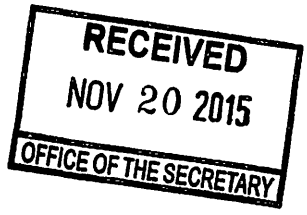
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



Administrative Proceeding
File No. 3-16712

In the Matter of

GILLES T. DE CHARSONVILLE,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT GILLES T. DE CHARSONVILLE AND SUPPORTING MEMORANDUM OF LAW

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Dated: November 19, 2015

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PRELIMINARY STATEMENT

The Division of Enforcement (the "Division") moves, pursuant to Rule 250 of the Commission's Rules of Practice, for summary disposition of the claims in the Order Instituting Administrative Proceedings ("OIP") in this matter, brought under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent Gilles T. De Charsonville. The Division respectfully requests that this Court issue an order barring De Charsonville from association with any broker, dealer, investment adviser, municipal securities dealer or transfer agent and participating in any offering of a penny stock. In support of its motion, the Division respectfully submits this Memorandum of Law.

STATEMENT OF FACTS

A. The Injunction Entered Against De Charsonville Based Upon His Testimony in the Parallel Criminal Proceedings Against Michael R. Balboa

On December 1, 2011, the Commission filed its Complaint against De Charsonville and Michael R. Balboa ("Balboa") in the Southern District of New York (the "Civil Action"). (Declaration of Nancy A. Brown, executed November 19, 2015 ("Brown Decl."), Ex. A.) On the same day, a criminal complaint was unsealed in United States v. Balboa, 12 Cr. 196 (PAC) (S.D.N.Y.) (the "Criminal Action"), and a superseding indictment was filed against Balboa on March 19, 2013, charging him with conspiracy to commit securities fraud, conspiracy to commit wire fraud, wire fraud, and investment adviser fraud. De Charsonville was not charged criminally, having obtained a non-prosecution agreement from the criminal authorities, which, among other things, required him to "cooperate fully" with the United States Attorneys' Office and the SEC. (Brown Decl., Ex. B, Local Rule 56.1 Statement of Undisputed Facts, submitted by

the Commission in support of its Motion for Summary Judgment in the Civil Action ("56.1") ¶ 8.)[1]

(1) De Charsonville's Central Role in the Fraud

Both the Commission's Complaint and the Criminal Action arose from the same circumstances. As alleged in the Commission's Complaint, and as subsequently found by the Court on the Commission's Motion for Summary Judgment, between 2006 and 2008, Balboa was a managing director in London of Millennium Global Investments, Ltd. ("MGIL"), an investment management firm (Brown Decl., Ex. A, Complaint ¶ 10; Ex. C, SJ Op. at 2; Ex. B, 56.1 ¶ 1), and MGIL's designated portfolio manager for three funds, Millennium Global Emerging Credit Master Fund, Ltd., Millennium Global Emerging Credit Fund, Ltd., and Millennium Global Emerging Credit Fund, L.P. (collectively the "Fund"), a group of unregistered funds, with reported assets in August 2008 of $844 million and approximately 180 investors. (Ex. A, Complaint ¶¶ 10, 12; Ex. C, SJ Op. at 2; Ex. B, 56.1 ¶ 1.) The Fund's primary investment focus was sovereign and corporate debt instruments from emerging markets. (Ex. A, Complaint ¶ 20.) As portfolio manager, Balboa made all of the Fund's investment decisions. (Ex. A, Complaint ¶ 21; Ex. B, 56.1 ¶ 1.)

To calculate the Fund's Net Asset Value ("NAV"), the Fund retained GlobeOp Financial Services, Ltd. ("GlobeOp"), a financial services firm that provides independent valuation services to financial services entities, and acted, in this case, as the Fund's independent valuation

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[1] The 56.1 Statement was supported primarily by the testimony De Charsonville gave at the trial of the Criminal Action. On Summary Judgment in the Civil Action, De Charsonville admitted all of the facts set out in the Commission's 56.1 Statement. (Brown Decl., Ex. C (Opinion and Order granting Commission's Summary Judgment Motion against De Charsonville, dated July 6, 2015 ("SJ Op.") at 1 n. 2, 5.) For that reason, the Division submits the 56.1 Statement without its supporting exhibits.

agent. (Ex. C, SJ Op. at 2; Ex. B, 56.1 ¶ 3.) Investors in the Fund were told that Balboa had no role in valuing the Fund's investments. (Ex. C, SJ Op. at 2; Ex. B, 56.1 ¶ 1.)

