SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 3628 / July 11, 2013

Admin. Proc. File No. 3-14572

In the Matter of

ALFRED CLAY LUDLUM, III
P.O. Box 3924
Wilmington, DE 19807

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Ground for Remedial Action

Respondent, who was associated with an investment adviser, agreed to be permanently enjoined from violating the antifraud provisions of the federal securities laws. *Held*, it is in the public interest to additionally bar him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

Alfred Clay Ludlum, III, *pro se*.

Dean M. Conway and *Devon Leppink Staren*, for the Division of Enforcement.

Appeal filed: January 19, 2012
Last brief received: March 30, 2012

I.

Alfred Clay Ludlum, III, was a registered investment adviser and the founder, president, and sole control person of Printz Capital Management, LLC, Printz Financial Group, Inc., and PCM Global Holdings, LLC (collectively, the "Printz Entities").[1] On December 20, 2010, the Commission filed a civil injunctive action against him for fraud and other violations.[2] After Ludlum agreed to be permanently enjoined from (among other things) future violations of the antifraud provisions of the federal securities laws,[3] the Commission instituted a follow-on administrative proceeding to determine whether the statutory predicate for further remedial action existed and, if so, whether it was appropriate in the public interest to take such action on the facts of this case.[4]

The administrative law judge found there was no genuine issue as to any material fact and that the Division of Enforcement was entitled to summary disposition as a matter of law.[5] She also found that "[t]he overwhelming evidence is that the public interest requires that Ludlum be barred from participating in the securities industry in the broadest possible way."[6] Although she barred Ludlum from association with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent, she did not bar him from association with a municipal advisor or nationally recognized statistical rating organization.[7] Those last two forms of relief were authorized by Congress in the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.[8] Ludlum's misconduct occurred before the passage of that Act, and the ALJ believed applying those sanctions would be impermissibly retroactive, though noting that the Commission had yet to decide the issue.[9]

This appeal followed. In the interim, we decided *John W. Lawton*, which held that collateral bars imposed pursuant to § 925 of Dodd-Frank are not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct because such bars are

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[1] Printz Capital, a Delaware limited liability company, was formed in May 2006. It registered with the Commission as an investment adviser in September 2006. Its registration was revoked on June 27, 2011. *Printz Capital Mgmt., LLC*, Investment Advisers Act Release No. 3233, 2011 WL 2544469, at *2 (June 27, 2011). Printz Financial is a holding company for Printz Capital and other businesses controlled by Ludlum. PCM Global was formed to raise money to invest in Costa Rican real estate.

[2] *SEC v. Ludlum*, Lit. Release No. 21785, 2010 WL 5167673 (Dec. 20, 2010).

[3] *SEC v. Ludlum*, Lit. Release No. 22110, 2011 WL 4526103 (Sept. 29, 2011).

[4] *Alfred Clay Ludlum III*, Admin. Proc. File No. 3-14572, 2011 WL 4526100 (Sept. 29, 2012).

[5] *Alfred Clay Ludlum III*, Initial Dec. Release No. 447, 2012 WL 681581, at *2 (Jan. 4, 2012).

[6] *Id.* at *7.

[7] *Id.*

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

[9] 2012 WL 681581, at *7.

prospective remedies whose purpose is to protect the investing public from future harm.[10] We affirm the ALJ's grant of the Division's motion for summary disposition, but we conclude that, for the reasons set forth in *Lawton*, all of the remedies authorized in § 925 of Dodd-Frank are legally available in this case. And, as discussed below, we find it appropriate in the public interest on the facts of this case to impose a full collateral bar against Ludlum.

II.

