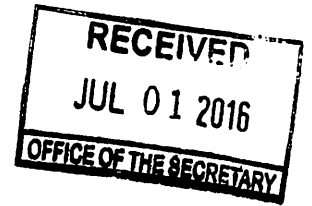


**HARD COPY**

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



**In the Matter of**

**GEORGE CHARLES CODY PRICE,**

**Respondent.**

**ADMINISTRATIVE PROCEEDING  
FILE NO. 3-16946**

**PETITION FOR REVIEW OF INITIAL DECISION**

Respondent George Charles Cody Price (“PRICE”) files this Petition for Review (the “PETITION”) of the Initial Decision (the “INITIAL DECISION”) by the Securities and Exchange Commission (the “COMMISSION”) on the Division of Enforcement’s (the “DIVISION”) Motion for Summary Disposition (the “MOTION”) in the above captioned Administrative Proceeding (the “PROCEEDING”) initiated by the Securities and Exchange Commission (the “SEC”) in its Order Initiating Proceeding (the “OIP”) dated June 4, 2016 and served upon the undersigned counsel on or about June 9, 2016.

**I. INTRODUCTION.**

This Petition does not argue that Price did not consent to a permanent injunction nor does it dispute the allegations deemed true for purposes of this proceeding, instead the Respondent challenges the findings of the Commission in its Initial Decision that he engaged conduct amounting to violations of Section 17(a) of the Securities Act of 1933 or Rule 10(b) of the Securities and Exchange Act of 1934 *to the extent it warrants the punishment requested*, above and beyond the permanent bar imposed on by Price in the Decision or in the underlying Consent Decree and Final Judgment.

Contrary to the findings set forth in the Initial Decision Respondent Price Argues that substantial relevant evidence exists which does not support its legal conclusions. Specifically, for purposes of this Petition for Review Respondent argues that:

1. Any evidence of misrepresentation, misappropriation, and mismanagement of the ABS Fund, LLC (Arizona), ABS Fund, LLC (California) and Capital Access Fund, LLC (Nevada) collectively the "FUNDS" should be taken in consideration of the complete record of the underlying civil case and the pending FINRA case number 14-02711;
2. Any calculation of investor loss is complicated by the fact that actual determination of the Funds' performance will be dictated by the outcome of a separately pending FINRA matter;
3. Price has cooperated extensively in this proceeding and in the Division's investigation in the underlying civil case and voluntarily entered into the Consent Decree and Final Judgment to resolve the underlying civil case and the Initial Decision contains unnecessary dicta castigating Price in an offensive and derogatory manner; and
4. Price has been stripped of a livelihood and effectively barred from the industry as a result of the Complaint filed on February 11, 2013 without the benefit of substantial evidence to the contrary or the findings to be presented in the pending FINRA matter.

Accordingly, Price assets the harsh sanctions ordered against him in the Initial Decision should be reviewed at such time a complete record of evidence can be evaluated for his violations and the precise punishment warranted in light of all relevant facts.

## II. LEGAL ARGUMENT.

### A. **Legal Authority.**

A respondent may appeal any opinion by the Commission to the Court of Appeals for the District of Columbia or for the Circuit in which the respondent resides or has its principal place of business. *See* 15 U.S.C. § 78y(a)(1), 15 U.S.C. § 77i.

Prior to such appeal a Respondent must exhaust its administrative remedies, *See* Section 704 of the Administrative Procedure Act, 5 U.S.C. § 704. As specifically set forth at Rule 410 Appeal of initial Decisions by Hearing Officers, "In any proceeding in which an initial decision is made by a hearing officer, any party, and any other person who would have been entitled to judicial review of the decision entered therein if the Commission itself had made the decision, may file a petition for review of the decision with the Commission." This must take place within the time frame set by Rule 360(b) calculated from the date of service of the Initial Decision and not to exceed 21 days thereafter.

While review is discretionary, the Commission shall consider whether the Petition (for Review) makes a reasonable showing that: (a) a finding or conclusion of material fact that is clearly

erroneous; or (b) a conclusion of law that is erroneous; or (b) an exercise of discretion or decision of law or policy that is important and that the Commission should review.

**B. Procedural Background.**

This is a follow-up proceeding which originates from a Final Judgment entered by Consent Decree against the Respondent on or about June 26, 2015, permanently enjoining Price from future violations of Section 17(a) of the Securities Act of 1933 (the “Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) and 206(4) of the Investment Advisers Act of 1940 (the “Adviser’s Act”) and Rule 206(4)-8 thereunder, in the civil action entitled *Securities and Exchange Commission v. ABS Manager, LLC, et al.*, Civil Action Number 13 CV 0319 GPC (BGS), in the United States District Court for the Southern District of California (the “Court”).