To perform its independent valuation of the Fund's assets, GlobeOp would solicit the valuation opinions of brokers or counter-parties trading such securities. (Ex. C, SJ Op. at 2; Ex. B, 56.1 ¶ 3.) Under GlobeOp's agreement with MGIL, if Balboa and a counter-party disagreed regarding valuation, the counter-party's valuation would control. (Ex. C, SJ Op. at 2; Ex. B, 56.1 ¶ 3.)

At all relevant times, De Charsonville was registered with FINRA as a foreign associate, and was employed by SEC-registered broker-dealer BCP Securities LLC ("BCP"). (Ex. C, SJ Op. at 1, 2; Ex. B, 56.1 ¶ 2.) De Charsonville has worked in the securities industry for his entire 20+ year career. (Ex. B, 56.1 ¶ 9.) During the 2007-2008 period, De Charsonville worked out of BCP's Madrid office as a salesperson, brokering purchases and sales of emerging market bonds on behalf of clients, like the Fund, for which he earned commissions. (Ex. C, SJ Op. at 1-2; Ex. B, 56.1 ¶ 2.) Balboa and the Fund ranked as one of De Charsonville's five largest customers in terms of commission-generating business in 2008. (Ex. B, 56.1 ¶ 2.)

In addition to his role as a broker, De Charsonville also offered his customers a complimentary mark-to-market service, through which he would provide valuations of securities in the client's portfolio. (Ex. C, SJ Op. at 2; Ex. B, 56.1 ¶ 2.)

In 2006, Balboa suggested De Charsonville to GlobeOp as a broker who could provide valuations for the Fund's securities. (Ex. C, SJ Op. at 3.) GlobeOp expected that the valuations provided by De Charsonville would be independent, accurate and not influenced by Balboa. (Id. at 2.) De Charsonville also understood that GlobeOp sought the valuations from him for the

purpose of obtaining independent confirmation of the values and to calculate the Fund's NAV. (Ex. B, 56.1 ¶ 12.)

Each month, De Charsonville would receive a list of 15-20 of the Fund's securities from GlobeOp. (Ex. C, SJ Op. at 3; Ex. B, 56.1 ¶ 11.) For most of them, De Charsonville would obtain valuations from Bloomberg. (Ex. C, SJ Op. at 3; Ex. B, 56.1 ¶ 12.) But beginning in March or April of 2007, when De Charsonville began to have difficulty finding pricing information on Bloomberg for one of the Fund's securities – the Nigerian warrants – De Charsonville agreed with Balboa that he would simply pass onto GlobeOp the valuations that Balboa supplied him for that security. (Ex. C, SJ Op. at 3; Ex. B, 56.1 ¶ 14.) De Charsonville also agreed not to inform GlobeOp that the Nigerian warrant valuations he was providing came from Balboa. (Ex. C, SJ Op. at 3; Ex. B, 56.1 ¶ 14.) From the beginning of his agreement with Balboa, in March or April 2007, and running through the end of the fraud in September 2008, De Charsonville understood that his failure to tell GlobeOp that he was simply furnishing marks supplied to him by Balboa was wrong. (Ex. B, 56.1 ¶ 14.)

By January 2008, De Charsonville also began to suspect that Balboa's valuations were inflated. (Ex. C, SJ Op. at 3; Ex. B, 56.1 ¶ 17.) Nonetheless, in April 2008, he began to pass on Balboa's valuations for a second highly illiquid portfolio security—the Uruguayan warrants—to GlobeOp, and continued to do so through September 2008. (Ex. C, SJ Op. at 3 n. 4; Ex. B, 56.1 ¶¶ 13, 16.)

In May 2008, after GlobeOp asked him to reconfirm one of his valuations, De Charsonville's suspicions that the marks were inflated were heightened, and he asked a third-party to provide him with a quote. (Ex. B, 56.1 ¶ 18.) When the quote he received was far lower than the one that Balboa asked him to give to GlobeOp, De Charsonville knew—in his words, he

had a "conviction"—that the valuations that Balboa gave him were "grossly inflated." (Ex. B, 56.1 ¶ 19; Ex. C, SJ Op. at 3.) But De Charsonville did not confront Balboa or decline to participate further in his scheme. (Ex. B, 56.1 ¶ 19.) As he testified, he did not change course because he did not want to lose Balboa as a client. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 32.) Between 2007 and 2008, De Charsonville earned more than $540,000 in commissions from Balboa's trading. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 33.)