On December 20, 2010, we filed a civil enforcement action against Ludlum in the U.S. District Court for the Eastern District of Pennsylvania.[11] Those proceedings concerned unregistered securities offerings in the Printz Entities between 2006 and 2009. The complaint alleged that, through these offerings, Ludlum defrauded investors, including at least twenty-one advisory clients of Printz Capital, out of approximately $852,000. In particular, the complaint alleged that Ludlum raised approximately $700,000 from twenty-seven investors through unregistered offerings of equity and debt securities in the Printz entities, fraudulently obtained $80,000 in loans from an advisory client, and misappropriated approximately $72,000 from three advisory clients' accounts. The complaint further alleged that the "Printz Entities failed to register their securities offerings with the Commission, even though no exemption from registration applied . . . ."[12] Although Ludlum told investors that their funds would be used "to grow and operate the businesses of the Printz Entities," he instead used the investors' funds "to support his lavish lifestyle, pay his personal expenses, and repay other investors."[13]

According to the complaint, Ludlum "induced investors to invest by creating the illusion of a legitimate business"[14] and "promised investors superior rates of return when he knew or was reckless in not knowing that the Printz Entities did not have the revenues to pay such returns."[15] "Specifically," the complaint stated, "Ludlum continued to solicit new promissory note-holders by promising an 8% annual return when he knew that many of the interest payments that were owed to existing note-holders in the Printz Entities had not been paid."[16] Ludlum also failed to disclose to prospective investors that "none of his businesses had ever made a profit and that the Printz Entity expenses (as well as his personal expenses) were largely paid out of newly-raised investor funds."[17] These investors included "many who did not have significant investing

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10 Advisers Act Release No. 3513, 2012 WL 6208750, at *10 (Dec. 13, 2012).

11 *Ludlum*, 2010 WL 5167673.

12 Compl. ¶ 3.

13 *Id.*

14 *Id.* ¶ 28.

15 *Id.* ¶ 27.

16 *Id.*

17 *Id.* ¶ 29.

experience and, instead, relied almost exclusively on the investment advice they received from Ludlum."[18]

Once he raised funds through these offerings, Ludlum commingled the investors' funds with personal and business assets and used approximately $251,000 of those funds "to support a lavish lifestyle for himself and his friends," including $44,000 in rent for a luxury condominium and $56,000 of expenses in bars and restaurants.[19] Ludlum then took various steps to conceal his fraud by knowingly or recklessly making false statements to investors, including telling one investor that her funds had been invested in a Costa Rican real estate deal, when in fact he had transferred her money into his personal bank account. Ludlum also "attempted to placate the concerns of at least two other investors and the son of a retired couple who also invested by telling them that the Commission's investigation of his fraud was nothing more than a routine audit."[20] And, during the Commission's subsequent investigation into his misconduct, Ludlum falsely testified under oath that he had disclosed on a background questionnaire all of the bank and securities accounts he had controlled over the past three years. According to the complaint, Ludlum controlled at least thirty-six additional accounts, which he failed to disclose.

As Printz Capital's sole control person, Ludlum was also responsible for the firm's withholding documents requested by Commission staff and for the firm's filing inaccurate forms with the Commission. In particular, the complaint alleged that Ludlum aided and abetted Printz Capital's failure to make available complete and accurate records concerning its business in response to Commission subpoenas and requests. The complaint also alleged that Ludlum caused Printz Capital to falsely claim on its Forms ADV that "the firm had more than $25 million under management when, in fact, Printz Capital never had more than $10 million under management."[21] Ludlum also caused Printz Capital to falsely state on its Forms ADV that neither Printz Capital nor any related person recommended securities to advisory clients in which Printz Capital or any related person had an ownership interest. Throughout the period covered by the Forms ADV, however, Ludlum recommended that his clients purchase securities offered by the Printz Entities.

The complaint concluded that, because of this misconduct, Ludlum violated, or aided and abetted violations of, registration and antifraud provisions of the securities laws, including §§ 5(a), 5(c), and 17(a) of the Securities Act of 1933,[22] § 10(b) of the Securities Exchange Act of

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[18] *Id.* ¶ 30.

[19] *Id.* ¶ 35.

[20] *Id.* ¶ 45.

[21] *Id.* ¶ 48. Form ADV is the uniform form used by investment advisers to register with both the Commission and state securities authorities.

