SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 71068 / December 12, 2013

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3736 / December 12, 2013

Admin. Proc. File No. 3-15057

In the Matter of

PETER SIRIS
c/o M. William Munno
Seward & Kissel LLP
One Battery Park Plaza
New York, NY 10004

OPINION OF THE COMMISSION

EXCHANGE ACT PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the federal securities laws. *Held*, it is in the public interest to bar respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

APPEARANCES:

M. William Munno and *Kimberly E. White*, of Seward & Kissel LLP, for Peter Siris.

Paul Gizzi and *Osman Nawaz*, for the Division of Enforcement.

Appeal filed: January 22, 2013
Last brief received: May 8, 2013

I.

Peter Siris appeals from the decision of an administrative law judge barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock, based on his having been enjoined from violating various provisions of the federal securities laws. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

Siris is the founder and managing director of Guerilla Capital Management, LLC, which is an investment adviser to two funds that invest in Chinese reverse merger companies.[1] Siris is also the managing director of Hua Mei 21st Century, LLC, a consulting firm that provides services to Chinese reverse merger companies.[2] In 2012, Siris, Guerilla Capital and Hua Mei agreed, without admitting or denying allegations, to be enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933;[3] Sections 10(b) and 15(a) of the Securities Exchange Act of 1934,[4] and Rule 10b-5[5] and Rule 105 of Regulation M[6] thereunder; and Section 206(4) of the Investment Advisers Act of 1940,[7] and Rule 206(4)-8[8] thereunder.[9] In addition to

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1 A "reverse merger" is a "method for a private company to become public without fulfilling the ordinary disclosure and registration obligations of a newly public company. The private company arranges to be acquired by a public company with minimal assets (*i.e.*, a shell company) and transfers the private company's assets to the new, publicly-traded owner in exchange for the shell company's equity, and the private company's former management then runs the original company under the corporate identity of the acquiring public company." *SEC v. Cavanagh*, 445 F.3d 105, 108 n.4 (2d Cir. 2006); *see also* SEC, *Investor Bulletin: Reverse Mergers* (June 2011), *available at* http://www.sec.gov/investor/alerts/reversemergers.pdf.

2 Through his funds—Guerilla Capital LP and Hua Mei 21st Century LP—and consulting firm, Siris was a significant investor and consultant in the area of Chinese reverse merger companies. Siris also has written several books on investing and previously wrote an investment column for the New York Daily News, in which he would often discuss the companies in which his funds invested.

3 15 U.S.C. §§ 77e(a), 77e(c), & 77q(a).

4 15 U.S.C. §§ 78j(b) & 78*o*(a).

5 17 C.F.R. § 240.10b-5.

6 17 C.F.R. § 242.105.

7 15 U.S.C. § 80b-6(4).

8 17 C.F.R. § 275.206(4)-8

9 *SEC v. Siris*, No. 12 Civ. 5810 (S.D.N.Y. Sept. 18, 2012).

entering the injunction, the district court ordered the defendants, jointly and severally, to pay $592,942.39 in disgorgement, plus prejudgment interest of $70,488.83, and ordered Siris personally to pay a civil penalty of $464,011.93. The complaint in this civil action (the "Complaint") alleged a variety of illegal conduct in connection with trading by Siris and affiliates in multiple Chinese companies. The Complaint alleged "wide-ranging misconduct from 2007 to 2010, including improper sales of unregistered securities, unregistered broker-dealer activity, illegal insider trading, material misrepresentations and omissions, and trading in violation of certain short-selling restrictions." Because these allegations are central to our determination of sanctions and to our consideration of Siris's arguments on appeal, we summarize them below.[10]

A. Siris engaged in misconduct related to China Yingxia.

Many of the Complaint's allegations involved the defendants' relationship with China Yingxia, a purported nutritional health food company with operations in Harbin, China.[11] China Yingxia entered the U.S. capital markets through a reverse merger in May 2006. Early in 2007, China Yingxia sought to raise capital in the United States through meetings with potential investors. In April 2007, China Yingxia representatives met in New York City with various fund managers, including Siris, and in July 2007, Siris on behalf of his two funds invested $1.5 million in the company through a private investment in public equity ("PIPE") transaction.[12]

According to the Complaint, after investing in China Yingxia through this PIPE transaction, Siris sold unregistered shares of China Yingxia stock in violation of Sections 5(a) and 5(c) of the Securities Act.[13] Siris acquired the China Yingxia shares through a sham

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[10] Consistent with our precedent, we "rely on the factual allegations of the injunctive complaint in determining the appropriate remedial action in the public interest." *Marshall E. Melton*, 56 S.E.C. 695, 711 (2003).

[11] The registration of China Yingxia's securities was eventually revoked pursuant to Exchange Act Section 12(j) based on its failure to file periodic reports after late 2008. *China Yingxia International, Inc.*, Securities Exchange Act Rel. No. 66523 (March 7, 2012), 2012 WL 1028984.

[12] "PIPEs are unregistered securities issued by companies whose stock is already publicly traded. Because PIPEs are unregistered, they cannot be offered to the market generally, and once issued, they cannot be resold or traded for a set period of time, usually 60-120 days. Issuers, through placement agents, target qualified potential investors who are offered PIPEs at a significant discount from the common stock's market price as compensation for the temporary illiquidity." *SEC v. Lyon*, 605 F. Supp. 2d 531, 536 (S.D.N.Y. 2009).