Rather than put that commission income at risk, when De Charsonville learned that Balboa's marks were grossly inflated in May 2008, he nonetheless continued to participate in Balboa's fraudulent scheme for the next four months, until the Fund collapsed in October 2008. (Ex. C, SJ Op. at 3-4; Ex. B, 56.1 ¶¶ 19-20.) In response to GlobeOp's questions in May 2008, and even after learning the truth about the inflated valuations, De Charsonville asked Balboa for a fabricated justification to give GlobeOp to allay their suspicions, and passed it along. (Ex. C, SJ Op. at 3; Ex. B, 56.1 ¶ 19.) Later, De Charsonville began to make up his own lies to GlobeOp to hide Balboa's role in the valuations. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 20.)

GlobeOp was not the only recipient of De Charsonville's phony valuations. In April 2008, the Fund's auditor sought De Charsonville's confirmation of 2007 year-end valuations that De Charsonville had provided GlobeOp. (Ex. B, 56.1 ¶¶ 21-22.) In response, De Charsonville confirmed them without notifying the auditor that Balboa had been his source. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 23.)

(2) De Charsonville's Active Role in the Cover Up and Lies to MGIL, the Commission, Prosecutors and a Prospective Employer

The Fund collapsed in October 2008, and was liquidated. (Ex. C, SJ Op. at 2.) Soon thereafter, Balboa contacted De Charsonville to warn him that the Fund's liquidators might seek to question him about the valuations he had provided. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 25.)

Balboa offered De Charsonville two documents he had created to educate De Charsonville about the warrants and which would allow him to appear knowledgeable about the securities, so he could persuade the liquidators that he had had a basis for the valuations he had provided to GlobeOp. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 25.) Balboa also showed De Charsonville email correspondence between the two of them that he called "damning." (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 25.) When MGIL's CEO contacted De Charsonville to ask about his valuations, De Charsonville lied, inventing explanations for the quotes that Balboa had furnished him, and he did not reveal that the valuations had been supplied by Balboa. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 26.)

De Charsonville also lied to the Commission and the FSA, the U.K. securities regulator—both of whom were investigating the Fund's collapse—and the CNMV, Spain's securities regulator, in February 2011, obstructing the regulators' investigation. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶ 27.) To prepare for an interview by the Commission staff and FSA staff set up by the CNMV, De Charsonville asked Balboa to send him a copy of the "damning emails." (Ex. B, 56.1 ¶ 27.) De Charsonville took the emails to a Spanish lawyer he had retained to help him concoct innocent explanations for the correspondence between him and Balboa. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶¶ 27-28.) At the interview with the regulators, De Charsonville lied about his role in the fraudulent scheme, even though he understood that he was expected to tell the truth, and told the regulators that he had come up with the valuations on his own after consulting with "locals" about the warrants' values. (Ex. B, 56.1 ¶ 29.) He did not admit that he had simply passed off whatever valuations Balboa dictated as his own. (Id.)

Even after the Commission filed its Complaint against him and Balboa, and Balboa had been charged by the Department of Justice, De Charsonville continued to lie. In a quest for

leniency, in January 2012, De Charsonville instructed his lawyer to tell representatives of the Department of Justice a new lie: that while he had discussed the valuations with Balboa, when he passed them on to GlobeOp, he had understood GlobeOp to be part of MGIL, and not an independent entity. (Ex. C, SJ Op. at 4-5; Ex. B, 56.1 ¶ 30.) One year later, after De Charsonville's lawyer's proffer was unsuccessful in procuring him a deferred prosecution agreement from prosecutors, De Charsonville finally admitted the truth about his involvement in Balboa's scheme. (Ex. C, SJ Op. at 5; Ex. B, 56.1 ¶ 30.)