[22] 15 U.S.C. §§ 77e(a) (prohibiting the sale of unregistered securities), 77e(c) (prohibiting the "offer to sell" any securities, unless a registration statement has been filed as to such securities or an exemption is available), and 77q(a) (prohibiting, among other things, the use of "any device, scheme, or artifice to defraud" in the "offer or sale of any securities").

1934[23] and Rule 10b-5 thereunder,[24] and §§ 206(1) and 206(2) of the Investment Advisers Act of 1940.[25] The complaint further alleged that Printz Capital violated the antifraud provisions and the books-and-records provisions of the Advisers Act (namely, §§ 203A, 204, and 207);[26] that Ludlum aided and abetted those violations; and that Printz Financial violated Securities Act Rule 503(a) of Regulation D, which pertains to notice that must be provided to the Commission on Form D.[27]

On September 12, 2011, Ludlum consented to the entry of a judgment against him imposing permanent injunctions, disgorgement, and civil penalties to be determined by the court. As part of that settlement, Ludlum expressly agreed not to contest the factual allegations of the complaint in any subsequent disciplinary proceeding based on the injunction.[28] The district court entered the judgment against Ludlum on September 21, 2011.[29]

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[23] 15 U.S.C. § 78j(b) (prohibiting "any manipulative or deceptive device" in connection with the purchase or sale of securities).

[24] 17 C.F.R. § 240.10b-5 (prohibiting the use of "any device, scheme, or artifice to defraud . . . mak[ing] any untrue statement of a material fact or to omit to state a material fact . . . [or] engag[ing] in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security").

[25] 15 U.S.C. §§ 80b-6 (making it unlawful for any investment adviser "(1) to employ any device, scheme, or artifice to defraud any client or prospective client; or (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or perspective client").

[26] 15 U.S.C. §§ 80b-3a(a) (generally prohibiting an investment adviser with less than $25 million of assets under management from registering with the Commission), 80b-4 (setting recordkeeping requirements involving the treatment and maintenance of records), and 80b-7 (making it unlawful "for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 203, or 204").

[27] 17 C.F.R. § 230.503(a). Regulation D of the Securities Act provides an exemption from registration for limited offerings or sales of securities if certain conditions are met. *Id.* §§ 230.501–508. Rule 503(a) describes the notice that an issuer must provide to the Commission on Form D pertaining to sales made in reliance on a Regulation D exemption. *Id.* § 230.503(a).

[28] The consent stated that,

> in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, [Ludlum] understands that he shall not be permitted to contest the factual allegations of the complaint in this action. . . . [Ludlum] understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, [Ludlum] agrees . . . not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis . . . .

Consent at 5.

[29] *SEC v. Ludlum*, No. 2:10-cv-07379-MSG (E.D. Pa. Sept. 21, 2011) (enjoining Ludlum from violating Securities Act §§ 5 and 17(a), Exchange Act § 10(b) and Rule 10b-5 thereunder, and Advisers Act §§ 206(1) and 206(2), and from aiding and abetting violations of Advisers Act §§ 203, 204, and 207).

III.

On September 29, 2011, we initiated an administrative follow-on proceeding against Ludlum, pursuant to Advisors Act § 203(f),[30] to determine whether he had been enjoined from, among other things, violating the antifraud and registration provisions of the securities laws and, if so, what, if any, remedial action was appropriate in the public interest.[31] On January 4, 2012, the administrative law judge granted a motion for summary disposition filed by the Division, agreeing with the Division that there was no dispute that Ludlum had been enjoined from violating various provisions of the federal securities laws.[32] The law judge also found that "[t]he likelihood of future violations if Ludlum is allowed to participate in the securities industry is enormous" and that "[t]he overwhelming evidence is that the public interest requires that Ludlum be barred from participating in the securities industry in the broadest possible way."[33] In doing so, however, the law judge noted that the conduct on which the injunction was based occurred before Congress authorized the Commission to impose collateral bars (*i.e.*, bars from associating in capacities other than those in which the respondent was associated at the time of the violative conduct) under § 925 of the Dodd-Frank Act. Because of this, the law judge analyzed whether imposing the collateral bars requested by the Division would be impermissibly retroactive. She found no retroactive effect in barring Ludlum from associating with brokers, dealers, municipal securities dealers, or transfer agents. She reasoned that such bars were permissible because the Exchange Act provided the Commission with pre-existing authority to impose such bars in subsequent proceedings. Regarding bars from associating with municipal advisors and NRSROs, however, the law judge found an impermissible retroactive effect because, she concluded, such bars "did not exist at the time of Ludlum's conduct, and they attach new legal consequences to his conduct."[34]

This appeal by Ludlum followed.[35]

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[30] 15 U.S.C. § 80b-3(f).

