

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 63720 / January 14, 2011

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3139 / January 14, 2011

Admin. Proc. File No. 3-13280

In the Matter of
DON WARNER REINHARD

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Civil Injunction

Former associated person of registered broker-dealer and investment adviser was enjoined from violating the antifraud provisions of the federal securities laws. *Held*, it is in the public interest to bar Respondent from association with any broker, dealer, or investment adviser.

APPEARANCES:

Don Warner Reinhard, pro se.

Edward D. McCutcheon and Robert K. Levenson for the Division of Enforcement.

Appeal filed: July 20, 2010
Last brief received: November 2, 2010

I.

Don Warner Reinhard, formerly the sole owner and president of Magnolia Capital Advisors, Inc. ("Magnolia"), a registered investment adviser, and formerly associated with Paragon Financial Group, Inc. ("Paragon"), a registered broker-dealer, appeals from the decision of an administrative law judge barring him from association with any broker, dealer, or investment adviser based on his having been enjoined by default, in 2008, from violating the antifraud provisions of the securities laws.¹ 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**

In October 2008, Reinhard was permanently enjoined from future violations of antifraud and other provisions of the federal securities laws, namely Section 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5;² Sections 206(1), (2)³ and 207⁴ of the Investment Advisers Act of 1940; and aiding and abetting violations of Advisers Act Section 204 and Advisers Act Rule 204-2(a)(7).⁵ The permanent injunction was entered against Reinhard following the entry of a default judgment against him.⁶

¹ *Don Warner Reinhard*, Supplemental Initial Decision Rel. No. 396 (Jun. 1, 2010), 98 SEC Docket 28878.

² Securities Act Section 17(a), 15 U.S.C. § 77q(a), Exchange Act Section 10(b), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, prohibit fraudulent conduct in connection with securities transactions.

³ Advisers Act Sections 206(1) and (2), 15 U.S.C. §§ 80b-6(1) and (2), make it unlawful to defraud a client or a prospective client.

⁴ Advisers Act Section 207, 15 U.S.C. § 80b-7, prohibits the willful making of any untrue statement of material fact, or omission of any material fact, in a report or application required to be filed under Advisers Act Sections 203 or 204.

⁵ Advisers Act Section 204, 15 U.S.C. § 80b-4, and Advisers Act Rule 204-2(a)(7) thereunder, 17 C.F.R. § 275.204-2(a)(7), requires investment advisers to maintain books and records, including written communications relating to their securities recommendations and orders, and to provide copies of these records as directed by the Commission.

⁶ *SEC v. Reinhard*, No. 4:07-CV-529-RH/WCS (N.D. Fla. Oct. 3, 2008), *aff'd*, No. 09-10213-CC (11th Cir. Oct. 28, 2009).

In the injunctive proceeding, Reinhard, acting *pro se*, challenged the sufficiency of service and made other procedural objections but did not answer the Commission's complaint. In his Order for Entry of Judgment, the district court judge found that a process server had delivered the complaint and summons to Reinhard on February 13, 2008 but "Reinhard answered the door [and] then slammed it," whereupon the process server left the complaint and summons on Reinhard's front porch. In March 2008, Reinhard moved for an extension of the time to respond to the complaint and the judge granted the motion, directing Reinhard to respond by April 18, 2008.⁷ Reinhard did not respond by April 18 but, rather, moved on May 6, 2008 for a further sixty-day extension. On the same day, the judge denied Reinhard's motion for another extension.

The Commission applied for a default judgment on June 9, 2008, which the clerk entered on June 12, 2008. On June 24, 2008, Reinhard objected to the Commission's application for a default judgment. On July 8, 2008, the Commission moved for entry of a default judgment. On July 13, 2008, the judge rejected Reinhard's opposition and granted the Commission's motion for entry of a default judgment.

The court relied on the Commission's complaint in entering judgment. The complaint alleged that, from at least January 2002 through August 2003, Reinhard had, through Magnolia Capital Advisers, "made false and misleading statements and omissions of material fact to his approximately 138 clients in connection with the offer and sale of collateralized mortgage obligations ('CMO's')." These false and misleading statements included "misrepresent[ing] the safety of the highly-leveraged CMO's he purchased for his clients' accounts and the account of . . . a hedge fund he controlled as its general partner." The complaint also alleged that Reinhard "lulled his hedge fund clients into keeping their investments with the hedge fund by providing them with false quarterly account statements showing materially inflated account valuations," and that "[t]hrough all this activity, Reinhard's clients and hedge fund investors lost \$6 million." In addition, the complaint asserted that, during a period when the market value of the CMO investments had declined, Reinhard "engaged in a fraudulent scheme to artificially increase the equity in certain brokerage accounts and to avoid margin calls . . . by temporarily 'parking' the CMO investments in the accounts of third parties, while falsely reporting the nature of the transactions to his broker-dealer and clearing firm."