The Respondent has maintained a FINRA arbitration case against Morgan Stanley Smith Barney on behalf of ABS Manager, LLC and the investors of ABS Fund and Capital Access Fund: *ABS Manager, LLC v. Morgan Stanley Smith Barney, LLC, et al. Case No. 14-02711* which is currently set for hearing on September 12, 2016.

**C. Arguments in Support of Review.**

1. Any evidence of misrepresentation, misappropriation, and mismanagement of the ABS Fund, LLC (Arizona), ABS Fund, LLC (California) and Capital Access Fund, LLC (Nevada) collectively the “FUNDS” should be taken in consideration of the complete record of the underlying civil case and the pending FINRA arbitration case number 14-02711;

At the outset of this proceeding, in the Order Instituting Administrative Proceedings (the “OIP”) the Commission set out to determine “whether the allegations set forth Section II hereof are true and in connection therewith to afford Respondent an opportunity to establish defenses to such allegations and what if any remedial action is appropriate in the public interest.”

The allegations in Section II of the OIP contain nothing more than a brief recitation of facts from the Division’s Complaint in the underlying civil action, which was resolved by Consent Decree for the Entry of Judgment without a trial on the merits. This, and the few pleadings from the underlying civil case identified by the Commission in its Initial Decision is hardly a complete

record of evidence. By utilizing an incomplete record the Commission has effectively denied Respondent the ability to present any cognizable legal defense in this proceeding.

2. Any calculation of investor loss is complicated by the fact that actual determination of the Funds' performance will be dictated by the outcome of a separately pending FINRA arbitration case number 14-02711.

Most troubling, the calculation of loss in the underlying civil case was incomplete as it was simply based on the unreliable claims of the Division's experts and never subjected to the cross-examination of Respondent at a hearing or trial or otherwise. The undersigned's co-counsel in the separately pending FINRA matter has recently retained an expert witness to prepare a report and testify in September 2016. The disclosure of the identity of this individual however, is prevented, due to the adverse strategy consequences which would result in the final pre-hearing preparations between Respondent and Morgan Stanley Smith Barney ("MSSB"). Note the Declaration of John E. Dolkart, Jr. filed herewith.

The Commission, should withhold its decision for approximately ninety (90) days or until the end of September 2016. It will be at this time that Respondent's expert will have testified and most importantly that the FINRA panel will have rendered a decision. Such a verdict will conclusively determine the loss to Respondent's investors – a critical factor in the determination of the appropriate penalties, which the Commission should impose on Respondent. Surely, if Respondent's investors did not lose any funds and testified in declarations that they did not consider the technical misrepresentations by Respondent to be material or even a factor in their investment decision, reconsideration would be warranted in light of such evidence.

3. Price has cooperated extensively in this proceeding and in the Division's investigation in the underlying civil case and voluntarily entered into the Consent Decree and Final Judgment to resolve the underlying civil case and the Initial Decision contains unnecessary dicta castigating Price in an offensive and derogatory manner.

The Initial Decision is littered with unnecessary and inflammatory dicta from pages seven (7) through nine (9). This discussion is entirely unnecessary and should be stricken from the record in a redacted and revised decision. Herein, the Commission characterizes Respondent, who happens to be of Welsh heritage, in a racially offensive manner having "Welshed" on his promise to not contest the allegations in the Complaint. The reality is that Respondent has been summarily barred from an industry, which he has worked in the extent of his professional life. It is an extreme

remedy to hand out when the totality of the circumstances is not yet known and the loss to investors remains quantified.

4. Price has been stripped of a livelihood and effectively barred from the industry as a result of the Complaint filed on February 11, 2013 without the benefit of substantial evidence to the contrary.

The remedy of a permanent bar is harsh remedy. The Initial Decision bars Respondent permanently from the financial industry and bars him from association with any registered person permanently. It the contention of this Petition there are other factors relevant for consideration, as well as the absence of any determination of any investor loss, which mitigate any harm caused Respondent's actions which have not been factored into the Initial Decision.


The current proceeding should be stayed until such time as this evidence can be presented to the Commission. The Respondent requests leave of court to file a supplemental brief containing such evidence when it becomes available, in or about September 2016.

## II. CONCLUSION.

Wherefore, the Commission's Initial Decision should accordingly be reviewed in light of substantial evidence to the contrary from the underlying record of the civil proceeding and until such time as the separately pending FINRA case number 14-02711 is resolved in September 2016.

DATED: June 30, 2016

Respectfully submitted,

  
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John E. Dolkart, Jr., Esq.  
Law Offices of John E. Dolkart, Jr.  
1750 Kettner Blvd, Suite 416  
San Diego, CA 92101  
Tel: (702) 275-2181

COUNSEL FOR RESPONDENT GEORGE  
CHARLES CODY PRICE

**In the Matter of George Charles Cody Price**  
Administrative Proceeding File No. 3-16946

**Service List**

Pursuant to Commission Rule of Practice 151(17 C.F.R. § 201.151), I certify that the attached:

PETITION FOR REVIEW OF INITIAL DECISION BY RESPONDENT GEORGE CHARLES CODY PRICE

On June 30, 2016.

