SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Release No. 10308 / February 15, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 80047 / February 15, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4650 / February 15, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32480 / February 15, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-15215

In the Matter of

JAMES S. TAGLIAFERRI

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

INVESTMENT COMPANY PROCEEDING

Grounds for Remedial Action

Conviction

Antifraud violations

Former principal of registered investment adviser was convicted of investment adviser fraud, securities fraud, wire fraud, and Travel Act violations. *Held*, it is in the public interest to bar him from associating with any broker, dealer, investment adviser, or investment company, and from participating in a penny stock offering.

APPEARANCES:

James S. Tagliaferri, pro se.

Nancy A. Brown and *H. Gregory Baker* for the Division of Enforcement.

Appeal filed: April 5, 2016
Last brief received: July 27, 2016

James S. Tagliaferri, the founder and principal of registered investment adviser TAG Virgin Islands, Inc., appeals the initial decision of an administrative law judge barring him from certain industry associations and from participating in any penny stock offering following his convictions for investment adviser fraud, securities fraud, wire fraud, and Travel Act violations.[1] We base our findings on an independent review of the record, except with respect to findings not challenged on appeal. We find that associational and penny stock bars are in the public interest.

I. Background

We issued the order instituting proceedings ("OIP") in this case on February 21, 2013,[2] alleging that Tagliaferri willfully violated Sections 17(a)(1) and (3) of the Securities Act of 1933,[3] Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 10b-5(a) and (c),[4] and Sections 206(1), (2), and (3) of the Investment Advisers Act of 1940.[5] That same day, the U.S. District Court for the Southern District of New York unsealed an indictment charging Tagliaferri with committing investment adviser fraud, securities fraud, wire fraud, and Travel Act violations.[6] The U.S. Attorney for the Southern District of New York requested a stay of the administrative proceeding under Rule 210(c) of our Rules of Practice on the ground that "the criminal action and this proceeding focus on the same conduct and share common allegations and questions of law and fact,"[7] and the law judge stayed our administrative proceeding during the pendency of the criminal case.[8]

The criminal indictment, like the OIP, concerned Tagliaferri's participation in a scheme to defraud TAG's clients.[9] According to the indictment, the scheme had three general aspects. First, Tagliaferri either failed to disclose or misrepresented the fact that he received millions of

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1 *James S. Tagliaferri*, Initial Decision Release No. 985, 2016 WL 1158233 (Mar. 23, 2016).

2 *James S. Tagliaferri*, Exchange Act Release No. 68963, 2013 WL 635053 (Feb. 21, 2013).

3 15 U.S.C. §§ 77q(a)(1) and (3).

4 15 U.S.C. §§ 78j(b), 78*o*(a); 17 C.F.R. § 240.10b-5(a) and (c).

5 U.S.C. §§ 80b-6(1), (2), and (3).

6 *United States v. Tagliaferri*, No. 1:13-cr-0115 (S.D.N.Y.), ECF No. 3.

7 17 C.F.R. § 201.210(c)(3).

8 *James S. Tagliaferri*, Admin. Proc. File No. 3-15215 (Mar. 11, 2013), *available at* https://www.sec.gov/litigation/apdocuments/3-15215-event-6.pdf.

9 *See United States v. Tagliaferri*, No. 1:13-cr-0115 (S.D.N.Y.), ECF No. 34.

dollars in kickbacks for investing the funds of TAG's clients—over which he had discretionary control—in (i) securities of International Equine Association Holdings ("IEAH"), and (ii) companies affiliated with Jason and Jared Galanis (the "Galanis companies"). Second, Tagliaferri caused accounts held in the name of the Galanis companies to sell securities to other client accounts, and then used proceeds from the sale for his own benefit, including paying clients who were demanding their money back. Third, Tagliaferri made an equity investment of over $5 million in National Digital Medical Archive but described this investment to clients as a loan and then placed fictitious sub-notes for the non-existent loan into client accounts.

On July 24, 2014, a jury convicted Tagliaferri of one count of investment adviser fraud, one count of securities fraud, four counts of wire fraud, and six counts of Travel Act violations.[10] In an order denying Tagliaferri's post-verdict motion for a judgment of acquittal, the district court found that the evidence adduced at trial would have allowed the jury to find facts that established all three aspects of the fraud alleged in the indictment.[11] Specifically, the district court found that "ample evidence supports a finding that the fees Tagliaferri received were in exchange for his investment of his client's funds into IEAH and the Galanis entities"; that "the evidence permitted an inference that Tagliaferri repeatedly used client funds to pay off other clients"; and that the "jury was entitled to conclude that . . . it was simply improbable that Tagliaferri's decision to create the 'sub notes' was anything other than an intentional attempt to deceive his clients."[12] The district court sentenced Tagliaferri to six years imprisonment followed by three years of supervised release, and ordered that he pay over $2.5 million in forfeiture and about $20.9 million in restitution. The Second Circuit affirmed Tagliaferri's conviction.[13]