Following a telephonic hearing in which Reinhard participated, the judge entered a permanent injunction against Reinhard on October 3, 2008. In that order, the court held that "Mr. Reinhard in effect admitted the fraud alleged in the complaint." The judge held an evidentiary hearing on December 8, 2008 to rule on various motions filed by Reinhard⁸ and to determine the

⁷ In his order granting Reinhard's motion, the judge stated that "[n]o further extensions will be granted."

⁸ On October 16, 2008, Reinhard filed a motion to quash the service of process. He
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appropriate amount of disgorgement, prejudgment interest, and civil penalty to be paid by Reinhard. Reinhard participated in this hearing and cross-examined the Commission's witness.

The judge found that "[t]he complaint identified the period of the fraud as beginning at least January 2002 and continuing through August 2003," and that the government's proof at trial established that Reinhard received commissions of approximately \$5.9 million from the transactions at issue. The judge ordered Reinhard to disgorge this amount, as well as to pay an award of interest of approximately \$2.26 million on the disgorgement amount and a civil penalty of \$120,000 -- for a total judgment of approximately \$8.2 million. On October 28, 2009, the Eleventh Circuit affirmed the district court decision.⁹

B. Criminal Conviction

On May 13, 2009, Reinhard entered into a plea agreement with the U.S. Attorney for the Northern District of Florida (the "Plea Agreement") regarding various counts of criminal misconduct (the "2009 Conviction").¹⁰ In the Plea Agreement, Reinhard stated that he was pleading guilty to these counts because "he is in fact guilty of the charges contained" in these counts and he acknowledged that, "were the case to go to trial, the government could present evidence to support these charges beyond a reasonable doubt." Reinhard further agreed that he was entering into the Plea Agreement "knowingly, voluntarily and upon the advice of counsel." The parties also executed a supporting agreement, signed by Reinhard and his attorney, in which they set out the factual basis for Reinhard's guilty plea (the "Factual Basis for Plea Agreement").¹¹

The Factual Basis for Plea Agreement identifies various misconduct as the basis for Reinhard's guilty plea, including:

- In 2003, Reinhard had applied to a bank for a loan of approximately \$250,000 to finance his purchase of a boat. As part of his loan application, he had submitted his purported 2001 federal income tax return. This purported tax return

⁸ (...continued)

filed additional evidentiary and procedural motions in November 2008, including requesting a hearing on his motion to quash service. On November 26, 2008, the judge denied one of Reinhard's procedural motions and, on December 8, 2008, denied the remainder.

⁹ *SEC v. Reinhard*, No. 09-10213, 2009 U.S. App. LEXIS 23744 (11th Cir. Oct. 28, 2009) (*per curiam*).

¹⁰ Reinhard's then-counsel also signed the Plea Agreement.

¹¹ The Factual Basis for Plea Agreement was also signed by Reinhard and his then-counsel.

was not, however, a copy of the actual return he filed for 2001, and it falsely listed his adjusted gross income as \$944,322 and his total tax as \$253,996, while his actual return listed his adjusted gross income as \$389,700 and his total tax as \$37,498.