**By: Facsimile and Overnight Mail**

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F. Street, N.E., Mail Stop 1090  
Washington, DC 20549-1090  
Facsimile: (202) 772-9324  
(Original and three copies)

**By: Email**

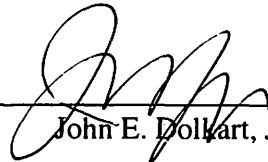
Honorable Brenda P. Murray  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E., Mail Stop 2557  
Washington, DC 20549-2557  
Email: [alj@sec.gov](mailto:alj@sec.gov)

**By: Email and U.S. Mail**

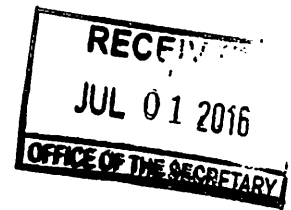
Lynn M. Dean, Esq.  
Division of Enforcement, Los Angeles Regional Office Securities and Exchange Commission  
444 S. Flower Street, Suite 900  
Los Angeles, California 90071-9591  
Email: [deanl@sec.gov](mailto:deanl@sec.gov)

DATED: June 30, 2016

BY:

  
\_\_\_\_\_  
John E. Dollart, Jr., Esq.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION



**In the Matter of**

**GEORGE CHARLES CODY PRICE,**

**Respondent.**

**ADMINISTRATIVE PROCEEDING  
FILE NO. 3-16946**

**DECLARATION OF JOHN E. DOLKART, JR.**

1. I am an attorney licensed to practice law in the state of California, before the courts of the United States and the Securities and Exchange Commission.

2. I have represented the Respondent in the present proceeding since mid-November 2015. If called upon to testify about any of these matters, I could and would testify competently thereto.

3. In addition, I have represented ABS Manager, LLC in the separately pending FINRA arbitration matter Case Number 12-02711 since mid-November 2015.

4. My co-counsel in the FINRA matter is March Chester of the law firm Chester & Shein, PC located in Scottsdale, Arizona.

5. Mr. Chester is the primary attorney handling the FINRA case. He has informed me as of June 15, 2016 that he has retained an expert witness to prepare a report and testify in September 2016; however we cannot now disclose the name of such expert or the contents of such expert's reports, notes, summaries, etc. as it would provide advance trial disclosure to our opponents and compromise the effectiveness of such testimony.

6. I believe this expert's testimony and the outcome of the FINRA case will provide substantial evidence in support of reconsideration and review of the Initial Decision and request the court stay the entry of the Initial Decision until such time as the FINRA matter has resolved.

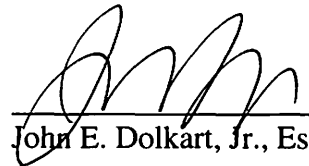
7. Further, I request to submit a supplemental brief at such time detailing the results of the FINRA case and the testimony of experts as to the value of the ABS Fund and the Capital Access

Fund and the loss (if any) which occurred with respect to investors as well as the accuracy of reports provided to investors by Respondent during the events underlying this case.

8. Should it please the court, I can and will obtain a supplemental declaration for attorney Mark Chester regarding the foregoing facts.

DATED: June 30, 2016

Respectfully submitted,



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John E. Dolkart, Jr., Esq.

COUNSEL FOR RESPONDENT GEORGE  
CHARLES CODY PRICE



**In the Matter of George Charles Cody Price**  
Administrative Proceeding File No. 3-16946

**Service List**

Pursuant to Commission Rule of Practice 151(17 C.F.R. § 201.151), I certify that the attached:

DECLARATION OF JOHN E. DOLKART, JR.

On June 30, 2016.

**By: Facsimile and Overnight Mail**

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F. Street, N.E., Mail Stop 1090  
Washington, DC 20549-1090  
Facsimile: (202) 772-9324  
(Original and three copies)

**By: Email**

Honorable Brenda P. Murray  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E., Mail Stop 2557  
Washington, DC 20549-2557  
Email: [alj@sec.gov](mailto:alj@sec.gov)

**By: Email and U.S. Mail**

Lynn M. Dean, Esq.  
Division of Enforcement, Los Angeles Regional Office Securities and Exchange Commission  
444 S. Flower Street, Suite 900  
Los Angeles, California 90071-9591  
Email: [deanl@sec.gov](mailto:deanl@sec.gov)

DATED: June 30, 2016

BY:

  
\_\_\_\_\_  
John E. Dolkart, Jr., Esq.