After the law judge lifted the stay,[14] we granted the Division of Enforcement's motion to amend the OIP to add Tagliaferri's conviction as an independent basis for imposing sanctions.[15] The amendment of the OIP also removed the directive to determine whether civil money penalties and disgorgement would be appropriate in the public interest, given the forfeiture and

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[10] 15 U.S.C. §§ 80b-6 & 80b-17 (investment adviser fraud); *id.* §§ 78j(b) & 78ff, and 17 C.F.R. § 240.10b-5 (securities fraud); 18 U.S.C. § 1343 (wire fraud); *id*. § 1952 (Travel Act).

[11] *United States v. Tagliaferri*, No. 1:13-cr-0115 (S.D.N.Y. Oct. 17, 2014), ECF No. 114, at 1-4.

[12] *Id.* at 7-8.

[13] *See United States v. Tagliaferri*, 820 F.3d 568 (2d Cir. 2016) (per curiam) (addressing jury instruction issue); *United States v. Tagliaferri*, 648 F. App'x 99, 2016 WL 2342712 (2d Cir. May 4, 2016) (addressing remaining issues).

[14] *James S. Tagliaferri*, Administrative Proceedings Rulings Release No. 2750 (June 1, 2015), *available at* https://www.sec.gov/alj/aljorders/2015/ap-2750.pdf.

[15] *James S. Tagliaferri*, Exchange Act Release No. 75820, 2015 WL 5139389, at *1 (Sept. 2, 2015).

restitution order in the criminal action. On September 14, 2015, the law judge issued an order in which he "construe[d] the amendment of the OIP as converting this proceeding into a 'follow-on proceeding' predicated on Tagliaferri's criminal conviction."[16]

On March 23, 2016, the law judge granted the Division's motion for summary disposition, finding that Tagliaferri's conviction established two bases for imposing associational and penny stock bars: (1) the conviction—by virtue of collateral estoppel—established that Tagliaferri willfully violated Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206, and those violations in turn established a basis for imposing bars under Exchange Act Section 15(b)(6), Advisers Act Section 203(f), and Investment Company Act Section 9(b); and (2) the conviction itself established a basis for imposing bars under Exchange Act Section 15(b)(6) and Advisers Act Section 203(f).[17] The law judge also found that the Division established the additional statutory requirements for imposing associational and penny stock bars: Tagliaferri was associated with an investment adviser and with a broker-dealer, and the bars were in the public interest. As discussed below, we agree with those findings.

II. Discussion

Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize us to bar a person from association with a broker, dealer, or investment adviser if we find: (1) that the person either (i) willfully violated the Exchange Act or the Advisers Act; or (ii) was convicted within ten years of the commencement of the proceeding of any felony or misdemeanor involving the purchase or sale of any security, the conduct of the business of a broker or investment adviser, or the violation of the wire fraud statute; (2) that the person was associated with a broker (Section 15(b)(6)) or an investment adviser (Section 203(f)) at the time of the misconduct; and (3) that a bar is in the public interest.[18] Exchange Act Section 15(b)(6) also authorizes a penny stock bar if we make these required findings.[19] Investment Company Act Section 9(b) authorizes a bar from association with an investment company if we find that the person willfully violated the Exchange Act or the Advisers Act and such a bar is in the public interest.[20] We find that Tagliaferri willfully violated the Exchange Act and Advisers Act and was convicted of securities fraud, investment adviser fraud, and wire fraud; that he was associated with both a broker and an investment adviser; and that bars are in the public interest.

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16 *James S. Tagliaferri*, Administrative Proceedings Rulings Release No. 3124, at 1 (Sept. 14, 2015), *available at* https://www.sec.gov/alj/aljorders/015/ap-3124.pdf.

17 *Tagliaferri*, 2016 WL 1158233, at *8. The amended OIP also alleged that Tagliaferri willfully violated Securities Act Section 17(a). But the Division declined to pursue that alleged violation in its motion for summary disposition. Consequently, the law judge did not address it, and we consider it abandoned.

18 15 U.S.C. §§ 78*o*(b)(6) and 80b-3(f); *see also infra* note 44.

19 15 U.S.C. § 78*o*(b)(6).

20 15 U.S.C. § 80a-9(b).

A. Tagliaferri's convictions establish that he willfully violated the Exchange Act and the Advisers Act, and that he has been convicted of a felony involving the purchase or sale of securities, the conduct of a broker or investment adviser, and wire fraud.