[31] *Ludlum*, 2011 WL 4526100, at *2.

[32] *Ludlum*, 2012 WL 681581, at *2. Our Rule of Practice 250 provides that a hearing officer "may grant . . . summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250.

[33] *Ludlum*, 2012 WL 681581, at *6–7.

[34] *Id.* at *7 (citing 15 U.S.C. § 80b-3(f) and *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269–70 (1994) (holding that a statute is impermissibly retroactive when it "attaches new legal consequences to events completed before [the statute's] enactment")).

[35] Ludlum, representing himself, did not challenge the basis for the ALJ's decision. Instead, he raised issues that have no relevance to the ALJ's decision. In light of the law judge's analysis concerning collateral bars, we advised the parties, pursuant to Rule of Practice 411(d), of our decision on our own initiative to review what sanctions, if any, were appropriate in this matter. Order Granting Pet. For Review and Scheduling Brs., dated Jan. 30, 2012, at 1. *See* 17 C.F.R. § 201.411(d) ("Review by the Commission of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to Rule 450(a)."). Neither party, however, addressed that particular issue in its briefs.

IV.

A. The imposition of an industry-wide bar is appropriate.

Advisers Act § 203 authorizes us to censure, place limitations on, suspend, or bar any person associated with an investment adviser who was enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security."[36] The record establishes, and Ludlum does not dispute, that he was enjoined from engaging in fraudulent conduct in connection with the purchase or sale of securities and that, at the time the enjoined conduct occurred, he was associated with an investment adviser. We find, therefore, that the statutory requirements for the imposition of sanctions have been satisfied.

We next turn to assessing what additional sanctions, if any, are in the public interest. In doing so, we consider, among other things, the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[37] Our "inquiry into . . . the public interest is a flexible one, and no one factor is dispositive."[38]

Here, the complaint to which Ludlum consented makes clear that his actions were egregious. Ludlum defrauded investors—including several to whom he owed a fiduciary duty[39]—out of $852,000. We have previously found that violating the trust placed in a fiduciary amounts to egregious behavior.[40] Ludlum's fraud was particularly egregious given that many of the clients Ludlum defrauded were financially unsophisticated, with little investment experience, and relied almost exclusively on his advice.[41] Further demonstrating the egregiousness of Ludlum's misconduct and the need for significant sanctions were Ludlum's efforts to mislead regulators and thwart their investigations. Ludlum, for instance, lied to Commission staff about the number of cash and securities accounts under his control, and he withheld Printz Capital's

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[36] 15 U.S.C. §§ 80b-3(e)(4) and 80b-3(f).

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

[38] *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 4481515, at *15 (Dec. 21, 2007) (quoting *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007)), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

[39] *See SEC v. Wash. Inv. Network*, 475 F.3d 392, 404 (D.C. Cir. 2007) (stating that investment advisers act "as fiduciaries" to their clients).

[40] *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (Jul. 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty . . . as egregious.").