[13] Section 5(a) provides that "[u]nless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly . . . to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such a security through the use or medium of any prospectus or otherwise." 15 U.S.C. § 77e(a). And Section 5(c) provides that "[i]t shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate

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agreement arranged by representatives of China Yingxia. To compensate Siris for due diligence conducted prior to the PIPE transaction (which China Yingxia used to promote itself to other potential investors in subsequent PIPE transactions), 175,000 shares of China Yingxia stock were transferred from an unidentified shareholder to Siris's consulting firm, Hua Mei, allegedly to reimburse Hua Mei for services performed for the shareholder. If China Yingxia had issued the shares directly to Hua Mei, the shares would not have been freely tradable because Hua Mei would have been an underwriter under the Securities Act.[14] China Yingxia representatives therefore structured the agreement to provide Hua Mei with shares that were ostensibly eligible for immediate resale because they were acquired from a shareholder and not the issuer itself.[15] But the shareholder that was the counterparty to the agreement with Hua Mei was later identified as the father of China Yingxia's CEO and, as "a person directly or indirectly controlled by the issuer," he qualified as an "issuer" under Section 2(a)(11) of the Securities Act.[16] Moreover, Hua Mei never performed any services for the CEO's father; the services performed by Hua Mei—due diligence that the company later used to promote itself—were rendered directly to China

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commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security." 15 U.S.C. § 77e(c). Thus, absent an available exception, it is unlawful for any person, directly or indirectly to use the mails or other means of interstate commerce to sell or offer to sell a security for which a registration statement is not filed or not in effect.

Between August 14, 2007 and November 15, 2007, Siris on behalf of Hua Mei sold 8,600 shares of China Yingxia stock for proceeds of approximately $24,600. But these shares were not eligible for resale at this time: there was no registration statement in effect at the time for the sale of these shares, and Hua Mei was not entitled to any exemption from registration when selling the unregistered shares during this time period. Thus, the Complaint alleges that Siris's sale of China Yingxia stock on behalf of Hua Mei violated the registration requirements of Section 5 of the Securities Act.

[14] Section 4(1) of the Securities Act exempts from registration "transactions by any person other than an issuer, underwriter, or dealer." 15 U.S.C. § 77d(1). And Section 2(a)(11) of the Act defines "underwriter" as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates . . . in any such undertaking." 15 U.S.C. § 77b(a)(11).

[15] Through the sham agreement, China Yingxia representatives and Siris sought to take advantage of a "safe harbor" exemption in Rule 144 of the Securities Act. Rule 144 permits the public resale of restricted or control securities under certain conditions. *See* 17 C.F.R. § 230.144. In order to obtain a favorable opinion under Rule 144 permitting Hua Mei to freely trade the shares, Siris falsely stated in an e-mail to China Yingxia's counsel that he "received these shares from [the CEO's father] in exchange for consulting services rendered to [the CEO's father] in China," he was "informed [the CEO's father] is not an affiliate of the company," and "[t]he services we provided were to [the CEO's father] and not to the company." In light of the true facts surrounding Hua Mei's acquisition of the shares, the transaction did not meet the requirements for a sale under Rule 144.

[16] 15 U.S.C. § 77b(a)(11).

Yingxia. Thus, the agreement between Hua Mei and the CEO's father was simply a sham designed "as an end-run around the registration provisions of the federal securities laws."[17]

The Complaint further alleged that Siris acted as a unregistered broker in violation of Section 15(a)(1) of the Exchange Act[18] by "raising over $2 million worth of investments in exchange for transaction-based compensation." In a second PIPE transaction completed in August 2007, Siris actively participated in soliciting investors for China Yingxia, even telling others that "[t]his is my deal." Once the deal was complete, Siris e-mailed a China Yingxia representative about receiving his "share of money from the fund raise." To facilitate the payment, the China Yingxia representative and Siris executed a backdated consulting agreement between a consulting firm controlled by the China Yingxia representative and Hua Mei for supposed "strategic consulting services." But "[d]espite the stated services in the consulting agreement, Siris, through Hua Mei, in fact received transaction-based fees for raising money for China Yingxia and not for providing consulting services."[19] The compensation Siris obtained through the consulting agreement was for "inducing or attempting to induce the purchase" of China Yingxia securities, and because Siris was not registered as a broker or dealer, and was not associated with any registered broker-dealer, he acted in violation of Section 15(a) of the Exchange Act.[20]

After the August 2007 PIPE transaction, Siris continued to work closely with China Yingxia. Siris's activities on behalf of China Yingxia included reviewing "Commission filings, including its quarterly financial statements on Forms 10-Q" and providing "guidance to the Company on key hiring and other business decisions." For example, "Siris recommended and facilitated the hiring of the Company's CFO in June 2008" and "made recommendations for director positions." Siris also communicated regularly with China Yingxia's CEO to, among other things, "provid[e] advice on how the Company should best present itself to the public."

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17 The "safe harbor" provided by Rule 144 "is not available to any person with respect to any transaction or series of transactions that, although in technical compliance with Rule 144, is part of a plan or scheme to evade the registration requirements of the Act." 17 C.F.R. § 230.144.

18 15 U.S.C. § 78*o*(a).

19 According to the Complaint,

> In total, Siris introduced seven investors and $2,150,000 worth of investments to China Yingxia through the August 2007 PIPE. In return, Hua Mei received payment of $107,500, which equaled exactly 5% of the amount of investments Siris introduced to China Yingxia. The Consulting Firm [controlled by the China Yingxia representative] paid Hua Mei by check with a memo line stating "CYXI finance commission" with funds from the August 2007 PIPE.

20 15 U.S.C. § 78*o*(a) (providing that it is unlawful "to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless one is a registered broker or dealer or associated with a registered broker or dealer).

The Complaint alleged that in February and March 2009 Siris engaged in insider trading in China Yingxia stock, in violation of Exchange Act Section 10(b) and Rule 10b-5 thereunder. According to the Complaint, because of his consulting relationship and course of dealings with China Yingxia, Siris both "owed a fiduciary duty to China Yingxia and its shareholders" and "had access to China Yingxia's material, non-public information, such as the Company's financial picture, key hiring decisions, and operation matters." The Complaint alleged that "[i]n violation of this duty, Siris repeatedly traded the securities of China Yingxia while in possession of material, non-public information." The Complaint specifically detailed two episodes of Siris's trading of China Yingxia stock after receiving material, non-public information.