And he lied to prospective employers as well. Having been fired from BCP after being sued by the Commission, De Charsonville sought a new job as a broker with another broker dealer. At his interview, De Charsonville explained the Commission's lawsuit with yet another lie. He admitted that he had conveyed Balboa's valuations, but maintained that he had been unaware that the marks were inflated. (Ex. B, 56.1 ¶ 31.) Only after he had finally told the truth to prosecutors and won his non-prosecution agreement, and only after being advised to tell the truth by his lawyer, did De Charsonville tell his employer about his role in Balboa's scheme and the cover-up in February 2013. (Id.)[2]

(3) The Commission's Complaint Against De Charsonville and the Court's Decision to Grant Injunctions Against Him

On the basis of these facts, the Commission's Complaint charged De Charsonville with violations of Section 10(b) of the Exchange Act, and Rules 10b-5(a) and (c) thereunder (Ex. A, Complaint, Count I); aiding and abetting Balboa's violations of Exchange Act Section 10(b) and Rules 10b-5(a) and (c) (Complaint, Count II); aiding and abetting Balboa's violations of Sections 206(1) and (2) of the Investment Advisers Act of 1940 (the "Advisers Act") (Complaint, Count VI); aiding and abetting Balboa's violations of Advisers Act Section 206(4) and Rule 206(4)-

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[2] De Charsonville continues to work as a broker in Madrid. (Brown Decl. ¶ 11 and Ex. J.)

8(a)(2) thereunder (Complaint, Count VIII); and violation of FINRA Rule 5210 under Exchange Act Section 21(f) (Complaint, Count X). The Complaint sought disgorgement, prejudgment interest and penalties pursuant to Exchange Act Section 21(d) and Advisers Act Section 209(e). (Complaint, Prayer for Relief.)

On March 6, 2012, the Civil Action Court "so ordered" the parties' stipulation to stay the proceedings in the Commission's case pending a judgment in the Criminal Action. (Ex. D.) On December 18, 2013, a jury convicted Balboa of all charged offenses. (Ex. B, 56.1 ¶ 6.)[3] On September 15, 2014, De Charsonville filed his answer to the Commission's Complaint. (Ex. E.) Despite testifying at the trial of the Criminal Action that he had done everything the Commission had charged him with doing (Ex. B, 56.1 ¶ 24), De Charsonville's Answer denied liability for the violations that the Commission had charged. (Ex. E, Answer at 15 ("Defendant respectfully requests that the Court enter judgment in his favor and dismiss the Complaint in its entirety.")

Taking a different tack in response to the Commission's subsequent summary judgment motion, Respondent conceded his "liability for the causes of action set forth in the SEC's motion for summary judgment." (Ex. F, Respondent's Memorandum of Law in Opposition to Plaintiff's Motion for Partial Summary Judgment, dated January 26, 2015, at 1.) De Charsonville further declined to oppose "the SEC's request for a permanent injunction." (Id. at 1 n.1.)[4] The Court,

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[3] After Balboa's sentencing to a prison term of 48 months, and after he was ordered to pay restitution of more than $390 million, the Commission issued a follow-on OIP against Balboa pursuant to Section 203(f) of the Investment Advisers Act of 1940. In the Matter of Michael Robert Balboa, Admin. Proc. File No. 3-16191, 2015 WL 847168, at *1 (ID Feb. 27, 2015). On his default, the ALJ (Elliot) granted the Division's motion for sanctions, and ordered a full, permanent associational bar against him. Id.

[4] In opposition to the Commission's motion for Summary Judgment, Respondent "note[d] that the SEC's motion does not seek an industry suspension or bar." But in omitting that relief from its motion, the Commission made no representation that it would not pursue it in this context of a follow-on administrative proceeding. Indeed, the Commission cited to the Court's

accordingly, granted the Commission's request for full injunctive relief (Ex. C, SJ Op. at 6), and entered a Judgment permanently enjoining him from further violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, Sections 206(1), (2) and (4) of the Advisers Act, and Rule 206(4)-8 thereunder, and Rule 5210 of the Financial Industry Regulatory Authority. (Ex. G, Judgment.)

The Court further awarded disgorgement of $297,174, prejudgment interest of $67,261.46 and a penalty of $260,000, for a total award of $624,435.46. (Ex. G.) To date, De Charsonville has paid none of the amount awarded, has not responded to a September 8, 2015 letter concerning his failure to pay, and has made no effort to contact the Commission staff to discuss a payment plan. (Brown Decl. ¶ 13.) Meanwhile, De Charsonville continues to work in the securities industry. (Brown Decl., Ex. J (Bloomberg screenshot of De Charsonville's current business contact information.)