[41] *See Epstein v. SEC*, 416 F. App'x 142, 146 (3d Cir. 2010) (affirming Commission's imposition of permanent bar where the Commission had determined that violations were egregious because they were perpetrated against elderly and unsophisticated clients and did not stem from a mistake of fact); *see also Butcher & Singer Inc.*, Exchange Act Release No. 23990, 48 SEC 640, 1987 WL 757641, at *7 (Jan. 13, 1987) (describing "fraudulent representations to an unsophisticated customer" as egregious).

records from Commission staff despite requests and subpoenas. Such efforts to frustrate Commission investigations are "especially serious"[42] and "justify[] strong sanctions."[43] Similarly troubling was Ludlum's attempt to grossly mislead regulators—and the public—about the extent of Printz Capital's assets under management by aiding and abetting the firm's filing of inaccurate Forms ADV.[44]

Ludlum's misconduct was also neither brief nor isolated. Instead, Ludlum committed multiple securities law violations, spanning at least three years and involving, among other things, the misuse of customer funds and misrepresentations to clients.[45] Ludlum also displayed a high degree of scienter by inducing clients to invest substantial sums through false claims about the legitimacy of his businesses and what rate of return the investors could expect. He then lied to the investors about what he had done with their money, lied to Commission staff during their investigation into that misconduct, and misled investors about the nature of the Commission's investigation.[46] Throughout these proceedings, Ludlum has also shown no willingness to accept responsibility—or show remorse—for his actions,[47] and he has made clear

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[42] *Hal S. Herman*, Exchange Act Release No. 44953, 55 SEC 395, 2001 WL 1245910, at *5 (Oct. 18, 2001) (affirming bar and noting that representative's submission of false information "emphas[izes] the appropriateness of the sanction imposed here"); *see also PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *4 (Apr. 11, 2008) ("The possibility of receiving a bar for a failure to cooperate may have a very specific deterrent effect on all current and future SRO members and associated persons.").

[43] *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 58 SEC 1197, 2006 WL 231642, at *9 (Jan. 31, 2006). Adding to the egregiousness of Ludlum's misconduct was his failure to ensure that the offerings at issue complied with the registration provisions of the Securities Act, which serve to "protect investors by promoting full disclosure of information thought necessary to informed investment decisions." *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953); *see also SEC v. Cap. Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963) (stating that a fundamental purpose of the securities laws is "to substitute a philosophy of full disclosure for the philosophy of caveat emptor").

[44] Providing accurate information on forms such as an ADV "assures regulatory organizations . . . and members of the public that they have all material, current information about the securities professional with whom they are dealing." *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 WL 5001956, at *6 (Oct. 20, 2011) (imposing bar for failure to disclose accurate information on a Form U4 and noting the importance of Forms U4, which, like Forms ADV, are used by regulatory agencies to determine the fitness of securities professionals).

[45] *See, e.g.*, *Impax Labs., Inc.*, Exchange Act Release No. 57864, 2008 WL 2167956, at *7–8 (May 23, 2008) (finding issuer's failure to file six quarterly and two annual reports over the course of eighteen months to constitute serious and recurrent violations); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *3 (Feb. 4, 2008) (finding that conduct was recurrent when it occurred over three years and involved a large number of respondent's clients), *petition denied*, 561 F.3d 548 (6th Cir. 2009); *Seghers*, 2007 WL 2790633, at *7 (finding conduct was not isolated when it occurred over a four-month period).

[46] *See, e.g.*, *Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *6 (Jun. 17, 2011) (finding that "Brown's scienter is demonstrated by his conduct and his attempts to disguise his actions"); *Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *5 (Mar. 26, 2010) (stating that "attempts to conceal misconduct indicate scienter"); *Justin F. Ficken*, Exchange Act Release No. 58802, 2008 WL 4610345, at *3 (Oct. 17, 2008) (finding that concealment of improper trading demonstrated scienter).

[47] Ludlum's brief claims that "the Division of Enforcement came up with two infractions that are factual[ly] correct," but he does not explain or provide any support for why or how the Division's other allegations of violations are incorrect. Appellant's Br. in Supp. of Pet. for Review at 1. Instead, Ludlum offers excuses, without any support, for the two violations that he admits he committed (claiming that the Division ordered him not to submit a

that he intends to return to the securities industry if given the chance.[48] Such factors all strongly support the need for imposing a broad industry-wide bar.[49]

By the same token, we can find nothing in the record or in Ludlum's briefs that mitigates his misconduct. In challenging the imposition of a bar, for instance, Ludlum cites to his "character," stating that he attended the Citadel (a military academy with what Ludlum describes as "a student run honor system") and that he was a "Captain in the New York Army National [G]uard."[50] Although Ludlum claims he will "continue to act under [the Citadel's honor] code,"[51] he offers no explanation about what behavior this honor code would preclude or how it might prevent future violations. Indeed, this honor code did not prevent Ludlum from repeatedly defrauding his clients and investors between 2006 and 2009. We therefore see no reason to expect that Ludlum's background would preclude future misconduct.