Tagliaferri's convictions for securities fraud and investment adviser fraud establish that he willfully violated Exchange Act Section 10(b) and Rule 10b-5 thereunder and Advisers Act Section 206. The jury found that he violated those provisions and that he did so willfully, and the doctrine of collateral estoppel prevents him from relitigating those findings.[21]

Tagliaferri's convictions for securities fraud, investment adviser fraud, and wire fraud also establish that within ten years of the commencement of this proceeding, Tagliaferri was convicted of felonies involving "the purchase or sale of any security," "the conduct of the business of a broker [or] investment adviser," and a violation of the wire fraud statute.[22]

B. Tagliaferri was associated with an investment adviser and a broker at the time of his misconduct.

We find, and Tagliaferri does not dispute, that he was associated with an investment adviser at the time of his misconduct. Tagliaferri was the principal and an associated person of registered investment adviser TAG. And the jury, in finding Tagliaferri guilty of investment adviser fraud, necessarily found that he acted as an investment adviser.[23]

We also find that Tagliaferri acted as an unregistered broker at the time of his misconduct and therefore was associated with a broker. Tagliaferri notes that "the charge of acting as an unregistered broker was not among those for which [he] was convicted." But there is no merit to his argument that his Travel Act conviction cannot supply the factual and legal predicates for finding that he acted as an unregistered broker. Tagliaferri's convictions and the evidence on which they were based establish that he actively found investors for IEAH and the Galanis entities, that he was closely involved in negotiations with the issuers of the notes his clients purchased, and that he received transaction-based compensation. As the district court explained in denying Tagliaferri's motion for judgment notwithstanding the verdict, the convictions under

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21 *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, *8 (Feb. 13, 2009) ("The doctrine of collateral estoppel prevents relitigating the factual findings or the legal conclusions of an underlying criminal proceeding in a follow-on administrative proceeding."), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010).

22 15 U.S.C. §§ 78*o*(b)(4)(B)(i), (ii), (iv), and 80b-3(e)(2)(A), (B), (D).

23 *See Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 569 (1951) ("In the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment."); *see also Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (rejecting "claim that, by acting as an investment adviser in an individual capacity, [respondent] is not a person associated with an investment adviser").

the Travel Act were "premised on [his] use of the instrumentalities of interstate commerce to distribute the proceeds of and carry out an unlawful activity—receipt of a commercial bribe under New York law—based on his undisclosed receipt of fees for placing his clients' funds in certain entities."[24] In convicting Tagliaferri, the jury necessarily found that he received these fees, or kickbacks, for causing his clients to invest in certain securities. And the evidence from Tagliaferri's trial established that the kickbacks he received were indeed transaction-based compensation: his compensation was based on the amount of money he transferred from client accounts to issuers because he received fees through TAG, which he referred to as "finders fees" or "referral fees," in exchange for "raising money" from clients and placing it with issuers.[25]

These facts—which he cannot dispute in this proceeding—establish that he was in fact acting as a unregistered broker. The Exchange Act defines a broker as one "engaged in the business of effecting transactions in securities for the account of others."[26] We have said that "[a]ctivities that are indicative of being a broker include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation."[27] "In particular, [t]ransaction-based compensation, or commissions are one of the hallmarks of being a broker-dealer."[28]

Tagliaferri contends that because "there were no allegations as to 'unregistered broker-dealer activities' in the criminal case, then no sanctions related to such activities can be imposed unless they are proven." But such activities were proven. As we have explained, the jury convicted Tagliaferri based on evidence that he received kickbacks in the form of transaction-based compensation. The Division submitted this evidence, as well as other evidence that Tagliaferri acted as an unregistered broker, in support of its summary disposition motion. Because Tagliaferri may not relitigate the factual or legal conclusions underlying his convictions,[29] and because those conclusions and the evidence the Division submitted establish

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[24] *Tagliaferri*, ECF No. 114, at 17.

[25] Tagliaferri also argues that the Travel Act does not apply because he lived in the U.S. Virgin Islands, but we do not consider this impermissible collateral attack on his conviction.

[26] 15 U.S.C. § 78c(a)(4)(A). Because the jury was instructed that a necessary element of securities fraud was that the conduct be "in connection with the purchase or sale of securities," the jury necessarily found that Tagliaferri's investments on behalf of his clients were securities.

[27] *Anthony Fields*, Advisers Act Release No. 4028, 2015 WL 728005, at *18 (Feb. 20, 2015) (collecting authorities); *see also Persons Deemed Not To Be Brokers*, Exchange Act Release No. 22172, 1985 WL 634795, at *4 (June 27, 1985) ("In determining whether an associated person is a 'broker,' the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities.").