The first occurred after Siris received a letter from China Yingxia's CEO, dated February 17, 2009. Early in 2009, concerns about suspected illegal fundraising activity by the CEO had resurfaced,[21] and the CEO had reportedly gone into hiding as Chinese nationals who had made "loans" to China Yingxia began to demand repayment. In the February 17, 2009 letter, the CEO "disclosed to Siris the illegal fundraising, and 'some drastic behavior' by Chinese nationals that caused business disruptions, preventing employees from going to work." According to the Complaint, "[f]rom the CEO's letter, Siris had possession of material, non-public information directly from the CEO confirming her illegal activities and the status of the Company's operations." Shortly after receipt of the CEO's letter, Siris began selling shares of China Yingxia—between February 19, 2007 and March 2, 2009, Siris sold 628,660 shares.

The second episode of insider trading occurred after Siris received additional material, non-public information on March 3, 2009. Late that afternoon, Siris received a draft press release from China Yingxia's CFO that disclosed "problems at the Company affecting its ability to continue operations." According to the Complaint, "[b]efore this time, China Yingxia [had] remained quiet, without issuing any release about the events surrounding the CEO's activities or closure of a Company-owned facility." The day after receiving the draft press release, Siris increased the size of his orders to sell China Yingxia stock, and between receipt of the draft press release and the public issuance of the press release on March 6, 2009, Siris sold an additional 515,000 shares. After the issuance of the press release, China Yingxia's stock price decreased dramatically, going from $0.08 on March 6 to $0.025 on March 9 (the first trading day after the press release was issued).[22]

The Complaint further alleged that Siris made misrepresentations and omitted material information in communications with his funds' investors concerning China Yingxia, in violation of Adviser Act Section 206(4) and Rule 206(4)-8 thereunder. On March 3, 2009, Siris wrote in his monthly newsletter to investors about some concerns he had with China Yingxia, including discussing in general terms the CEO's illegal fundraising. Siris added that "[w]e are in the process of taking legal action against the company, its management, its Directors, the investment bankers, the lawyer, and auditors." The newsletter specifically stated that "[w]e believe the

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[21] Siris had been aware of allegations of illegal fundraising by the CEO as early as July 2008.

[22] The Complaint alleged that Siris had ill-gotten gains from these illegal trades of China Yingxia stock of approximately $172,000.

bankers have significant liability," noting that "the investment bankers continued to handle the SEC filings, hired the CFO, and selected directors." Similarly, in an e-mail to select investors in China Yingxia on March 4, 2009, Siris mentioned possible legal action against China Yingxia, the investment bankers, the auditors, and "anyone else we can find," noting that "[t]he investment bankers are in a particularly vulnerable position" because "after raising money, they continued to work with the company . . . actually wrote and filed the financial documents . . . [and] hired the CFO and the consultant." The Complaint alleged that these communications to investors included material misrepresentations and omissions because they made no mention of Siris's own "role with the now-failed Company and gave the false and misleading impression that others should be sued for the very conduct in which Siris himself engaged."

B. Siris engaged in misconduct in connection with ten confidential offerings.

In addition to insider trading involving China Yingxia stock, the Complaint alleged that between July 2009 and December 2010 Siris engaged in extensive insider trading in connection with ten confidential securities offerings by selling or selling short the issuers' securities prior to the public announcement of the offerings.[23] The Complaint alleged that in advance of each offering Siris or his firm, Guerrilla Capital, was confidentially solicited by a broker-dealer and brought "over the wall," meaning that Siris was "given access to material, non-public confidential information on a securities offering after agreeing not to trade while in possession of the information." As the Complaint explained,

> In general, Siris agreed not to share the information he received with anyone nor trade on the information from the time of going "over-the-wall" until the public announcement of the offering or deal. After going "over-the-wall," Siris and his funds were generally privy to information such as the name of the issuer doing the deal, anticipated and actual timing for closing, the book or list of investors involved in the offering, anticipated and actual pricing, and updates on other particulars of the deals.

For each of the ten offerings, the Complaint detailed how Siris, after being brought over the wall, traded in the securities of the issuer prior to public announcement of the offering, violating Securities Act Section 17(a)(1), Exchange Act Section 10(b), and Rule 10b-5 thereunder, and reaping ill-gotten gains totaling approximately $161,000.[24]

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[23] The issuers involved in the ten confidential offerings were China Green Agriculture, Inc., Harbin Electric, Inc., Yongye International, Inc., Sutor Technology Group, Ltd., Gulf Resources, Inc., Universal Travel Group, Inc., Puda Coal, Inc., China Agritech, Inc., and HQS Sustainable Maritime Industries, Inc.

[24] The Complaint further alleged that, with regard to one of the ten offerings, Siris made a materially false representation in a 2009 securities purchase agreement. In that agreement, Siris represented that he had "not engaged in any purchases or sales of the securities of" Universal Travel (including any short sales) after being first contacted by the placement agent on December 7, 2009, and promised that he would "not engage in any purchases or sales of the securities" of Universal Travel prior to the public disclosure of the offering. Despite these

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Finally, the Complaint alleged that Siris violated Rule 105 of Regulation M by directing short sales during the five business days before pricing in two follow-on securities offerings in which he participated.[25]

III.

A. The Exchange Act and Advisers Act authorize sanctions based on an injunction.

Section 15(b)(6) of the Exchange Act authorizes us to bar a person from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization[26] or from participating in an offering of penny stock if the person has been, among other things, enjoined from any conduct or practice in connection with the purchase or sale of a security and if, at the time of the alleged misconduct, the person was participating in an offering of any penny stock.[27] Section 203(f) of the Advisers Act authorizes us to impose an industry-wide associational bar if the person has been, among other things, enjoined from any conduct or practice in connection with the purchase

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representations, Siris had directed short sales of 7,000 shares of Universal Travel stock on December 9 (after being brought over the wall but before signing the agreement), and directed sales of 300 shares of Universal Travel stock on December 10, 2009 (after signing the agreement but before the offering was publicly disclosed).