- Reinhard filed a bankruptcy petition in 2006 but failed to disclose "numerous significant assets," although he had represented to the bankruptcy trustee that he had reported all the assets he owned. The omitted assets included the boat mentioned above, artwork he had purchased for approximately \$40,000, and certain investment accounts. Reinhard also failed to disclose certain of his liabilities, lease obligations and gifts (including gifts valued at approximately \$40,000 to his girlfriend).
- Reinhard transferred two unreported assets following the filing of his bankruptcy petition, including artwork that he sold for \$24,000, of which approximately \$20,000 was deposited to Reinhard's girlfriend's bank account -- an account that was not disclosed to the bankruptcy court.
- Reinhard under-reported Schedule E income on his 2001 federal income tax return by reporting a fraudulent expense of \$554,622, the expense purportedly being incurred to reimburse investors for losses they had incurred in one of Reinhard's ventures when, in fact, the evidence reveals that no such payment was made to the investors. As a result of this false statement, Reinhard underpaid his taxes by \$216,498.
- On his 2005 federal income tax return, Reinhard falsely stated that his cost basis in investment properties that he sold in that year was \$3.2 million, when it was actually \$1.14 million. Reinhard later benefitted from the incorrect basis information when he used his overstated losses from the 2005 return to offset his reported taxable income on his 2002 tax return, which he was required to file by the bankruptcy court. As a result of his use of the false information from the 2005 return, Reinhard reported a taxable loss of approximately \$1.17 million for 2002, instead of correctly reporting taxable income of approximately \$729,000. Also, by submitting this false 2002 tax return to the bankruptcy court, Reinhard concealed from the court the fact that he had generated substantial capital gains.

Pursuant to the Plea Agreement and the Factual Basis for Plea Agreement, Reinhard pled guilty on May 13, 2009 to seven counts of the criminal indictment against him, including: (i) making false statements on a loan application in violation of 18 U.S.C. § 1014;¹² (ii) making

¹² 18 U.S.C. § 1014 prohibits "knowingly mak[ing] any false statement or report . . . for the purpose of influencing in any way the action of" a banking institution "upon any

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false statements to the bankruptcy trustee and aiding and abetting the making of such statements in violation of 18 U.S.C. §§ 152(3) and 2;¹³ (iii) transferring assets and concealing them from the bankruptcy trustee in violation of 18 U.S.C. § 152(7);¹⁴ and (iv) making false statements on an income tax return in violation of 26 U.S.C. § 7206(1) and (2).¹⁵ Reinhard was sentenced to 51 months' imprisonment for five of the counts and 36 months' imprisonment for the other two counts, the sentences to run concurrently. In addition, he was ordered to pay restitution of \$667,890.28 and a special assessment of \$700. He is currently incarcerated in the Beaumont, Texas Federal Correctional Complex.

C. Administrative Proceedings

1. Initial Decision and Remand Order

On October 27, 2008, proceedings were instituted based on the default injunction. On February 12, 2009, the law judge issued an Initial Decision barring Reinhard from associating with any broker, dealer or investment adviser.¹⁶ Reinhard appealed. In February 2010, we issued an order (the "Remand Order") holding that, while the statutory basis for the imposition of sanctions was satisfied in that Reinhard was enjoined from violating the antifraud and other provisions of the federal securities laws while in an associated capacity, we were concerned about whether the record was "sufficient to address, in a meaningful manner, the public interest"

¹² (...continued)
application, . . . loan . . . agreement or . . . any change or extension of any of the same . . ."

¹³ 18 U.S.C. § 152(3) prohibits a person from "knowingly and fraudulently mak[ing] a false declaration, certificate, verification, or statement under penalty of perjury" in a bankruptcy matter. 18 U.S.C. § 2 declares that a person who aids or abets another in the commission of a crime against the United States, or willfully causes an act to be done which, if directly performed by him or another, would be an offense against the United States, will be punishable as a principal. Reinhard also pled guilty to aiding and abetting the concealment of a material fact in violation of 18 U.S.C. § 1001.

¹⁴ 18 U.S.C. § 152(7) prohibits a person from "knowingly and fraudulently transfer[ring] or conceal[ing] any of his property . . . in contemplation of a case under" the bankruptcy laws or "with intent to defeat the provisions" of the bankruptcy laws.

¹⁵ 26 U.S.C. § 7206(1), as relevant here, prohibits the submission of an income tax statement which the filer "does not believe to be true and correct as to every material matter." 26 U.S.C. § 7206(2) makes it unlawful to "[w]illfully" assist in the preparation of an income tax return "which is fraudulent or is false as to any material matter. . . ."

¹⁶ *Don Warner Reinhard*, Initial Decision Rel. No. 370 (Feb. 12, 2009), 95 SEC Docket 14218.

because the injunction was entered by default with no litigated or agreed upon findings of fact.¹⁷ The Remand Order noted that the Supreme Court has held that "[i]n the case of a judgment entered by . . . default, none of the issues is actually litigated [and that] [t]herefore [issue preclusion or collateral estoppel] does not apply with respect to any issue in a subsequent action."¹⁸ The Remand Order further stated that "[i]n determining the need for assessment of sanctions in the public interest, we, like the law judge, are guided by the factors identified in *Steadman v. SEC*."¹⁹ The parties were directed, on remand, to introduce additional evidence regarding these factors.