B. The Commission's OIP and the Procedural History of this Proceeding

On July 30, 2015, the Commission issued its OIP against De Charsonville. On the Division's allegations that Exchange Act and Adviser Act injunctions had been entered against him, the Commission issued the OIP to determine whether those allegations are true and what, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

The Division served De Charsonville by serving his counsel and by sending a copy of the OIP to him at his last known residential address in Madrid by USPS Express Mail. When the

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opinion in SEC v. Contorinis, No. 09 Civ. 1043 (RJS), 2012 WL 512626, at *3 n.7 (S.D.N.Y. 2012), aff'd, 743 F.3d 296 (2d Cir. 2014), pet. for cert. filed, No. 14-471 (U.S. Oct. 20, 2014) (No. 14-471, 14A178), where the Court explained the Commission's right to seek that relief at a later date: "[T]he SEC may seek such [a bar] later. . . ." In any event, the Commission's Complaint sought no such relief, so it would have had no basis to seek it in the District Court. (Ex. A.)

Division learned that De Charsonville may have moved, it sought to confirm his address with counsel. Counsel did not respond, although he had, by that time, entered an appearance in this case. (Brown Decl., Ex. H.) The Division ultimately succeeded in delivering the OIP to Respondent at his place of business in Madrid, and De Charsonville filed his Answer, dated October 6, 2015. (Ex. I, Answer.)

De Charsonville admits all of the OIP's allegations. (Ex. I, Answer at 6-7.) At the pre-hearing conference, held October 21, 2015, the Division sought leave to file a motion for summary disposition pursuant to Rule of Practice 250. Respondent objected, contending that a hearing was necessary on two issues: "what [De Charsonville's] contributions were to the SEC's efforts, as well as the DOJ's efforts" and "the "substantial price [De Charsonville paid] for his wrongdoing." (Ex. K, Hearing Tr. at 5.) The Court granted both parties leave to move for summary disposition, and set February 23, 2016 as a date for a hearing "should the proceeding not be resolved by summary disposition." (See Order, entered October 21, 2015.)

ARGUMENT

I. SUMMARY DISPOSITION IS APPROPRIATE PURSUANT TO RULE 250

A. Standard for Summary Disposition

Rule 250(a) of the Commission's Rules of Practice permits a party, with leave of the hearing officer, to move for summary disposition of any or all the OIP's allegations. Rule 250 expressly provides that a motion for summary disposition should be granted if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Indeed, the Commission has "repeatedly upheld the use of summary disposition by a law judge in cases such as this one where the respondent has been enjoined or convicted of an offense listed in Exchange Act Section 15(b) and Advisers Act Section 203, the sole determination is the proper sanction, and no material fact is genuinely

disputed." In the Matter of Gary M. Kornman, Admin. Proc. File No. 3-12716, 2009 WL 367635, at *10 (Feb.13, 2009), pet. denied, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases); see also In the Matter of Robert J. Lunn, Admin. Proc. File No. 3-16427, 2015 WL 5528212, at *1 (ID Sept. 21, 2015). The circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare," and are typically reserved for situations in which a respondent may present "genuine issues with respect to facts that could mitigate his or her misconduct." In the Matter of John S. Brownson, Admin. Proc. File No. 3-10295, 2002 WL 1438186 at *2 n.12 (S.E.C. July 3, 2002), pet. denied, 66 F. App'x 687 (9th Cir. 2003). Such issues are not present here.

De Charsonville's claimed issues of fact requiring a hearing are not in dispute. The Division acknowledges, for purposes of this motion, his belated cooperation and the assistance it provided the Commission's case against Balboa, as did the Department of Justice when it awarded De Charsonville a non-prosecution agreement, liberating him from any possibility of criminal sanction for his admitted participation in Balboa's criminal scheme.

Similarly, the Division does not contest, for purposes of this motion, that De Charsonville paid a substantial price for his role in the fraud: The Division concedes that De Charsonville was unemployed for a year after the Commission filed its civil case against him, and that his compensation in subsequent years never matched what he had earned prior to his being named in the Commission's civil complaint.

B. The Injunctions Entered Against De Charsonville Establish the Basis for Administrative Relief Under Section 15(b)(6) of the Exchange Act

Section 15(b)(6) of the Exchange Act permits the Commission to bar any person who is or was associated with a broker or dealer upon a showing that the person has been enjoined from "any conduct or practice in connection with the purchase or sale of a security" if such a bar is in

the "public interest." In the Matter of Daniel Imperato, Admin. Proc. File No. 3-15628, 2015 WL 1389046, at *4 & n.21 (S.E.C. Mar. 27, 2015) (citing Section 15(b)(6)). De Charsonville admits that he was associated with a broker during the relevant period and that he was enjoined by the District Court in the Commission's civil action from further violations of the antifraud provisions of the Exchange Act and the Advisers Act. (Ex. I, Answer at 6-7.)