[25] Since October 2007, Rule 105 has prohibited any person who makes a short sale during the restricted period—generally the five business days before pricing of a securities offering—from purchasing any securities of that issuer in a follow-on offering done on a firm commitment basis. *See* 17 C.F.R. § 242.105(a). On September 18, 2009, Siris, for his funds, purchased 50,000 shares of Smartheat, Inc. at $9.00 per share in a publicly marketed firm commitment follow-on offering. During the five business days before pricing of this offering, Siris's funds sold short 25,000 shares of Smartheat at prices between $9.91 and $10 per share, making his subsequent purchases a violation of Rule 105. A similar violation occurred when, on February 12, 2010, Siris purchased 180,000 shares of Puda Coal, Inc. at $4.75 per share in a confidentially marketed firm commitment follow-on offering. During the five business day before pricing of this offering, Siris's funds sold short 3,600 shares of Puda Coal at $5.68 per share. The Complaint alleged ill-gotten gains from these violations of Rule 105 of approximately $127,000.

[26] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), which was signed into law July 21, 2010, expanded the categories of associational bars authorized by Exchange Act Section 15(b)(6) and Advisers Act Section 203(f), allowing the Commission to impose, in addition to direct associational bars, a broad collateral bar on participation throughout the securities industry. There is no dispute in this proceeding that the conduct alleged in the Complaint continued until after Dodd-Frank became law. In any event, under our decision in *John W. Lawton*, Investment Advisers Act Rel. No. 3513 (Dec. 13, 2012), 2012 WL 6208750, at *10, imposition of a collateral bar based on a present assessment of a person's potential harm to the public is not impermissibly retroactive, even if informed in part by pre-Dodd-Frank conduct.

[27] 15 U.S.C. § 78*o*(b)(6).

or sale of a security and if, at the time of the alleged misconduct, the person was associated with an investment adviser.[28] It is undisputed that Siris was enjoined from conduct in connection with the purchase or sale of securities. Likewise, it is undisputed that, at the time of the alleged misconduct, Siris was participating in an offering of penny stock (China Yingxia)[29] and was associated with an investment adviser (Guerilla Capital).[30] Accordingly, we find that the threshold statutory requirements for the imposition of sanctions have been satisfied.

B. The public interest requires that Siris be barred.

We next turn to whether, and to what extent, sanctions are in the public interest.[31] In analyzing the public interest we consider, among other things: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[32] Our "inquiry into . . . the public interest is a flexible one, and no one factor is dispositive."[33] And our "determination that a remedial, disciplinary sanction is in the public interest is based on the particular circumstances

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[28] 15 U.S.C. § 80b-3(f).

[29] China Yingxia, a security priced at less than five dollars per share, qualifies as a penny stock. *See* 15 U.S.C. § 78c(a)(51)(A); 17 C.F.R. § 240.3a51-1 (defining "penny stock" to include "any equity security other than a security . . . that has a price of five dollars or more"). And Siris's activities related to the offering of China Yingxia bring him within the statute's definition of a person participating in an offering of a penny stock. *See* 15 U.S.C. § 78*o*(b)(6)(C) ("[T]he term 'person participating in an offering of penny stock' includes any person acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading.").

[30] Although not registered with the Commission, Guerilla Capital Management, LLC is an investment adviser and Siris an associated person within the meaning of the Advisers Act. *See* 15 U.S.C. § 80b-2(a)(11) ("'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."); 15 U.S.C. § 80b-2(a)(17) ("The term 'person associated with an investment adviser' means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser . . . .").

[31] 15 U.S.C. § 78*o*(b)(6)(A); 15 U.S.C. § 80b-3(f).

[32] *Vladimir Boris Bugarski*, Exchange Act Release No. 66842 (Apr. 20, 2012), 2012 WL 1377357, at *4 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

[33] *David Henry Disraeli*, Exchange Act Rel. No. 57027 (Dec. 21, 2007), 2007 WL 4481515, at *15, *petition denied*, 33 F. App'x 334 (D.C. Cir. 2008) (per curiam).

and entire record of the case."[34] Based upon these factors, we find that an industry-wide bar is in the public interest here.

Siris's conduct was egregious and recurrent and amply justifies his being barred from the industry. He was enjoined based on alleged conduct that included numerous instances of insider trading over the course of almost two years and that resulted in ill-gotten gains of over half-a-million dollars. In addition to recurrent insider trading, the Complaint further alleged that Siris committed securities fraud through material misrepresentations in connection with a securities purchase agreement and misrepresentations and omissions to investors in his funds.[35] We have repeatedly held that "'conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws.'"[36]

Siris's conduct involved scienter. The multiple, repeated instances of insider trading alleged in the Complaint support the conclusion that Siris acted intentionally, or at a minimum, with severe recklessness.[37] This is particularly true given Siris's long experience in the industry and admitted knowledge that he could not trade while in possession of material, non-public information. Moreover, in addition to fraud-based claims, the Complaint alleged deceptive conduct in connection with a violation of Section 5 of the Securities Act. The sale of China Yingxia stock that forms the basis of the Section 5 charge was facilitated by Siris's making a knowingly false representation that the stock he received was for services rendered to the shareholder and not the company. [38] According to the Complaint, despite knowing of its falsity, Siris made this representation to evade the registration requirements of Section 5 so he could freely trade China Yingxia stock.[39] Giving "considerable weight to the injunctive allegations" of

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[34] *Melton*, 56 S.E.C. at 698.

[35] As noted, the Complaint also alleged that Siris violated the registration requirements of Section 5 of the Securities Act, acted as an unregistered broker in violation of Section 15(a) of the Exchange Act, and violated the short selling requirements of Rule 105 of Regulation M. *See supra* at 4-6, 10.

[36] *Bugarski*, 2012 WL 1377357, at *5 (quoting *Melton*, 56 S.E.C. at 713).

[37] "Scienter is a mental state consisting of an intent to deceive, manipulate, or defraud, and includes recklessness, commonly defined as 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the [respondent] or so obvious that the [respondent] must have been aware of it.'" *Johnny Clifton*, Exchange Act Rel. No. 69982 (July 12, 2013), 2013 WL 3487076, *10 n.67 (quoting *Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 513 F.3d 702, 704 (7th Cir. 2008)).