2. Supplemental Initial Decision and Appeal to Commission

The law judge then considered the case again pursuant to the Remand Order. On March 22, 2010, the law judge held a prehearing conference in which she requested that Reinhard state, by May 6, 2010, why his 2009 conviction should not be considered in evaluating whether sanctions should be imposed in the public interest in light of the *Steadman* factors. At the prehearing conference, Reinhard contended that the conviction was not relevant to the administrative proceeding, but did not file any additional pleadings with the law judge. On June 1, 2010, the law judge issued a Supplemental Initial Decision, again barring Reinhard from associating with any broker, dealer, or investment adviser based on the default permanent injunction entered against him.²⁰ In her Supplemental Initial Decision, the law judge took official notice of Reinhard's 2009 criminal conviction in assessing the public interest. The law judge held that, "[e]ven disregarding the injunction . . . his criminal conduct shows a lack of honesty

¹⁷ *Don Warner Reinhard*, Securities Exchange Act Rel. No. 61,506 (Feb. 4, 2010), 97 SEC Docket 25269, 25273.

¹⁸ *Arizona v. California*, 530 U.S. 392, 414 (2000) (quoting *Restatement (Second) of Judgments*, § 27 cmt. e, p. 257 (1982)); *but see Harold F. Harris*, Exchange Act Rel. No. 53122A (Jan. 13, 2006), 87 SEC Docket 362, 369 (preclusive effect given to default injunction where district court's accompanying findings took account of "substantive defenses argued by Respondents" in late-filed answer); *Thomas J. Donovan*, 58 S.E.C. 1032, 1035 (2005) (imposing sanctions based on default injunction, where law judge conducted hearing accepting testimony and other evidence related to underlying misconduct and the public interest); *Lamb Bros., Inc.*, 46 S.E.C. 1053, 1058-59 (1977) (sanctions imposed based on default injunction but "allegations made in the injunctive suit [were] remade" in administrative proceeding and "an evidentiary record with respect to those matters was developed").

¹⁹ 97 SEC Docket at 25273 (citing to *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979)). The relevant public interest factors are identified and discussed in Section III a. below.

²⁰ *Don Warner Reinhard*, Initial Decision Rel. No. 396 (June 1, 2010), 98 SEC Docket 28878.

and indicates that he is unsuited to function in the securities industry." On July 28, 2010, we issued an order granting Reinhard's request for review. In this order, we asked the parties to address in their briefs "whether the order instituting proceedings ["OIP"] should be amended to reflect Reinhard's criminal conviction and the relevance of that conviction to the Commission's consideration of the public interest." In response, both parties argued that the OIP should not be amended to reflect the 2009 Conviction. Reinhard contended that amendment is not appropriate because, in his view, the 2009 Conviction is not relevant to the public interest. The Division of Enforcement, on the other hand, maintained that the "OIP does not need to be amended [because] [t]he default permanent injunction entered against Reinhard provides a statutory basis for these proceedings, and the OIP does not need to include a criminal conviction for a Law Judge to consider [the conviction] in determining whether it is in the public interest to order a bar." Under the circumstances, we have determined that there is no need to amend the OIP.²¹ On October 8, 2010, we issued a second order in which we gave the parties "express notice that the Commission may consider the 2009 Conviction in assessing the public interest." We further advised the parties that they would be given "a further opportunity to discuss any mitigating circumstances and any other issues related to that conviction," through the opportunity to file additional briefs on the matter.

III.

Under Exchange Act Sections 15(b)(4) and (6)²² and Advisers Act Sections 203(e) and (f),²³ we may impose remedial sanctions on a person associated with a broker, dealer, or investment adviser consistent with the public interest if, among other things, the associated person has been permanently enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities. We find, and Reinhard does not dispute, that Reinhard was an associated person and that he was permanently enjoined from engaging in conduct in connection with the purchase or sale of securities. Accordingly, the statutory requirements for the imposition of sanctions were satisfied here.

a. The Exchange Act and the Advisers Act authorize us to censure, place limitations on, suspend, or bar an associated person based on these findings if we find that such sanction is in the public interest.²⁴ 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,

²¹ See *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").

²² 15 U.S.C. §§ 78o(b)(4) and (6).

