have obscured his longstanding fraud. And by creating this document, Lawton continued his pattern of fraudulently misrepresenting the investment success of the firm. Lawton's criminal attempt to subvert an investigation into his ongoing fraud reveals an attitude toward regulatory oversight that is fundamentally incompatible with the principles of investor protection and with association in any capacity covered by the collateral bar.

The duty to cooperate with regulatory investigations is not limited to a particular aspect of the securities industry. Regulatory efforts to detect violative conduct require full cooperation by persons associated with each of the professions covered by the collateral bar. Persons who fail to cooperate with such efforts may be deemed "presumptively unfit for employment in the securities industry" because such non-cooperation "frustrates . . . efforts to detect misconduct, and such

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[59] Dodd-Frank Section 975(c); 124 Stat. at 1851. Lawton's past conduct violating his fiduciary duty to his clients is more than sufficient to demonstrate his unfitness to take on another role as a fiduciary.

[60] *See supra* note 7.

[61] *Kornman*, 95 SEC Docket at 14256.

inability in turn threatens investors and markets."[62] Here, Lawton not only failed to cooperate, he actively attempted to undermine an investigation into securities fraud. We have consistently held that such attempts to deceive regulatory authorities justify a bar and "have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business."[63]

Lawton's conduct demonstrates that allowing him to enter the securities industry in *any capacity* would create too great a risk that future efforts to detect securities violations would be impaired, causing harm to the public. It also demonstrates a lack of remorse for his fraudulent conduct, further heightening the risk that Lawton will cause future harm in the industry.

C. Post-Injunction Conduct

Lawton's conduct since the entry of the permanent injunction is further evidence of his lack of remorse and his failure to understand the duties of a securities professional. As a result, his future participation in the securities industry would pose an unacceptable risk of future harm to the investing public. During his criminal plea hearing, he admitted that he falsely overstated Paramount's investment success to current and potential investors to induce new investments and prevent withdrawals. He specifically admitted his guilt for wire fraud and for "knowingly and willfully" preparing a "materially false, fictitious or fraudulent" document to be provided to the government. In light of these admissions, Lawton's later attempts to minimize this conduct, including by attempting to withdraw his consent to the injunction, and his failure to offer assurances against future violations, suggest that he does not fully understand the seriousness of securities fraud, wire fraud, and misleading government investigators and how such conduct violated the duties of a securities professional. As we have held, such "failure[s] to recognize the wrongfulness of his conduct presents a significant risk that, given th[e] opportunity, he would commit further misconduct in the future."[64] This risk is particularly significant here because

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[62] *Paz Sec., Inc.*, Exchange Act Rel. No. 57656 (Apr. 11, 2008), 93 SEC Docket 5122, 5126; *see also, e.g., R.E. Bassie & Co.*, Accounting and Auditing Enforcement Rel. No. 3354 (Jan. 10, 2012), 102 SEC Docket 50082, 50100 (finding that noncooperation with Public Company Accounting Oversight Board investigations "indicates a lack of sufficient regard for Board processes and authority designed by statute to protect investors"); *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325 (Jan. 30, 2009), 95 SEC Docket 13802, 13816 ("[F]ailure to cooperate during [an] investigation threatens the self-regulatory system and, in turn, investors by impeding NASD's detection of violative conduct.").

[63] *Kornman*, 95 SEC Docket at 14256 & n.28 (barring person associated with investment adviser and broker-dealer in follow-on proceedings predicated on Kornman's conviction under 18 U.S.C. § 1001, a criminal conviction also considered in this proceeding).

[64] *Michael J. Markowski*, 55 S.E.C. 21, 30-31 (2001), *petition denied*, 2002 U.S.

(continued...)

opportunities for similar misconduct arise in each of the associational capacities covered by the collateral bar and Lawton's admitted conduct demonstrates fundamental and ongoing unfitness for any such association.

Given Lawton's egregious, longstanding, deliberate, and escalating pattern of violative conduct and his unwillingness to acknowledge the wrongfulness of this conduct or to offer credible assurances against future violations, we find ample evidence of his ongoing unfitness and risk that he would engage in further misconduct if given future opportunities in the industry. Allowing his participation in the securities industry would unduly risk exposing the public to further misconduct threatening the fairness, transparency, and regulatory oversight of the securities markets. As the Supreme Court has explained, "[t]he primary objective of the federal securities laws [is the] protection of the investing public and the national economy through the promotion of 'a high standard of business ethics . . . in every facet of the securities industry.'"[65] We find that the record demonstrates Lawton's unfitness to uphold the ethical standards required throughout the securities industry.

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[64] (...continued)
App. LEXIS 12484 (D.C. Cir. Apr. 25, 2002) (unpublished opinion); *see also Geiger*, 363 F.3d at 489 (noting that respondent's continuing assertion that "he did nothing wrong . . . casts doubts on his promise that he will mend his ways"); *Gann v. SEC*, 361 F. App'x 556, 560 (2d Cir. 2010) (per curiam) (affirming permanent associational bar and stating "if [Gann] doesn't know right from wrong in this industry, how can he avoid wrongdoing in the future?"). Like the law judge, we treat a refusal to acknowledge wrongdoing as an aggravating factor. *See Seghers v. SEC*, 548 F.3d 129, 137 (D.C. Cir. 2008) (finding that this analysis does not constitute an "unconstitutional[] burden" or "deny [respondent] due process").

[65] *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 315 (1985) (quoting *Capital Gains Research Bureau*, 375 U.S. at 186-87).

Accordingly, we hold that it is in the public interest to bar Lawton from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. An appropriate order will issue.[66]

By the Commission (Chairman SCHAPIRO and Commissioners WALTER and AGUILAR); Commissioners PAREDES and GALLAGHER, concurring in part and dissenting with respect to the bar from association with municipal advisors and nationally recognized statistical rating organizations. A dissenting opinion will issue separately.

Elizabeth M. Murphy
Secretary

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[66] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3513 / December 13, 2012

Admin. Proc. File No. 3-14162

In the Matter of

JOHN W. LAWTON

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that John W. Lawton be, and he hereby is, barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Elizabeth M. Murphy
Secretary