[38] Although Siris attempts in his reply brief to address the Division's arguments regarding the consulting agreement (claiming that he did not know the CEO's father was an affiliate and that China Yingxia's counsel provided an opinion that the shares were freely tradable), he does not dispute that he made a knowingly false representation concerning the recipient of the consulting services.

[39] The Exchange Act Section 15(a) charge also involved deception. Siris and a China Yingxia representative entered into a back-dated agreement allegedly for "strategic consulting

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the Complaint,[40] we find based on our review of the entire record that Siris's conduct involved scienter, which supports a bar.[41]

Siris insists that he has taken "corrective efforts" to avoid future misconduct, such as ceasing to participate in offerings, eliminating consulting services, establishing trading compliance protocols, appointing a chief compliance officer, maintaining a restricted list, and establishing an e-mail backup system.[42] While we acknowledge the steps Siris has taken, we find that such voluntary measures do not ensure, as he suggests, that "there is no realistic prospect for future violations."[43] And accepting the sincerity of Siris's assurances against future misconduct does not mean that "there can be no risk of future misconduct warranting a bar."[44] As we have held "such assurances are not an absolute guarantee against misconduct in the future"; we weigh them against the other *Steadman* factors in assessing the public interest.[45]

If permitted, Siris intends to remain in the securities industry, which we have recognized "presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence."[46] And although Siris represents that he intends

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services," when in fact the agreement was to pay Siris "transaction-based fees for raising money for China Yingxia and not for providing consulting services."

40 *Schield Mgmt. Co.*, 58 S.E.C. 1197, 1212-13 (2006); *see also Melton*, 56 S.E.C. at 698-700 ("[A]s we have stated in a number of decisions, we have adopted the policy in administrative proceedings based on consent injunctions that the injunctive allegations may be given considerable weight in assessing the public interest.").

41 Siris quotes *Steadman* for the proposition that "[i]t would be a gross abuse of discretion to bar an investment adviser from the industry on the basis of isolated negligent violations." 603 F.2d at 1140-41. As discussed, we reject Siris's contention that his conduct was isolated and merely negligent.

42 Siris also represents that he is in the process of liquidating and winding up his funds.

43 As an alternative to a bar, Siris proposes that he is willing to continue the "corrective efforts" he has already taken (not participating in offerings and not accepting consulting assignments) as well as not purchasing penny stocks. In addition to the "practical difficulties in enforcing compliance with such a proposal," *James C. Dawson*, Advisers Act Rel. No. 3057 (July 23, 2010), 2010 WL 2886183, at *6, we reject Siris's proposed sanctions short of a full industry-wide bar because—given the nature of the misconduct and the opportunity that continued participation in the industry would present for future violations—we do not believe Siris's proposal provides sufficient protection for investors in the public interest, *see id.*

44 *Gary M. Kornman*, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 2009 WL 367635, at *11. (holding that respondent's assurances against future misconduct, even if accepted as "sincerely given," did not prevent a finding that a bar was in the public interest, when considered in conjunction with the other *Steadman* factors).

45 *Id.*

46 *Id.* at *7.

to work as a securities analyst and is prepared to agree "not to serve as a portfolio manager or investment adviser to a managed account," we agree with the Division that Siris's agreeing not to serve in those capacities "does not ensure the protection of investors," because the allegations supporting the injunction involve a broad array of misconduct not unique to service as a portfolio manager or investment adviser. Indeed, Siris's "repeated and egregious misconduct evidences an unfitness to participate in the securities industry that goes beyond just the professional capacity in which [he] was acting when he engaged in the misconduct underlying these proceedings."[47]

We also find that Siris has not meaningfully recognized the wrongful nature of his conduct. Although Siris insists that he has "acknowledged his conduct" and "accepted responsibility for it," he continues to maintain, as discussed more fully below, that his conduct did not in fact amount to violations of the securities laws as alleged in the Complaint. Denying that there is a factual basis for most of the securities law violations in the Complaint (something Siris agreed not to do) does not amount to a meaningful recognition of his misconduct.[48]

Indeed, although Siris agreed that he would not contest the factual allegations of the Complaint in this proceeding, he has failed to abide by this agreement and has repeatedly disputed the Complaint's factual allegations.[49] The flagrant manner in which Siris has violated the terms of his consent also gives us pause about relying upon his assurances against future misconduct, even accepting them as sincere. Weighing the relevant factors, we conclude that, "notwithstanding the sincerity of his present assurances that he will not commit such misconduct again, the risk that he would not be able to fulfill his commitment is sufficiently great that permanent associational bars are required to protect the public interest."[50]

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47 *Alfred Clay Ludlum, III*, Advisers Act Rel. No. 3628 (July 11, 2013), 2013 WL 3479060, at *5. As we recognized in *Ludlum*, "'[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 [nationally recognized statistical rating organizations] routinely learn confidential and potentially market-moving information about securities, issuers, and potential transactions'" and "'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.'" *Id.* (quoting *Lawton*, 2012 WL 6208750, at *11). Thus, Siris's repeated insider trading is exactly the type of egregious behavior that supports a collateral bar.

48 *Cf. Michael T. Studer*, 57 S.E.C. 890, 898 (2004) (finding that respondent did not recognize the wrongful nature of his misconduct when he admitted "mistakes in judgment" but denied scienter that was established in the underlying proceeding).

49 See *infra* at 19-21.

50 *Kornman*, 2009 WL 367635, at *11; *see also Gibson*, 2008 WL 294717, at*6 ("We have accepted Gibson's assertions, but nevertheless have determined that they do not outweigh the other *Steadman* factors that weigh in favor of barring Gibson from continuing in the industry.").

IV.

Siris does not dispute the basis for these proceedings—that he was enjoined from conduct in connection with the purchase or sale of securities and that he was associated with an investment adviser and participating in an offering of penny stock—and he acknowledges that the trading and other violative conduct alleged in the Complaint took place. He claims, however, that his misconduct was not egregious and does not warrant a bar. According to Siris, the Division has failed to show that he acted with "a high degree of scienter, as it asserts." To the contrary, he argues, "the facts show negligence, not purposeful or reckless misconduct requiring a bar." Siris asserts that, if the Commission considers his conduct in the context of the surrounding facts and circumstances, it will find that a lesser sanction will serve the public interest. In addition, Siris challenges the initial decision on procedural grounds, arguing that summary disposition was inappropriate. As discussed below, we find Siris's arguments unpersuasive and agree with the law judge's determination to impose an industry-wide bar.