De Charsonville's conduct occurred prior to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), signed into law on July 21, 2010. At the time of his illegal activities, Sections 15(b)(6)(A)(ii) and 15(b)(4)(B) of the Exchange Act permitted the Commission to bar a person from being associated with a broker or dealer and from participating in the offering of a penny stock. By virtue of those bars, a respondent would be subject to "statutory disqualification" pursuant to Exchange Act Section 3(a)(39), prohibiting him from association with an investment adviser, municipal securities dealer, or transfer agent. In the Matter of David L. Olson, Admin. Proc. File No. 3-14349, 2011 WL 2187728, at *2 (ID June 6, 2011); see also In the Matter of Erick Laszlo Mathe, Admin. Proc. File No. 3-16553, 2015 WL 5013727, at *3 & n.3 (ID Aug. 25, 2015) (awarding all industry bars pursuant to Exchange Act Section 15(b)(6) except a bar from association with a municipal advisor or nationally recognized statistical rating organization for pre-Dodd Frank conduct). Thus, by virtue of the injunctions entered against him in the Commission's civil action, De Charsonville should be barred from association with a broker, dealer, investment adviser, municipal securities dealer or transfer agent and barred from participation in any offering of penny stock.[5]

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[5] The Dodd-Frank Act amended the Exchange Act and Advisers Act to also allow the Commission to bar violators from associating with municipal advisors or nationally recognized statistical rating organizations. See Dodd-Frank Act § 925(a). However, in Koch v. SEC, 793 F.3d 147, 158 (D.C. Cir. 2015), the Court held that the Commission could not impose these additional bars for conduct that pre-dated Dodd-Frank.

C. De Charsonville Is Collaterally Estopped from Relitigating the Facts Underlying the Judgment on Which this Proceeding Is Based

To the extent that De Charsonville seeks to manufacture an issue of fact by collateral attack on the validity of the Judgment, he is barred from doing so. "It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved after a trial, by consent, or by summary judgment." In the Matter of Sfmingyang, Admin. Proc. File No. 3-15928, 2015 WL 2088468, at *2 (ID May 6, 2015) (citations omitted); see also In the Matter of John Francis D'Acquisto, Admin. Proc. File No. 3-8899, 1998 WL 34300389, at *1 n.1, *2 (S.E.C. Jan. 21, 1998) (where district court entered an injunction pursuant to grant of partial summary judgment, collateral estoppel precludes relitigating facts determined in injunctive action).

Furthermore, as set forth above, De Charsonville has admitted the allegations set forth in the OIP and the facts set out in the Commission's 56.1 Statement that supported the District Court's findings.

II. THE PUBLIC INTEREST WOULD BE SERVED BY BARRING DE CHARSONVILLE

Before a bar will be imposed under Section 15(b)(6) of the Exchange Act, the Court must consider whether it is in the public interest to do so. In determining whether it is in the public interest to impose an associational bar, six factors are considered: (1) the egregiousness of respondent's actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the respondent's assurances against future violations, (5) the respondent's recognition of the wrongful nature of his conduct, and (6) the likelihood that the respondent's occupation will present opportunities for future violations. In the Matter of David F. Bandimere, Admin. Proc. File No. 3-15124, 2015 WL 6575665, at *27, & n.160 (S.E.C. Oct. 29, 2015) (citing, inter alia, Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on

other grounds, 450 U.S. 91 (1981)). The Commission also considers the extent to which the sanction will have a deterrent effect. Imperato, 2015 WL 1389046, at *4 & n.27. The inquiry is "flexible, and no single factor is dispositive." Bandimere, 2015 WL 6575665, at *27 & n.162 (citations omitted).

On this record, all of the Steadman factors weigh in favor of an associational and penny stock bar as provided in Section 15(b)(6) of the Exchange Act. As the Commission has held, it is the rare case when the public interest does not merit a full bar from the industry for those who have violated the antifraud provisions:

> [C]onduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest sanctions under the securities laws. . . .[O]rdinarily, 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.