[28] *SEC v. Helms*, 2015 WL 6438872, at *3 (W.D. Tex. Oct. 20, 2015) (internal quotation marks omitted).

[29] *See Eric S. Butler*, Exchange Act Release No. 65204, 2011 WL 3792730, at *5 (Aug. 26, 2011) ("[W]e have long held that follow-on proceedings based on a criminal conviction are not

(*continued…*)

that he acted as a "broker" and was not registered with the Commission, we find for purposes of Exchange Act Section 15(b)(6) that Tagliaferri acted as an unregistered broker at the time of his misconduct.[30]

Because we find that Tagliaferri himself met the definition of a "broker," we also find that he met the definition of a "person associated with a broker" for purposes of Exchange Act Section 15(b)(6). A person "associated with a broker" includes "any partner, officer, director, or branch manager of such broker . . . (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker . . . , or any employee of such broker."[31] Tagliaferri was, in effect, the owner and manager of a sole proprietorship. He thus "occup[ied] a similar status [and] perform[ed] similar functions" as a general partner within a partnership or an officer or director within a corporation.[32] He also necessarily controlled the activities of his brokerage business. Indeed, had Tagliaferri registered his sole proprietorship as a broker, as the Exchange Act

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(*...continued*)
an appropriate forum to 'revisit the factual basis for,' or legal defenses to, [a] conviction."); *cf. Gregory Bartko*, Exchange Act Release No. 71666, 2014 WL 896758, at *12 (Mar. 7, 2014) (considering as evidence "not open to collateral challenge" in a follow-on proceeding, a post-conviction district court order that "reflects the facts and issues contested during the criminal trial and the basis for [the] criminal conviction").

[30] Our finding that Tagliaferri acted as an unregistered broker would ordinarily support a determination that he violated Exchange Act Section 15(a). Indeed, the OIP alleged that Tagliaferri violated Exchange Act Section 15(a), and the Division argued before the law judge that the evidence adduced at Tagliaferri's trial supported a finding that he violated Section 15(a). But the law judge construed the Commission's order amending the OIP as converting this proceeding into a "follow-on proceeding" on the basis of Tagliaferri's convictions. *See supra* note 16 and accompanying text. Having done so, the law judge made no finding about whether Tagliaferri violated Section 15(a) as an additional basis for imposing sanctions—and the Division did not challenge that aspect of the initial decision on appeal. In light of this procedural history, and because we find that the predicates for imposing associational and penny-stock bars under Exchange Act Section 15(b)(6) have been met, we exercise our discretion and decline to find that Tagliaferri violated Section 15(a) by acting as an unregistered broker.

[31] 15 U.S.C. § 78c(a)(18).

[32] We note that this finding is consistent with FINRA's treatment, for registration purposes, of "[s]ole [p]roprietors" of member firms as both "principals" of the firm, by virtue of the management role, and "[p]ersons associated with a member." FINRA Rule 1021(b) (stating that "[p]ersons associated with a member" who fall into one of five categories—"[s]ole [p]roprietors," "[o]fficers," "[p]artners," "[m]anagers of [o]ffices of [s]upervisory [j]urisdiction," or "[d]irectors of [c]orporations"—"who are actively engaged in the management of the member's investment banking or securities business . . . are designated as principals").

required him to do, he necessarily would have been associated with that registered broker.[33] And to hold that Tagliaferri was not associated with a broker simply because he declined to register would prevent the Commission from barring persons who themselves meet the definition of a broker but who are not otherwise associated with a registered brokerage—something that would be inconsistent with the Exchange Act's purpose of protecting investors.[34]

Tagliaferri also contends that it was error for the law judge to construe the amendment of the OIP as converting the proceeding to a follow-on proceeding because the result was that he could only challenge the appropriate sanctions and not the other allegations in the OIP such as that he acted as an unregistered broker. Although collateral estoppel prevented Tagliaferri from relitigating the factual findings and legal conclusions underlying his conviction, the law judge recognized that "this did not deprive [Tagliaferri] of the opportunity to present evidence and arguments to counter *the OIP's allegations* and the sanctions sought by the Division."[35] Tagliaferri had the opportunity to—and did—argue that neither his conviction nor other evidence established that he acted as an unregistered broker. Nonetheless, we agree with the law judge, based on our independent *de novo* review of the record, that the findings underlying his conviction and the evidence the Division submitted establish that Tagliaferri failed to raise a genuine issue of material fact that he acted as an unregistered broker.