A. Siris's arguments against the imposition of a bar are unpersuasive.

It is well-established, as Siris contends, "that a respondent in a 'follow-on' proceeding may introduce evidence regarding the 'circumstances surrounding' the conduct that forms the basis of the underlying proceeding as a means of addressing 'whether sanctions should be imposed in the public interest.'"[51] Relying on this precedent, Siris's principal argument in this proceeding is that a bar is not required in the public interest because his conduct was neither egregious nor undertaken with scienter. With regard to China Yingxia, Siris insists that his trading was the result of legitimate research and investigation by his consulting firm and not based on material, non-public information. Similarly, with regard to the ten confidential offerings, Siris maintains that he never intentionally traded based on confidential information. But this line of argument represents a misapplication of the relevant precedent. Although Siris may put forward mitigating evidence concerning the circumstances surrounding his underlying misconduct, he is not permitted to contest the allegations in the Complaint.[52] We have repeatedly held that "where, as here, respondents consent to an injunction, 'they may not dispute the factual allegations of the injunctive complaint in [a subsequent] administrative proceeding.'"[53]

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[51] *Schield Mgmt. Co.*, 58 S.E.C. at 1213 (quoting *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1109 (D.C. Cir. 1988)).

[52] *See id.* (rejecting attempts by the respondent to put forward assertions that were "in conflict with the allegations in the Complaint and therefore not consistent with relevant precedent").

[53] *Id.* (quoting *Melton*, 56 S.E.C. at 712); *Lawton*, 2012 WL 6208750, at *5 ("Having consented to the entry of an injunction on the basis of the Complaint's allegations, Lawton may not use this proceeding to collaterally attack the allegations."); *Bugarski*, 2012 WL 1377357, at *5 ("[W]hen an injunction has been entered by consent, it is appropriate to prohibit Respondents from contesting the factual allegations of the Complaint."); *Martin A. Armstrong*, Advisers Act Rel. No. 2926 (Sept. 17, 2009), 2009 WL 2972498, at *3 ("We have repeatedly held that a party may not collaterally attack the factual allegations in an injunctive complaint brought by the

(continued…)

In consenting to the entry of an injunction against him in district court, Siris acknowledged that the "entry of a permanent injunction may have collateral consequences," and he expressly agreed that "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, [he] understand[s] that [he] shall not be permitted to contest the factual allegations of the complaint in this action." Siris further agreed "not to take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or create the impression that the complaint is without factual basis." Despite these express representations, the vast majority of Siris's arguments in this proceeding—both before the law judge and before us on appeal—consist of his contesting the factual allegations of the Complaint.[54]

For example, Siris repeatedly suggests or directly avers that his conduct was not "undertaken with scienter." But the Complaint expressly alleged that Siris acted "with scienter." And we have held, in the context of a consent injunction, that when the injunctive complaint contains allegations that a respondent "engaged in scienter-based offenses" the respondent is precluded from arguing in a follow-on proceeding "that he had no scienter."[55] Thus, Siris is precluded from arguing that there was no scienter in his conduct related to the allegations of scienter-based fraud (including insider trading and material misrepresentation) in the Complaint.[56]

Siris also repeatedly argues in connection with the insider trading allegations that he was not in possession of material, non-public information. In the context of his trading of China Yingxia stock, Siris argues that he "did not understand that anything in [the CEO's] letter . . . contained material nonpublic information" and "it is far from evident that it did." He further argues that he "did not know whether [the draft press release] contained material nonpublic information" and "[i]ndeed, it did not." But the Complaint alleged that "[f]rom the CEO's letter,

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(…continued)
Commission when, as is the case here, the party has consented to the entry of an injunction on the basis of such allegations.").

[54] If Siris had legitimate factual challenges to the validity of the Complaint's allegations, his opportunity to bring them was in the district court proceeding. But having consented to the entry of the injunction against him—expressly agreeing to waive findings of fact and not contest the factual allegations of the Complaint—Siris is not permitted to dispute the Complaint's allegations in this proceeding.

Quoting our decision in *Dawson*, Siris notes that "[p]arties settle injunctive actions for a variety of reasons, not all of them evincing a consciousness of misconduct." 2010 WL 2886183, at *5. This is no doubt true, but it does not mean that Siris, after consenting to an injunction in the district court (whatever his reasons), may then violate the terms of his consent by contesting the factual allegations of the injunctive complaint before the Commission.

[55] *Dawson*, 2010 WL 2886183, at *5.

[56] As noted, the Complaint alleged that Siris violated Exchange Act Section 10(b), Rule 10b-5 thereunder, and Securities Act Section 17(a)(1), violations that require scienter. *See Aaron v. SEC*, 446 U.S. 680, 695-97 (1980).

Siris had possession of material, non-public information directly from the CEO confirming her illegal activities and the status of the Company's operations" and that when Siris was sent the draft press release he "received new material, non-public information." Siris may not challenge those allegations in this proceeding.

In the context of the ten confidential offerings, with the exception of three instances where he admits "mistakes" for which "[h]e has no satisfactory explanation,"[57] Siris argues that at the time of his trading he had not been brought over the wall and was thus not in possession of material, non-public information. But the Complaint alleged that Siris traded in the issuers' securities "while in possession of material, non-public information concerning the [ten] offerings." And the Complaint specifically alleged that Siris had been brought over the wall—*i.e.*, received "access to material, non-public confidential information on a securities offering after agreeing not to trade while in possession of the information"—for each offering at the time he directed trades in advance of the offering's public announcement.[58] Given the Complaint's allegations concerning the offerings, Siris is precluded from arguing that he was not in possession of material non-public information at the time of his trading.[59]

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[57] Siris concedes that he or his firm was in possession of material, non-public information when he traded ahead of the public announcement of the offerings for Harbin Electric in July 2009, HQ Sustainable Maritime Industries in August 2010, and Puda Coal in December 2010, but he characterizes his illegal trading each time as merely a "mistake" that "should not have occurred."