Ludlum also claims that he has "worked on Wall Street for over 20 years with a perfect record."[52] However, we have previously found that "lack of disciplinary history is not mitigating for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional."[53] This is particularly true in cases like this, where the misconduct involves extended, egregious violations of the law.[54] We have also

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Regulation D filing and that he "was advised by a representative of FINRA to register [with the Commission] at the Federal instead of state level"). *Id*. at 2. However, none of these excuses, even if true, eliminate Ludlum's underlying violations. Ludlum's brief also discusses a whistleblower report he allegedly filed against Bank of New York concerning supposed insider trading at the bank. He does not provide, nor can we find, any connection between this alleged report and Ludlum's misconduct that led to the injunction entered against him.

[48] *See, e.g.*, Appellant's Br. in Supp. of Pet. for Review at 2 (asserting that, if the Commission overturns the law judge's decision, he would "continue to operate in a conscious and honorable fashion within this industry").

[49] *See Lawton*, 2012 WL 6208750, at *12 (finding that Lawton's lack of remorse heightened the risk that he would cause future harm to the industry and thus supported imposition of an industry-wide bar); *Brown*, 2011 WL 2433279, at *7 (expressing "particular concern" with Brown's desire to remain in the securities industry and imposing a bar by noting, in part, that "Brown's continued participation in the industry would provide opportunity for further violations"); *see also Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004) (noting that "the existence of a violation raises an inference that it will be repeated"); *Seghers*, 2007 WL 2790633, at *7 (noting that the securities industry "presents continual opportunities for dishonesty and abuse").

[50] Appellant's Br. in Supp. of Pet. for Review at 2.

[51] *Id.*

[52] *Id.*

[53] *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 WL 3313843, at *6 (Nov. 8, 2006); *see also, e.g.*, *Milligan*, 2010 WL 1143088, at *5 (affirming an associational bar despite a previously clean record); *Marshall E. Melton*, Exchange Act Release No. 48228, 56 SEC 695, 2003 WL 21729839, at *7 (July 25, 2003) (affirming associational bar and noting that respondent's previously clean record did not outweigh his recurrent, egregious conduct).

[54] *See Eric S. Butler*, Advisers Act Release No. 3262, 2011 WL 3792730, at *4 (Aug. 26, 2011) (finding repeated dishonesty towards customers reflected a lack of care or understanding of the law); *see also Geiger*, 363 F.3d at 489 ("As the Commission noted, Kirby still thinks he did nothing wrong, which casts doubts on his promise that he will

consistently found that antifraud violations like those committed by Ludlum are "'especially serious and [should be] subject to the severest sanctions.'"[55]

Given the scope and severity of Ludlum's misconduct, we believe that an appropriate sanction against him should include a bar from associating with any investment adviser, plus a bar from associating with any broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.[56] Ludlum's repeated and egregious misconduct evidences an unfitness to participate in the securities industry that goes beyond just the professional capacity in which Ludlum was acting when he engaged in the misconduct underlying these proceedings.[57] As we have concluded in similar situations, Ludlum's "willingness to violate his fiduciary duty to his clients is more than sufficient to demonstrate his unfitness to take on another role as a fiduciary,"[58] and municipal advisors, like investment advisers, are bound by fiduciary duties to their clients.[59] Furthermore, "[b]rokers, dealers, municipal securities dealers, and transfer agents routinely gain access to sensitive financial and investment information of investors and other market participants, and persons associated with municipal advisors and NRSROs routinely learn confidential and potentially market-moving information about securities, issuers, and potential transactions."[60] To gain access to such information, "securities professionals must take on heightened responsibilities to safeguard that information and to avoid temptations to fraudulently misuse their access for inappropriate—but potentially lucrative or self-serving—ends."[61] Ludlum's repeated abuse of his investors' and clients' trust and misuse of their funds for his own purposes demonstrate that he cannot be trusted with such heightened responsibilities.