C. Bars are in the public interest.

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

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[33] *See* Exchange Act Section 15(a)(1), 15 U.S.C. 78*o*(a)(1) (making it "unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person" to act as a broker unless registered with the Commission); *see also Chester Richard Koza dba Chester R. Koza & Co.*, Exchange Act Release No. 6298, 1960 WL 56272, at *2 (June 28, 1960) (finding that applicant, who was a natural person "engaged in the securities business as a sole proprietor," violated Exchange Act Section 15(a) because he bought and sold securities as a dealer without having registered as such with the Commission, and rejecting argument that the securities transactions at issue were "personal ones made by [applicant] as an individual investor" because, as a sole proprietor, applicant "was the company") (internal quotations and citation omitted).

[34] *Cf. Benincasa*, 2001 WL 99813, at *2 (holding that a person who "act[s] as an investment adviser in an individual capacity" is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an investment adviser'").

[35] *Tagliaferri*, 2016 WL 1158233, at *4; *see also Tagliaferri*, 2015 WL 5139389, at *2 ("The Division's allegation that he is liable based on the criminal conviction does not establish prejudice sufficient to deny the amendment. The OIP does not establish facts, it alleges them; Tagliaferri will have an opportunity to contest these allegations and their legal effect.").

recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations."[36]

Tagliaferri's misconduct was egregious, recurrent, and involved a high degree of scienter. The jury convicted Tagliaferri of multiple counts of fraud for a scheme that lasted at least four years. We have long treated antifraud violations as being particularly serious and subject to the severest of sanctions.[37] "Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly."[38] Tagliaferri also violated the fiduciary duties he owed his clients as an investment adviser by failing to disclose the conflict of interest inherent in receiving kickbacks for investing client funds in the securities of IEAH and the Galanis companies.[39] "We 'consistently view[] misconduct involving a breach of fiduciary duty . . . as egregious.'"[40] And not only did the district court instruct the jury that scienter is a required element of the offenses for which it convicted Tagliaferri, the jury also found that Tagliaferri committed securities fraud, investment adviser fraud, and wire fraud "willfully"; in the criminal context, a "willful" violation is "one undertaken with a 'bad purpose.'"[41]

We also consider "the degree of harm to investors and the marketplace resulting from the violation."[42] Tagliaferri conceded at his sentencing that he had between ten and fifty victims. These victims suffered significant losses: as the district court explained at Tagliaferri's

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36 *Kornman*, 2009 WL 367635, at *6 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

37 *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013), *petition denied*, 773 F.3d 89 (D.C. Cir. 2014).

38 *Chris G. Gunderson*, Exchange Act Release No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009) (internal quotation marks omitted).

39 *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92, 201 (1963) (explaining that the Advisers Act, "in recognition of the adviser's fiduciary relationship to his clients, requires that his advice be disinterested," and the disclosure requirements reflect the "congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser . . . to render advice which was not disinterested").

40 *Edgar R. Page*, Advisers Act Release No. 4400, 2016 WL 3030845, at *5 (May 27, 2016) (finding investment adviser's breach of fiduciary duty to be egregious where he made undisclosed profits at his clients' expense) (quoting *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010)), *reconsideration denied*, Advisers Act Release No. 4454, 2016 WL 3753502 (July 14, 2016).

41 *Bryan v. United States*, 524 U.S. 184, 191 (1998).

42 *Marshall Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003).

sentencing, clients "who trusted [him] lost millions of dollars, for some their livelihood, their savings, what they hoped to pass on to their children and their grandchildren."

Tagliaferri provided some recognition of the wrongful nature of his misconduct. For example, he stated at his sentencing that he "accept[s] the responsibility" for his "deplorable" misconduct. But Tagliaferri undermined this acknowledgement by stating at his sentencing that his violations were "more . . . gatekeeping" than "predatory." His statements aside, we think that the egregious and recurrent nature of the fraud in which he violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility. Further, Tagliaferri has made no assurances against future violations, nor has he disclaimed any intent to reenter the securities industry after he is released from prison. Thus, absent the imposition of bars, Tagliaferri could return to a role in which he would present a risk of harming investors and the marketplace.

The record establishes that Tagliaferri is unfit to participate in the securities industry. Because the securities industry "presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence,"[43] Tagliaferri's participation in it in any capacity would pose a risk to investors. Accordingly, we find that it is in the public interest to impose upon Tagliaferri associational bars under Exchange Act Section 15(b)(6) and Advisers Act Section 203(f), a penny stock bar under Exchange Act Section 15(b)(6), and investment company bars under Investment Company Act Section 9(b).[44]

III. Tagliaferri's Procedural Contentions

A. Tagliaferri contends that he is entitled to a hearing.

Tagliaferri contends that the law judge erred in granting summary disposition because he was entitled to a hearing to determine his "degree of culpability." But summary disposition is

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[43] *Seghers*, 2007 WL 2790633, at *7.