[58] Siris's claims that he did not trade ahead of the public announcement of the offerings while in possession of material non-public information are directly contrary to specific allegations in the Complaint for each offering. For example, in his opening brief Siris contends that he did not go over the wall with regard to a Universal Travel Group offering until "[a]fter the close" of the market on December 9, 2009, but the Complaint specifically alleged that "[o]n December *7*, 2009, Broker-Dealer B confidentially solicited Siris and brought him 'over-the-wall' concerning a registered direct or confidentially marketed public offering for Universal Travel Group, Inc." Similarly, Siris claims that he "declined to go over the wall until" the afternoon of February 11, 2010, for a Puda Coal offering announced February 12, 2010, but the Complaint alleged that "[o]n February *1*, 2010, Broker-Dealer B confidentially solicited Siris and brought him 'over-the-wall' concerning a registered direct or confidentially marketed public offering for Puda Coal, Inc."

[59] There are several other instances where Siris, directly or indirectly, contests the factual allegations in the Complaint. For example, Siris disputes his status as a fiduciary of China Yingxia, relevant time periods and dates contained in the Complaint, and that his disclosures to investors concerning China Yingxia were deficient under Advisers Act Rule 206(4)-8. In insisting that he made adequate disclosures to his investors about China Yingxia, however, Siris does not even address the Complaint's allegation that he failed to reveal his own role in China Yingxia and "gave the false and misleading impression that others should be sued for the very conduct in which Siris himself engaged."

Siris insists that he is not contesting the factual allegations of the Complaint or violating the terms of his consent but merely "informing the Commission of the facts and circumstances surrounding [his] conduct." We reject this contention. By arguing with respect to the Complaint's allegations of insider trading that there was no scienter and that he was not in possession of material, non-public information, Siris is plainly violating his consent by "denying, directly or indirectly, [the] allegation[s] in the complaint" and "creat[ing] the impression that the complaint is without factual basis." Without scienter or the possession of material, non-public information there can be no illegal insider trading. Far from merely providing mitigating evidence relating to the "circumstances surrounding" the alleged violations, Siris is impermissibly collaterally attacking the basis for the underlying injunctive action in the district court.[60]

Siris further argues that the Division has failed to "specify any *facts* or offer any concrete evidence" but instead "merely offers conclusory allegations." But under our precedent, the Division is not required "to prove the allegations of an injunctive complaint in a follow-on administrative proceeding before any disciplinary action can be taken."[61] As we have explained,

> We do not believe that Congress, having made an injunction a ground for commencing the proceeding, intended for the parties to conduct the proceeding as if the injunction had never been entered, disregarding the allegations underlying the injunction. . . .

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[60] *See supra* note 53; *see also Kornman v. SEC*, 592 F.3d 173, 134 (D.C. Cir. 2010) (approving of the Commission's decision to estop respondent from making mitigation arguments that were "essentially collateral attacks" on the district court's judgment); *Blinder, Robinson & Co.*, 837 F.2d at 1109-10 (recognizing that a respondent in a follow-on proceeding may not "relitigate the factual question[s]" going to the respondent's liability).

Even if Siris's factual arguments were properly before us, the record evidence that Siris points to in support of his arguments consists largely of uncorroborated, self-serving assertions from his own investigation testimony, his Answer and supporting affidavit submitted in this proceeding, and a "white paper" submitted by his counsel to the Division in advance of these proceedings. Additionally, in more than one instance, the underlying materials cited by Siris do not actually support the factual assertions he has made before the Commission in this proceeding. For example, in both his Answer and his opening brief in this appeal, Siris cites his investigation testimony for the proposition that he did not review the China Yingxia draft press release when he received it. But the excerpt of the transcript upon which he relies says nothing about whether he read or reviewed the draft press release. Moreover, in his briefs before us, Siris makes several factual assertions without any reference to record evidence. For example, Siris claims that, when a broker-dealer representative contacted him about an offering of Sutor Technologies, the representative did not disclose any price terms. But he points to no record evidence to support this bald assertion (and even his affidavit, which discusses the telephone call with the representative, does not include this factual assertion).

[61] *Melton*, 56 S.E.C. at 710.

> [I]t would be illogical and a waste of resources for us not to rely on the factual allegation of the injunctive complaint in a civil action settled by consent in determining the appropriate remedial action in the public interest.[62]

Thus, for purposes of a follow-on administrative proceeding, the allegations in an injunctive complaint are established, and we rely upon them in determining the appropriate sanction in the public interest.[63] Siris's insistence to the contrary notwithstanding, the Division is not required in this proceeding to put forward record evidence to prove the factual allegations in the Complaint.[64]

Siris also argues that his conduct did not "remotely resemble insider trading that merits a bar" in part because it "primarily involved Offerings and not daily trading activities." We disagree. First, this argument ignores the repeated instances of fraudulent conduct involving China Yingxia that did not involve offerings, including insider trading and providing materially misleading information to investors. More importantly, Siris's trading ahead of the public announcement of the offerings is not less worthy of sanctions than other forms of insider trading. Even if it can be said that Siris did not actively seek out insider information, he took unfair advantage of his role as a leading investor in Chinese reverse merger companies, knowing that he frequently would be contacted about participating in offerings and likely would become privy to confidential information about the offerings. The Complaint avers that after receiving material, non-public information about offerings from placement agents and expressly agreeing not to trade on the information, Siris repeatedly abused his position of trust by trading in the issuers' securities ahead of the public announcement—sometimes within minutes of his being provided the confidential information. We find such behavior—which he engaged in repeatedly—egregious and deserving of the severest sanctions.[65]

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62 *Id.* at 711-12.

63 *See supra* note 10.

64 Moreover, because the parties agreed to settle the matter well in advance of trial, the Division's record is necessarily not as developed as it would be had the matter been tried in the district court.