In the Matter of Marshall E. Melton, et al., Admin. Proc. File No. 3-9865, 2003 WL 21729839, at *9 (S.E.C. July 25, 2003) (imposing associational bar on respondent on the basis of civil action injunction); accord In the Matter of Mark Feathers, Admin. Proc. File No. 3-15755, 2014 WL 6449870, at *3 & n.15 (S.E.C. Nov. 18, 2014) ("We have repeatedly held that 'antifraud injunctions merit the most stringent sanctions and that our "foremost consideration must . . . be whether [the] sanction protects the trading public from further harm."'") (quotations omitted).

A. De Charsonville's Actions Were Egregious and He Acted Intentionally

The egregious nature of De Charsonville's conduct and the high degree of scienter he possessed are established by the facts De Charsonville has admitted and by the District Court's finding that he aided and abetted Balboa's securities fraud with requisite scienter. "Fraud is especially serious and subject to the severest of sanctions under the securities laws." In the Matter of Conrad P. Seghers, Admin. Proc. File. No. 3-12433, 2007 WL 2790633, at *7 (S.E.C.

Sept. 26, 2007) (quotation omitted). As the Civil Action Court found—and as De Charsonville conceded—De Charsonville was liable for aiding and abetting securities laws requiring scienter, including Section 10(b) of the Exchange Act and Section 206(1) of the Advisers Act. The District Court found De Charsonville's conduct sufficiently egregious to warrant two times the maximum third tier penalty. (Ex. C, SJ Op. at 9-10 (applying "the maximum third tier penalty to each of [two fraudulent schemes]" after explaining third tier penalties "are applicable where 'fraud, deceit, manipulation or deliberate reckless disregard of a regulatory requirement' formed a part of the violation and the violation caused, or created a significant risk of, substantial loss to others." (citations omitted).)

The undisputed record confirms the District Court's findings. De Charsonville passed along Balboa's valuations to GlobeOp and the Fund's auditors without disclosing the source of those valuations, and upon learning that those figures were grossly inflated, he chose to continue furthering the fraud rather than risk the commissions Balboa was paying him. (Ex. C, SJ Op. at 3-4.) When GlobeOp began to ask De Charsonville questions that might have exposed the fraudulent scheme, De Charsonville doubled down on the fraud, concocting a story with Balboa to allay GlobeOp's concerns, and then inventing new lies himself to hide the scheme. (Ex. C, SJ Op. at 3-4; Ex. B, 56.1 ¶¶ 19-20.) And when the Commission itself launched its investigation, De Charsonville took affirmative steps to thwart its investigation, hiring a lawyer to help him create explanations for his "damning" email correspondence with Balboa. (Ex. C, SJ Op. at 4; Ex. B, 56.1 ¶¶ 27-29.) De Charsonville's active efforts in the cover-up are further evidence – if it were needed – that his conduct was intentional. In the Matter of Tzemach David Netzer Korem, Admin. Proc. File No. 3-14208, 2013 WL 3864511, at *6 (S.E.C. July 26, 2013) (respondent's efforts to conceal his misconduct "further demonstrate that he acted with intent").

B. De Charsonville's Conduct Was Repeated and Ongoing

De Charsonville's conduct extended far beyond a single isolated instance. As the District Court found, De Charsonville participated in fraudulent schemes involving two different securities, warranting two maximum third-tier penalties. The fraud transpired over many months (Ex. B, 56.1 ¶ 18), and involved lies to many people, including those at GlobeOp and the Fund's auditors, as well as De Charsonville's own regulators and the Department of Justice, who later sought to uncover the truth. (Ex. C, SJ Op. at 4-5; Ex. B, 56.1 ¶¶ 27, -29.) Such a record evinces recurrent, not isolated conduct. Seghers, 2007 WL 2790633, at *7 (affirming permanent bar and finding violations were ongoing, not isolated, where respondent furnished Fund administrator with overstated asset values for four consecutive months). Indeed, De Charsonville did not curtail his role in the fraud because of some sudden appreciation of its wrongfulness; the fraud ended because the Fund collapsed. Accordingly, De Charsonville's conduct merits a permanent bar. Cf. Korem, 2013 WL 3864511, at *5 ("we have repeatedly declined to credit a respondent whose misconduct stopped only after it was detected by regulators")

C. De Charsonville Has Offered No Assurance Against Future Violations, Has Continued to Deny Responsibility and Works in the Securities Industry with Daily Opportunity to Engage in Further Wrongdoing.