²³ 15 U.S.C. §§ 80b-3(e) and (f).

²⁴ 15 U.S.C. § 78o(b)(6)(A); 15 U.S.C. § 80b-3(f).

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.²⁵ Our "inquiry into . . . the public interest is a flexible one, and no one factor is dispositive."²⁶ Based on our consideration of these factors, we believe that the bar imposed by the law judge was amply warranted.

According to the Factual Basis for Plea Agreement, Reinhard made repeated false statements on a loan application, to a bankruptcy court, and on his tax returns. Moreover, the false statements were not mere minor or ministerial errors, as Reinhard maintains, but significant in amount and scope. For example, Reinhard included a bogus tax return in a loan application that falsely listed his adjusted gross income as \$944,322 and his total tax as \$253,996 when, in fact, his actual return listed his adjusted gross income as \$389,700 and his total tax as \$37,498. He also reported a fraudulent expense of \$554,622 on his 2001 tax return, which allowed him to underpay his taxes by \$216,498, and on his 2002 income tax return falsely claimed a net operating loss of \$4,126,540 that was used to offset his reported income of \$3.2 million. These are, as Enforcement correctly states, "crimes of dishonesty." His criminal misconduct included making false statements to the government and others concerning financial matters and involved concealing assets and lying about their existence and disposition. This misconduct is highly relevant in our inquiry where we are required to consider the public interest and determine whether an individual is fit to work in an industry where honesty and rectitude concerning financial matters is critical.²⁷

²⁵ *James C. Dawson*, Investment Advisers Act Rel. No. 3057 (July 23, 2010), 98 SEC Docket 30697, 30699-700, *Scott B. Gann*, Exchange Act Rel. No. 59729 (Apr. 8, 2009), 95 SEC Docket 15818, 15823 (citing *SEC v. Steadman*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)), *aff'd*, No. 09-60435 (5th Cir. 2010) (per curiam)).

²⁶ *David G. Ghysels*, Exchange Act Rel. No. 62937 (Sept. 20, 2010), 99 SEC Docket 32610, 32614, *appeal filed*, No. 10-4634 (2d Cir. Nov. 12, 2010); *Dawson*, *supra*.

²⁷ The fact that Reinhard's criminal misconduct did not involve violations of the federal securities laws is not determinative for our analysis. Exchange Act Section 15(b)(4)(B) and Advisers Act Section 203(e)(2)(A) authorize Commission action if the respondent has been convicted of "any felony" involving "the taking of a false oath, the making of a false report, . . . [or] perjury." As we recently stated:

'The securities industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants.' Indeed, the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business.

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Also significant to our inquiry is the fact that Reinhard's misconduct occurred over an extensive period of time and involved a high degree of scienter. As the Factual Basis for Plea Agreement shows, Reinhard's criminal activity occurred between 2003 through 2007 and involved numerous false filings and statements. Moreover, all of the crimes to which Reinhard pled guilty required that he have acted intentionally or knowingly.²⁸ Finally, while Reinhard expressed his "remorse" for his actions, he also challenges the facts underlying his conviction, as discussed in section b. below, suggesting an unwillingness to appreciate the wrongfulness of what he did.

b. Reinhard appears to concede that some sanction is warranted -- he proposes in his pleadings that, in settlement of this proceeding, he be suspended "for a period of 60 months beginning on the date of the SEC default judgement on October 3, 2008" -- but objects to a permanent bar as excessive.²⁹ According to Reinhard, a 60-month suspension is "more than sufficient given a default judgement and a plea agreement based on unintentional errors & mistakes." In particular, he objects to the consideration of his 2008 guilty plea in evaluating the public interest, arguing that the facts underlying his criminal conviction "do not lead to concern of the public interest" [emphasis in original].

²⁷ (...continued)

Gary M. Kornman, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14255-56, *petition denied*, 592 F.3d 173 (D.C. Cir. 2010) (quoting *Bruce Paul*, 48 S.E.C. 126, 128 (1985)). *See also Ahmed Mohamed Soliman*, 52 S.E.C. 227, 231 (1995) (holding that criminal conviction for tax law violations involving "fraud and deceit" is a "serious" offense which "shows a lack of honesty and judgement and indicates that [respondent was] unsuited to function in the securities industry"); *Benjamin Levy Sec., Inc.*, 46 S.E.C. 1145, 1147 (1978) (holding that respondent's conduct in "play[ing] a key role in a deliberate fraud practiced on the [Small Business Administration] and [a] bank" constituted "serious misconduct" and supported the law judge's decision to bar respondent from association with any broker-dealer or investment adviser).