65 Siris also argues that this case is "dramatically unlike" other cases in which respondents were barred in follow-on proceedings. We have consistently recognized, however, that the appropriate sanction "depends on the facts and circumstances of each and cannot be precisely determined by comparison with action taken in other proceedings." *Kornman*, 2009 WL 367635, at *9. Moreover, precedent does not support Siris's contention that his conduct, which involved many instances of insider trading and multiple other securities law violations, was significantly less egregious than that in other cases in which respondents have been barred.

B. Summary disposition was appropriate.

Siris argues that he raised genuine issues of material fact that precluded the law judge from granting the Division's motion for summary disposition.[66] But the purported genuine issues of material fact identified by Siris—whether there was material, non-public information and whether his insider trading was knowing and intentional (*i.e.*, involved scienter)—are not in dispute given the allegations in the Complaint, which Siris agreed he would not contest in this proceeding.[67] As we recently held in the context of an administrative proceeding following entry of a consent injunction, "[f]ollow-on proceedings are not an appropriate forum to 'revisit the factual basis for,' or legal challenges to, an order issued by a federal court, and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings."[68] Because Siris has not identified any "genuine factual issue with respect to sanctions or any other material issue in the case," the law judge did not err in resolving the case by summary disposition.[69]

* * * *

As we have repeatedly recognized, "[a]ntifraud injunctions have especially serious implications for the public interest."[70] "Based on our experience enforcing the federal securities laws, we believe that ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions."[71] In our consideration of the *Steadman* factors in this case, we have

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66 Commission Rule of Practice 250 provides for summary disposition "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250.

67 *See Gibson v. SEC*, 561 F.3d 548, 553 (6th Cir. 2009) (noting, in the context of a follow-on disciplinary proceeding, that "Gibson agreed not to dispute the facts alleged in the original district court Complaint," and that, "[w]hen the facts underlying Gibson's relevant misconduct are undisputed, it stands to reason that there is no genuine issue of fact").

68 *Lawton*, 2012 WL 6208750, at *5 (quoting *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 2007 WL 98919, at *4); *see also Kornman*, 592 F.3d at 183 (recognizing that a "summary proceeding was appropriate" in a follow-on proceeding when the respondent's criminal case "disposed of the central issue regarding the nature of his 'alleged misconduct' for administrative enforcement purposes"); *Jeffrey L. Gibson*, Exchange Act Rel. No. 57266 (Feb. 4, 2008), 2008 WL 294717, at*5 ("Use of the summary disposition procedure has been repeatedly upheld in cases such as this one where the respondent has been enjoined or convicted, and the sole determination concerns the appropriate sanction.").

69 *Gibson*, 2008 WL 294717, at*6. In determining whether to grant summary disposition, the law judge accepted the sincerity of Siris's assurances against future misconduct. *See Peter Siris*, Initial Decision Rel. No. 477 (Dec. 31, 2012), 2012 WL 6738469, at *1-2.

70 *Gibson*, 2008 WL 294717, at *7.

rejected the arguments that Siris is precluded from making based upon his consent to the entry of the injunction against him, which amount to the bulk of Siris's arguments before us.

Based upon our weighing of the relevant factors and the parties' arguments that are properly before us, we conclude that it is in the public interest to bar Siris from the securities industry.[72] Siris was enjoined based on egregious and recurrent conduct involving fraud and deception, which he has failed to meaningfully acknowledge. Although he has taken some ameliorative steps and has promised to avoid future misconduct, we conclude that the weight of the relevant factors supports an industry-wide bar. Accordingly, we will bar Siris from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

(…continued)

[71] *Melton*, 56 S.E.C. at 713. Contrary to Siris's suggestion, it is not our view that his consenting to an antifraud injunction in the district court "automatically means a bar is appropriate" without regard for the *Steadman* factors. But because "'[f]idelity to the public interest' requires a severe sanction when a respondent's misconduct involves fraud," *Gibson*, 2008 WL 294717, at *7 (quoting *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976)), in most fraud cases the *Steadman* factors, such as egregiousness, scienter, and opportunity for future misconduct, will weigh in favor of a bar.

We likewise reject Siris's contention that, "[a]ccording to the law judge, because follow-on cases involving anti-fraud injunctions have resulted in bars, there was no need to examine the entire record in considering the *Steadman* factors." This is not an accurate characterization of the law judge's decision. In the context of Siris's argument that his conduct was not as bad as that in other cases in which a bar was imposed, the law judge simply pointed out that there have been no administrative proceedings following the entry of an antifraud injunction in which the respondent was not barred. *Siris*, 2012 WL 6738469, at *5. But there is no indication that the law judge automatically imposed a bar; instead, the initial decision shows that she recognized and appropriately applied the *Steadman* factors. *Id.* at *4-5. And in any event, our de novo review would cure any error in this regard. *See Kornman*, 2009 WL 367635, at *9 n.44 (noting that de novo review by the Commission cures an alleged failure by the law judge to properly apply *Steadman*).

[72] We have also considered the deterrent effect of imposing an industry-wide bar on Siris as a factor in our analysis. *See Schield Mgmt. Co.*, 58 S.E.C. at 1217-18 ("We also consider the extent to which the sanction will have a deterrent effect."); *see also Steadman v. SEC*, 603 F.2d 1126, 1142 (5th Cir. 1979) ("[T]he Commission also may consider the likely deterrent effect its sanctions will have on others in the industry."); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007) (noting that although "'general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry'" (quoting *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005)).

An appropriate order will issue.[73]

By the Commission (Chair WHITE and Commissioners AGUILAR and STEIN; Commissioners GALLAGHER and PIWOWAR not participating).

Elizabeth M. Murphy
Secretary

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 71068 / December 12, 2013

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3736 / December 12, 2013

Admin. Proc. File No. 3-15057

In the Matter of

PETER SIRIS
c/o M. William Munno
Seward & Kissel LLP
One Battery Park Plaza
New York, NY 10004

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Peter Siris be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

By the Commission.

Elizabeth M. Murphy
Secretary