[44] We do not impose collateral bars from associating with a transfer agent, municipal securities dealer, municipal adviser, or nationally recognized statistical rating agency ("NRSRO"). The D.C. Circuit recently held that it is "impermissibly retroactive" to impose a collateral bar, based on a respondent's misconduct before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, from association in capacities in which the respondent "had no cognizable association" at the time of the misconduct. *Bartko v. SEC*, 845 F.3d 1217, 1222-24 (D.C. Cir. 2017); *see also Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015). That holding does not affect our ability to impose a collateral bar based on misconduct after Dodd-Frank's effective date. Based on the record before us, we find that Tagliaferri's misconduct occurring after that date does not warrant imposing collateral bars from association in capacities in which Tagliaferri had no association at the time of his misconduct. Indeed, the Division has not sought bars from associating with a municipal adviser or NRSRO based on his post-Dodd-Frank misconduct.

ordinarily appropriate in follow-on proceedings.[45] Under Rule 250 of our Rules of Practice, a motion for summary disposition may be granted "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."[46] The party opposing summary disposition "may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing."[47] Tagliaferri has not made the required showing to avoid summary disposition.

Tagliaferri contends that he provided the law judge with a list of "numerous, outstanding, factual issues which are clearly material." But Tagliaferri identified no specific facts; rather, he listed only bare allegations and denials of facts that the Division presented. For example, Tagliaferri stated that "[i]n all cases related to investments in IEAH and Galanis-related securities, [TAG] and Respondent placed 'good faith' reliance on outside counsel . . . and in-house counsel . . . for advice on disclosure to clients," and that a law firm reviewed certain transactions and issued a letter that TAG "was in full compliance with all laws and regulations." Although the circumstances surrounding any provision of legal advice to Tagliaferri may have been relevant to his degree of culpability for purposes of imposing sanctions.[48] Tagliaferri failed to present any specific facts or evidence on these issues. And in addition to providing no support for the issues on his list, much of the list identified issues from Tagliaferri's criminal conviction that he is collaterally estopped from relitigating (*e.g.*, whether Tagliaferri received kickbacks from IEAH).[49] Tagliaferri also contends that he provided the law judge with a list of potential

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[45] *See Kornman*, 2009 WL 367635, at *10 n.58 (collecting cases); *see also John S. Brownson*, Exchange Act Release No. 46161, 2002 WL 1438186, at *2 n.12 (July 3, 2002) (explaining that it "will be [the] rare" case in which summary disposition in a follow-on proceeding involving fraud is inappropriate, and that such cases will ordinarily be limited to "certain criminal convictions [that] warrant less severe sanctions" or respondents who "present *genuine* issues with respect to facts that could mitigate his or her misconduct") (emphasis added), *petition denied*, 66 F. App'x 687 (9th Cir. 2003).

[46] 17 C.F.R. § 201.250(b); *see also David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *3 n.5 (Mar. 21, 2016) ("'[C]ourts have upheld summary disposition where no genuine issue of material fact is in dispute.'") (quoting *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5 (Feb. 4. 2008)).

[47] *Imperato*, 2015 WL 1389046, at *6.

[48] *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1110 (D.C. Cir. 1988) (finding that, in determining sanctions in a follow-on proceeding, "the precise nature and details of counsel's advice, and indeed, the totality of the circumstances surrounding the lawyer-client relationships in question, are undoubtedly relevant," notwithstanding that the respondents could not relitigate the determination in the underlying action that they "did not rely on counsel's advice").

[49] *See Seghers*, 2007 WL 2790633, at *5 (concluding that the respondent had not established that a hearing was required because he either made improper collateral attacks on the district court's judgment or cited facts that were "not disputed . . . by the Division").

witnesses who he would call at a hearing, but as the law judge stated, and our review confirms, Tagliaferri did not provide "any explanation of their expected testimony."[50] Thus, Tagliaferri failed to show that there was a genuine issue of material fact for resolution at a hearing.

We also reject Tagliaferri's request that, even if we find that the law judge did not err in granting summary disposition, we should order a hearing so his "witnesses can be heard before any sanctions are imposed." Tagliaferri misunderstands the purpose of summary disposition: to proceed without a hearing when the moving party meets the summary disposition standard. And Tagliaferri's reliance on *Blinder, Robinson & Co. v. SEC*, in which the D.C. Circuit vacated and remanded our decision imposing sanctions on respondents in a follow-on proceeding because they were precluded from introducing evidence on their degree of culpability relevant to our sanctions determination,[51] is misplaced. Tagliaferri has not been precluded from presenting evidence; indeed, the law judge explicitly ruled that he could do so. But Tagliaferri's failure to present evidence raising a genuine issue of material fact made a hearing unnecessary.[52]

B. Tagliaferri contends that the Division violated Rule of Practice 230 and due process by not making its investigative file available to him.