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mend his ways."); *Melton*, 2003 WL 21729839, at *7 (noting that extended egregious action warrants a bar in order to prevent possible future violations).

[55] *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498 , at *3 (Sept. 17, 2009) (quoting *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *5 (Jan. 16, 2007)); *accord Melton*, 2003 WL 21729839, at *9 (finding that a person who has been enjoined from violating the antifraud provisions "has especially serious implications for the public interest" and that "ordinarily, in the absence of evidence to the contrary," a bar is appropriate in such circumstances).

[56] Although the Division did not appeal the law judge's decision against imposing a bar from association with any municipal advisor or NRSRO, and neither party addressed that issue on appeal, we determined, on our own initiative, to review the sanctions imposed in this case pursuant to Rule of Practice 411(d). *See supra* note 35.

[57] *See, e.g.*, *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *7 (Feb. 13, 2009) (noting that "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" and citing cases).

[58] *Lawton*, 2012 WL 6208750, at *11.

[59] Dodd-Frank Act § 975(c), 124 Stat. at 1851; *see also Lawton*, 2012 WL 6208750, at *11.

[60] *Lawton*, 2012 WL 6208750, at *11.

[61] *Id.*

B. Barring Ludlum from associating with a municipal advisor or NRSRO is not impermissibly retroactive.

The law judge's pre-*Lawton* ruling that barring Ludlum from associating with a municipal advisor or NRSRO would be impermissibly retroactive is erroneous for the reasons we explained in *Lawton*. The Dodd-Frank Act amended § 203(f) of the Advisers Act to authorize us to bar investment advisers from association with municipal advisors and NRSROs—bars that were not previously available under the securities laws. Although Congress enacted the Dodd-Frank amendment after Ludlum committed his misconduct, we held in *Lawton* that imposing bars from association with municipal advisors or NRSROs "are not impermissibly retroactive as applied in follow-on proceedings addressing pre-Dodd-Frank conduct because such bars are prospective remedies whose purpose is to protect the investing public from future harm."[62] Ludlum's conduct, as detailed above, "demonstrates that allowing him to enter the securities industry in *any capacity* would create too great a risk that future efforts to detect securities violations would be impaired, causing harm to the public."[63]

C. Ludlum's procedural objections have no merit.

In his petition for review, Ludlum argues, without further explanation, that he has not "yet been able to present the facts for this proceeding."[64] This presumably refers to the law judge's granting the Division's motion for summary disposition, which our Rules of Practice allow an ALJ to do "if there is no genuine issue with regard to any material fact."[65] Ludlum, however, signed a consent that specifically precludes him from contesting in this disciplinary proceeding the allegations in the complaint in the underlying civil injunction action.[66] That agreement is consistent with our repeated holdings that a party may not collaterally attack the factual allegations in a complaint brought by the Commission when, as here, the party consents to the entry of an injunction based on such allegations.[67] Moreover, Ludlum fails to identify, or even allege, any facts or circumstances that might create a genuine issue concerning the two dispositive findings relevant under § 203(f): (i) that Ludlum was associated with an investment adviser at the time of his conduct and (ii) that Ludlum was enjoined from violating the securities

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[62] *Id.* at *10.

[63] *Id.* at *12 (emphasis in original) (imposing bar in a follow-on proceeding against investment adviser from association with any investment adviser, broker, dealer, municipal securities dealer, transfer agent, municipal advisor, or NRSRO).

[64] Pet. for Review at 1.

[65] 17 C.F.R. § 201.250.