²⁸ *See supra* notes 12-15 and accompanying text.

²⁹ Reinhard does not explain his reasons for suggesting a 60 month suspension. Alternatively, Reinhard seeks a stay of this proceeding pending his release from prison. We deny Reinhard's stay request. *Cf. David G. Ghysels, Order Denying Motions to Correct Manifest Errors of Fact and Denying Motions to Stay and for a Fact-Finding Hearing*, Admin. Proc. Rel. No. 648 (Jan. 10, 2010), 97 SEC Docket 25011, 25014 (holding that "pending appeal [of conviction] is not a valid reason for delaying the resolution" of follow-on administrative proceeding); *Charles Trento*, 57 S.E.C. 346-47 (2004) (denying request of incarcerated respondent to set aside law judge's decision pending appeal of his conviction). *See also Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598 (administrative proceeding adjudicated and decided while respondent was incarcerated).

Reinhard further argues that "[t]he actual counts that I pled guilty to are not the identical counts as outlined in the Factual Basis of the Plea Agreement." He claims that the discrepancies between the two "are substantiated in the language used when presenting the plea to the judge . . . and in the objections and changes made in the sentence hearing," and would be evident if the transcripts of these events were to be reviewed.³⁰ He further asserts that the factual record from the plea hearing and the sentencing hearing "proves . . . that [his] plea was based upon unintentional errors and mistakes by [Reinhard] and [his] legal counsel" that "solely dealt with the filing and appropriate amending [sic] of documents."³¹

As we have repeatedly held, Reinhard is collaterally estopped from attacking the facts underlying his conviction.³² Moreover, Reinhard cannot now dispute the accuracy of the findings

³⁰ For example, with respect to the assertion in the Factual Basis for Plea Agreement that he had submitted a false tax return to a bank overstating his adjusted gross income in support of his loan application, Reinhard claims that "the issue on the [2001] tax return is one of a deduction and there was *not* a new loan or a loan application of any kind involved," rather "[i]t was simply an administrative function of a 'change of terms' agreement because of new collateral and [he] even paid the principle [sic] down by approximately \$95,000 [emphasis in original]." Also, as to the statement in the Factual Basis for Plea Agreement that he had filed a false tax return in 2001 by reporting a fraudulent expense of \$554,622, Reinhard states that the distributions to his limited partners "were actually made in 2002 and 2003 and therefore could be deducted in 2002 and 2003 instead of 2001."

³¹ Among other things, he challenges the facts set forth in the Factual Basis for Plea Agreement by arguing that: (i) the omissions in the various schedules and statements he filed with the bankruptcy court "should have been amended [sic] by [his] bankruptcy attorney;" (ii) the purportedly false cost basis in his 2005 tax return for which he had pled guilty was, in fact, "accurate" but he "[did] not have the supporting documentation to prove the cost basis used;" and (iii) the distributions made to his limited partners, while not made in 2001 as his tax return for that year indicated, were, in fact, paid in 2002 and 2003 as shown in additional supporting materials provided to the Internal Revenue Service since the Plea Agreement was signed and the sentencing hearing held. Reinhard further claims that the government "acknowledged at the sentence hearing that there was *not* a fraud involving a loan application," and that the government agrees "that an incorrect tax return was supplied to the bank for administrative purposes during a change in collateral of an existing loan [emphasis in original]." Reinhard similarly seeks to minimize the significance of his tax return violations.

³² *See, e.g., Kornman*, 95 SEC Docket at 14257 (finding criminal conviction based on guilty plea has collateral estoppel effect precluding relitigation of issues in Commission proceedings); *Phillip J. Milligan*, Exchange Act Rel. No. 61790 (Mar. 26, 2010), 98 SEC Docket 26791, 26796-97 (holding that a respondent in a follow-on proceeding may not challenge the findings made in an underlying criminal or injunctive proceeding). *See also Robert Blakeney*

(continued...)