Tagliaferri contends that the Division violated Rule 230 of our Rules of Practice, and due process, by not giving him access to its "entire investigative file."[53] Rule 230 provides that, no later than seven days after service of the OIP, the Division must make the investigative file "available to the respondent for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree."[54] We find no denial of access in violation of Rule 230 and thus no denial of due process.

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50 *Tagliaferri*, 2016 WL 1158233, at *6.

51 *Blinder*, 837 F.2d at 1109-11; *see also Gary L. McDuff*, Exchange Act Release No. 78066, 2016 WL 3254513, at *7 (June 14, 2016) ("A respondent in a follow-on proceeding may introduce evidence regarding the circumstances surrounding the conduct that forms the basis of the underlying proceeding as a means of addressing whether sanctions should be imposed in the public interest." (internal quotations omitted)).

52 *See, e.g.*, *Jose P. Zollino*, Advisers Act Release No. 2579, 2007 WL 98919, at *5 (Jan. 16, 2007) (imposing a bar after concluding that "the law judge acted properly in granting summary disposition" upon finding "no genuine issue with regard to any material fact," in which case the "rules do not mandate the holding of an evidentiary hearing").

53 In his reply brief, Tagliaferri requests, for the first time, "all documents related to" the criminal prosecutions and the Division's civil actions against "Jason Galanis and others." This request is denied because it is waived. *Anthony Fields*, Advisers Act Release No. 4028, 2015 WL 728005, at *19 (Feb. 20, 2015) (arguments made "for the first time in [a] reply brief . . . are waived"). Even if Tagliaferri had not waived this request, we would still deny it because he has not demonstrated the basis for his purported "entitle[ment]" to these documents.

54 17 C.F.R. § 201.230(d) & (e).

Tagliaferri's petition for review suggests that he believes that the Division violated Rule 230 by not making the investigative file available to him in February 2013 after the OIP was issued. But Tagliaferri himself acknowledged in a filing with the law judge in May 2015 that, "[p]rior to the stay becoming effective, on February 28, 2013"—seven days after the OIP's issuance—"the [Division], pursuant to Rule 230(a), agreed to make available documents collected by the Commission in its investigation of this matter." Tagliaferri also suggests that the Division improperly "declined to produce its file" after the case was stayed in February 2013. But the record does not reflect that Tagliaferri sought and was denied access to the investigative file during that period. In any case, due to some uncertainty in the record about whether Tagliaferri was effectively served in February 2013, the law judge ruled—and Tagliaferri did not object—that after the stay was lifted the OIP was deemed served on June 1, 2015.

In his briefs, Tagliaferri argues that the Division violated Rule 230 by failing to make the investigative file available to him after service was deemed effective as of June 1, 2015. We find that, within seven days after service of the OIP on June 1, 2015, the Division complied with its obligations under Rule 230 by making two offers to make the file available. First, in a letter sent via email to Tagliaferri on June 4, the Division offered to make the file available at its New York office the following day. Second, when Tagliaferri responded in an email on June 4 that he could not travel from Connecticut to New York to inspect the file on June 5, the Division emailed him another letter on June 5 in which it offered to make the file available at its New York office "at any time" so long as Tagliaferri provided at least 24 hours' notice. Tagliaferri did not ask to review the file in the month before he surrendered for incarceration on July 6.

Tagliaferri contends that the Division knew he could not travel to New York to inspect the investigative file because he was wheelchair-bound and subject to home confinement in Connecticut. But Tagliaferri did not inform the Division that he could not travel to New York because he was wheelchair-bound or subject to home confinement; indeed, he did not make these assertions until after the Division brought its motion for summary disposition. In any case, Tagliaferri's bail conditions permitted him to travel between the District of Connecticut and the Southern District of New York (where the Division's New York office is located), and Tagliaferri does not suggest that the Division's New York office was not wheelchair-accessible.

Tagliaferri also contends that, because Rule 230 provides that the Division may make the investigative file available "at such other place as the parties, in writing, may agree," and because the Division stated in its June 5, 2015 letter that per Tagliaferri's request it would convert the investigative file to .pdf format and send it to him on discs "in approximately two weeks," the Division violated Rule 230 by sending him only about half of the investigative file on discs before he was incarcerated on July 6, 2015.[55] We reject this contention because the

[55] The Division sent Tagliaferri about half of the investigative file in two productions: two discs on June 17, 2015, and a thumb drive on July 2, 2015. Counsel for the Division later explained in a declaration that "because the production included very large Excel spread sheet files produced by TAG's custodian bank, consisting of hundreds of thousands of pages in .pdf format, the .pdf conversion process took substantially longer than originally anticipated."