To date, De Charsonville has offered no assurance against future violations. And, given his current employment in the securities industry (Brown Decl. ¶ 11 and Ex. J), De Charsonville will be presented with daily opportunities to commit further violations presented by customers – like Balboa – whose commission income De Charsonville may be just as loath to lose as he was Balboa's. These two factors merit an industry bar because "the securities industry 'presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence.'" In the Matter of Sherwin Brown, et al., Admin. Proc. File No. 3-13908, 2011 WL 2433279, at *7 (S.E.C. June 17, 2011) (finding that

respondent's stated intention to continue to work in the industry warranted a full industry bar) (quotations omitted).

Nor has De Charsonville consistently accepted responsibility, even after his cover-up failed and he agreed to "cooperate." Although De Charsonville told the Jury in the Criminal Action that he did everything the Commission charged him with doing in the Civil Action (Ex. B, 56.1 ¶ 24), in his subsequent Answer in the Civil Action, he denied liability and sought judgment in his favor on the Commission's claims. (Ex. E., Answer at 15.)

In fact, any claims of remorse, acknowledgement of culpability, or assurances of future compliance by De Charsonville should be viewed with skepticism. Were those claims sincere, one would expect De Charsonville to have paid the disgorgement and penalty awards against him promptly, yet De Charsonville has made no effort to pay any of it. And apart from demonstrating that he is not yet willing to pay the full price for his wrongdoing, De Charsonville's flouting of an Order and Judgment of the District Court reveal his continued disregard for his legal obligations, and bode poorly for his future compliance with the securities laws.

D. A Bar Will Deter Other Brokers from Frustrating Their Regulators' Investigations

The Commission also considers the deterrent effect of the proposed sanction. In that regard, the Court should take special note of De Charsonville's willingness to lie to his regulators and his efforts to thwart their investigation. The Commission views "such efforts to frustrate Commission investigations [as] 'especially serious' and to 'justify serious sanctions.'" In the Matter of Alfred Clay Ludlum, III, Admin. Proc. File No. 3-14572, 2013 WL 3479060, at *4 (S.E.C. July 11, 2013) (barring respondent who, among other things, lied to the investigative staff, and citing cases). Had De Charsonville told the truth in his SEC interview, the

investigation might have proceeded more swiftly, and at far less expense. The Commission and the investing public should have the right to expect honesty from those who work in the industry. The Commission's ability to regulate the markets and to protect investors relies on it.

If this Court were not to bar De Charsonville, other brokers might not be deterred from attempting a similar cover-up and frustration of the staff's investigations. If there is to be a message from this proceeding, it should be that industry professionals owe a duty to be completely honest in their dealings with the Commission staff.

CONCLUSION

Each of the Steadman factors weighs in favor of barring permanently De Charsonville from the securities industry, and each of those factors is supported by facts De Charsonville has already admitted or about which the District Court has already resolved any dispute. Even if, for the purpose of this Motion, the Court accepted that (i) De Charsonville belatedly cooperated with the United States Attorney's Office and the Commission and (ii) De Charsonville paid a "substantial price" for his wrongdoing, there would be no genuine dispute as to any material fact that would counsel against issuing a permanent industry bar in this matter.

Accordingly, the Division respectfully requests that its motion for summary disposition be granted, and that an order issue barring De Charsonville from associating with any broker, dealer, investment adviser, municipal securities dealer or transfer agent and participating in any offering of a penny stock.

Dated: New York, New York
November 19, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT

By: _____
Nancy A. Brown
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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Division Rule 250 Motion and Memorandum of Law in Support to be served on Respondent Gilles De Charsonville this 19th Day of November by sending a copy of the same by UPS Overnight to his counsel at the following address:

Scott S. Balber, Esq.
Herbert Smith Freehills New York LLP
450 Lexington Avenue
New York, NY 10017

Nancy A. Brown

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November 19, 2015

VIA UPS OVERNIGHT & EMAIL

Hon. Carol Fox Foelak
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D. C. 20549-2557

Re: In the Matter of Gilles T. De Charsonville;
Admin. Proc. File No. 3-16712

Dear Judge Foelak:

We represent the Division of Enforcement in this matter.

Enclosed are courtesy copies of the Division's Motion for Summary Disposition and my Declaration, with exhibits, in Support.

Respectfully submitted,

Nancy A. Brown

cc: (w/ encls.)

Scott S. Balber, Esq. (Counsel for Respondent De Charsonville)
Secretary's Office