set out in the Factual Basis for Plea Agreement. He and his then-attorney signed this agreement as well as the Plea Agreement. These agreements were entered into as part of a settlement where the U.S. Attorney agreed to dismiss the remaining sixteen counts of the indictment and not to file any further criminal charges against Reinhard arising out of the same transactions and occurrences to which he pled guilty. As noted, Reinhard acknowledged in the Plea Agreement that "were the case to go to trial, the government could present evidence to support these charges [*i.e.*, the ones to which he pled guilty] beyond a reasonable doubt." Moreover, by signing the Plea Agreement and Factual Basis for Plea Agreement, Reinhard waived any objections he may have had to the facts set out in the latter agreement and became bound by the facts recited therein.³³

c. Reinhard asks that we "show mercy on [him] and [his] future as [his] current 51 month prison sentence is more than sufficient punishment." However, as we previously noted, "[t]he specified administrative and criminal remedies are designed to serve different purposes, one to determine whether respondent[] should be barred or suspended from association . . . or censured, and the other to determine whether [respondent] should be fined or imprisoned."³⁴ Thus, we do not view his criminal sentence as mitigative of the appropriate sanction to be imposed in the public interest in this administrative proceeding.

³² (...continued)

Stevenson, 48 S.E.C. 89, 90 n.4 (noting that it is "well-settled that a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case [and that] [f]or purposes of applying that principle, this Commission and the United States have been regarded as one and the same." [citations omitted]).

Reinhard also challenges the validity of the civil injunction order, asserting that "the Commission did not prove that [he] broke or violated any securities laws in obtaining this default judgement." He attributes his civil injunction and the \$8.2 million judgment against him to "egregious errors" of Bear Stearns that caused him to be a "victim as well as [his] clients," and argues that imposing a bar on him in this administrative proceeding would be "in effect punishing [him] for the errors of Bear Stearns." If Reinhard wished to challenge these allegations, he should have done so before the court.

³³ See *United States v. Lomeli-Mences*, 567 F.3d 501, 507 (9th Cir. 2009) (holding that, having admitted to certain facts in "both his written plea agreement and oral change of plea proceedings," defendant could not challenge these facts on appeal); *United States v. Newman*, 148 F.3d 871, 876 (holding that defendant was deemed to have admitted facts in signed plea agreement and waived any subsequent challenge to them).

³⁴ *Richard N. Cea*, 44 S.E.C. 8, 25 (1969).

The "securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."³⁵ Here, by his repeated acts of false filings and dishonest conduct over several years and his refusal to appreciate the wrongfulness of his misconduct, Reinhard has demonstrated his unfitness for employment in the industry. The imposition of a bar reflects the importance of "deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions."³⁶ By barring Reinhard from associating with broker-dealers and investment advisers, these sanctions address the risks of allowing Reinhard to remain in the securities industry, serving as a "legitimate prophylactic remedy consistent with [our] statutory obligations"³⁷ to "protect[] investors and the integrity of the markets by preventing those convicted of crimes from acting in the capacity of a securities professional."³⁸

Accordingly, we hold that it is in the public interest to bar Reinhard from association with any broker, dealer, or investment adviser. An appropriate order will issue.³⁹

By the Commission (Chairman SCHAPIRO and Commissioners CASEY, WALTER, AGUILAR, and PAREDES).

Elizabeth M. Murphy
Secretary

³⁵ *Conrad P. Seghers*, Advisers Act Rel. No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2304; *see also Charles Phillip Elliott*, 50 S.E.C. 1273, 1276 (1992) (stating that the securities industry is "a business that presents many opportunities for abuse and overreaching"), *aff'd*, 36 F.3d 86 (11th Cir. 1994) (per curiam).

³⁶ *Ghysels*, 99 SEC Docket at 32621 (quoting *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005)).

³⁷ *Kornman*, 592 F.3d at 189.

³⁸ *Ghysels*, 99 SEC Docket at 32621 (quoting *William F. Lincoln*, 53 S.E.C. 452, 461 (1998)); *see also SEC v. Palmisano*, 135 F.3d 860, 866 (2d Cir. 1998) (finding that "deterrence of securities fraud serves other important nonpunitive goals, such as encouraging investor confidence, increasing the efficiency of financial markets, and promoting the stability of the securities industry").

³⁹ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or are in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 63720 / January 14, 2010

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3139 / January 14, 2010

Admin. Proc. File No. 3-13280

In the Matter of

DON WARNER REINHARD

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Don Warner Reinhard be barred from association with any broker, dealer or investment adviser.

By the Commission.

Elizabeth M. Murphy
Secretary