June 5 letter did not constitute a written agreement to an alternative procedure under Rule 230. The Division made no guarantees that it would be able to provide Tagliaferri with the entire investigative file on discs before he surrendered for incarceration. Indeed, the Division also stated in the June 5 letter that it "understood that [Tagliaferri] wished to review the documents as soon as possible," and that Tagliaferri could do so "at any time" at its New York office. This latter statement fulfilled the Division's Rule 230 obligations; the Division's additional attempt to provide discs with the investigative file exceeded its obligations under Rule 230.

Moreover, the Division continued to try to accommodate Tagliaferri after he was incarcerated.[56] Because the prison did not permit Tagliaferri to receive the production electronically, Tagliaferri requested that the Division send him hard copies of the remaining investigative file. The Division responded that doing so would be "prohibitively costly": according to the Division, it would have cost over $50,000 to print the remaining investigative file, which consisted of approximately one million pages and over 130,000 documents. The Division proposed that it instead produce a hard drive to Tagliaferri's designee, who could "review its contents and print for [him] whatever [he] choose[s]." The Division also provided Tagliaferri with "a list of producing parties" to help narrow down the documents he wanted copied, and offered to provide those copies "so long as the cost is not excessive." Tagliaferri refused to designate an outside reviewer, stating that "there is no one but myself who can review them," and did not narrow down the documents he wanted copied.

Finally, Tagliaferri contends that the Division violated Rule 230 and due process because it did not give him "the opportunity to pay for the cost of copying the file."[57] But Tagliaferri has not offered, at any time in this proceeding, to pay for the costs of copying the investigative file; thus the Division could not deny him the opportunity to pay those costs. We also note that Tagliaferri has claimed elsewhere in this proceeding that he is indigent: for example, he stated that he could not furnish three additional copies of a filing, as required by Rule of Practice 152(d),[58] because he "do[es] not have the funds to make additional copies."[59]

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56 *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 WL 1941502, at *4 & n.27 (Aug. 23, 2002) (rejecting argument that respondent, who was "incarcerated and unable to review [investigative file] documents himself," was "improperly denied discovery of [the] Division's [investigative] file" where the Division provided the file to his representative instead).

57 *Cf.* Rule of Practice 230(f), 17 C.F.R. § 201.230(f) (providing that a "respondent may obtain a photocopy of any documents made available for inspection," and that "[t]he respondent shall be responsible for the cost of photocopying").

58 17 C.F.R. § 201.152(d).

59 Tagliaferri cites *Byron S. Rainner*, in which we remanded to the law judge because the respondent was "incarcerated at the time the matter was before the law judge" and had not been "permitted to review the Division's entire investigative file." Exchange Act Release No. 59040, 2008 WL 5100855, at *2 (Dec. 2, 2008). But unlike here, in *Rainner* the respondent had not had the opportunity to view the file at the Division's office. *Id.* And the Division did "not dispute

(*continued…*)

In any case, Tagliaferri has not shown any prejudice from the alleged violation of Rule 230. Rule 230(h) provides that "no rehearing or redecision of a proceeding already heard or decided shall be required, unless the respondent shall establish that the failure to make the document available was not harmless error."[60] We have repeatedly rejected claims that a purported failure to make documents available under Rule 230 violates due process when the respondent has not "substantiated [a] claim of prejudice" under Rule 230(h).[61] Tagliaferri has not identified what documents he expects to find in the investigative file that would be probative of the narrow range of issues in this follow-on proceeding. Nor has he demonstrated how his failure to obtain such documents affected his ability to litigate this proceeding.

An appropriate order will issue.[62]

By the Commission (Acting Chairman PIWOWAR and Commissioner STEIN).

Brent J. Fields
Secretary

(*...continued*)
that Rainner was not given access to the entire investigative file"; rather, it contended that "it had provided Rainner with 'copies of every document that provided the basis for the Division's case against' him." *Id.* The respondent in *Rainner* also "agreed to pay the costs related to [his] request" to copy the file, which the Division estimated would be about $7,500. *Id*. at *1.

60 17 C.F.R. 201.230(h).

61 *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *18 & n.129 (Nov. 4, 2013) (collecting citations).

62 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

SECURITIES ACT OF 1933
Release No. 10308 / February 15, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 80047 / February 15, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4650 / February 15, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32480 / February 15, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-15215

In the Matter of

JAMES S. TAGLIAFERRI

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that James S. Tagliaferri be barred from association with any broker, dealer, or investment adviser; and it is further

ORDERED that James S. Tagliaferri be barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; and it is further

ORDERED that James S. Tagliaferri be prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated investment company, investment adviser, depositor, or principal underwriter.

By the Commission.

Brent J. Fields
Secretary