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

[67] *See, e.g.*, *Schield Mgmt. Co.*, 2006 WL 231642, at *6 (precluding respondents from disputing allegations in injunctive complaint after consenting to entry of injunction); *see also Kornman*, 2009 WL 367635, at *8 (finding criminal conviction based on guilty plea has collateral estoppel effect precluding relitigation of issues in Commission proceedings); 17 C.F.R. § 202.5(e) (stating that respondent who consents to judgment may not deny allegations of the complaint).

laws.[68] Because Ludlum cannot challenge the underlying judgment in these proceedings and he has not offered evidence of circumstances that might mitigate the seriousness of his conduct,[69] we find no error in the law judge's decision to proceed by summary disposition.[70]

Ludlum also contends in his brief, without further explanation, that the Division "went on a character defamation campaign to embolden their agenda."[71] As with his other claims, Ludlum offered no support, or even an explanation, for this claim, nor can we find any evidence relevant to such a claim in the record. To the extent that Ludlum is alleging that the Division engaged in selective prosecution, we note that he must "demonstrate not only that he was unfairly singled out, but that his prosecution was motivated by improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally-protected right."[72] Ludlum has not alleged any facts, nor can we find any, that even suggest he was singled out or that his prosecution was motivated by such considerations.

Ludlum defrauded investors out of approximately $852,000 over an extended period, took steps to conceal that fraud, and provided inaccurate and incomplete documents and testimony to the Commission. Ludlum's misrepresentations to investors and Commission staff and his refusal to recognize the wrongfulness of his actions displays a fundamental misunderstanding or lack of regard for his responsibilities toward his clients and weighs strongly in favor of our conclusion that imposing a bar will protect the investing public from the likelihood that Ludlum will commit future violations of the federal securities laws.[73] A bar will also "'have the salutary effect of deterring others from engaging in the same serious misconduct.'"[74] We therefore find that barring Ludlum from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO serves the public interest and is remedial.

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[68] *See supra* note 47 (discussing Ludlum's arguments on appeal regarding the Division's allegations).

[69] *Cf. Schield Mgmt.*, 2006 WL 231642, at *6 (noting that "a respondent in a 'follow-on' proceeding may introduce evidence regarding the 'circumstances surrounding' the conduct [at issue] as a means of addressing 'whether sanctions should be imposed in the public interest'" (quoting *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1109 (D.C. Cir. 1988)).

[70] *Butler*, 2011 WL 3792730, at *5 (imposing a bar and noting that "we have long held that follow-on proceedings based on a criminal conviction are not an appropriate forum to 'revisit the factual basis for,' or legal defenses to, the conviction" (quoting *Zollino*, 2007 WL 98919, at *4)).

[71] Appellants' Br. in Supp. of Pet. for Review at 1.

[72] *Richard J. Puccio*, Securities Act Release No. 37849, 1996 WL 603681, at *4 (Oct. 22, 1996).

[73] *Scott B. Gann*, Exchange Act Release No. 2684, 2009 WL 938033, at *6 (Apr. 8, 2009) (noting that a refusal to recognize wrongful conduct reveals "a fundamental misunderstanding of the duties of a securities industry professional that presents a significant likelihood that he will commit similar violations in the future").

[74] *Andrew P. Gonchar*, Exchange Act Release No. 60506, 2009 WL 2488067, at *13 (Aug. 14, 2009) (quoting *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 WL 1697151, at *13 (April 11, 2008)) (upholding NASD disciplinary action barring securities representatives from the industry for interposing a third party between member firm and customers and charging customers undisclosed, excessive markups), *petition denied*, 409 F. App'x 396 (2d Cir. 2010).

An appropriate order will issue.[75]

By the Commission (Chair WHITE and Commissioners WALTER and AGUILAR); Commissioners PAREDES and GALLAGHER, concurring in part and dissenting with respect to the bar from association with municipal advisors and nationally recognized statistical rating organizations.

Elizabeth M. Murphy
Secretary

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3628 / July 11, 2013

Admin. Proc. File No. 3-14572

In the Matter of

ALFRED CLAY LUDLUM, III
P.O. Box 3924
Wilmington, DE 19807

ORDER IMPOSING REMEDIAL SANCTIONS

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

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

By the Commission.

Elizabeth M. Murphy
Secretary