SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 55107 / January 16, 2007

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2579 / January 16, 2007

Admin. Proc. File No. 3-11536

In the Matter of

JOSE P. ZOLLINO

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Injunction

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

APPEARANCES:

Jose P. Zollino, pro se.

J. Kevin Edmundson, for the Division of Enforcement.

Appeal filed: April 10, 2006
Last brief received: July 17, 2006

I.

Jose P. Zollino, the former chairman of InverWorld, Inc. ("IW Advisers"), an investment adviser formerly registered with the Commission, and InverWorld Securities, Inc. ("IW Securities"), a broker-dealer formerly registered with the Commission, appeals from a decision of an administrative law judge. The law judge barred Zollino from association with any broker, dealer, or investment adviser based on Zollino's conviction for conspiracy to commit fraud and money laundering and on his injunction from violations of the antifraud provisions of the federal securities laws. The law judge's action followed our earlier remand to her of this matter based on procedural deficiencies we had identified in the proceedings below.[1] To the extent we make findings, we base them on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

This administrative proceeding is based on criminal and injunctive proceedings brought against Zollino beginning in 1999. On August 4, 1999, we filed an emergency civil injunctive action in the United States District Court for the Western District of Texas against Zollino and several companies under his control, including IW Advisers and IW Securities and two off-shore affiliates, IG Services, Ltd. and IWG Services, Ltd. (collectively the "IW Affiliates"), all of which operated from IW Advisers' offices in San Antonio, Texas. According to the complaint, Zollino owned, through a holding company, all of the stock of IW Advisers and IW Securities, and was the beneficiary of a trust that owned IG Services, Ltd. and IWG Services, Ltd.

The complaint alleged that, in early 1997, approximately 1,000 Latin American investors had invested over $470 million with IW Advisers with directions that the funds be placed in low-risk or "conservative" investments that offered a fixed rate of return, such as certificates of deposit and U.S. Treasury obligations. Instead, according to the complaint, IW Advisers, without the investors' knowledge, directed a substantial portion of the invested funds into "highly leveraged, speculative investments, such as volatile emerging market investments . . . and for other improper and unauthorized purposes." The complaint alleged that this deviation from clients' investment directives was concealed by IW Advisers' fraudulent monthly account statements, which failed accurately to disclose how investor funds were invested and the risks associated with these investments. The complaint asserted that investors were instructed to wire funds to bank accounts in the United States and that some investors personally delivered funds to IW Advisers' offices in San Antonio, Texas. On June 25, 1999, IW Advisers announced that it was unable to permit client withdrawals because of "severe financial setbacks in connection with its emerging markets and other investments." Since that time, IW Advisers' clients have been unable to withdraw funds from their accounts. The complaint further alleged that Zollino, among others, "control[led] and direct[ed]" the activities of the IW Affiliates and was aware that

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1/ Jose P. Zollino, Investment Advisers Act Rel. No. 2381 (Apr. 29, 2005), 85 SEC Docket 1292.

client funds were used for improper purposes and that the values of client investments were not accurately disclosed.

On August 4, 1999, the court granted the emergency relief that had been requested by freezing the assets of IW Advisers and appointing a receiver to oversee those assets. The injunctive action was then stayed pending resolution of related criminal charges against Zollino. The related criminal proceeding was resolved when Zollino agreed to plead guilty to conspiracy to commit fraud in violation of 18 U.S.C. § 371 and conspiracy to launder monetary instruments in violation of 18 U.S.C. § 1956.[2]

On May 15, 2002, at the hearing where Zollino entered his guilty plea, the judge asked the Assistant United States Attorney prosecuting the case to provide a "factual basis" for the government's case against Zollino. The Assistant United States Attorney stated, in response, that, if the case were to proceed to trial, the government would prove that Zollino "operated and controlled a group of companies, referred to as the InverWorld Group," that engaged in the business of investment advice and management, from offices located in San Antonio. According to the government, the IW Affiliates, among other abusive practices, accepted funds from customers to purchase securities that were never purchased and misled customers regarding their ownership of such securities with fraudulent account statements; they also used securities purchased for clients, and purportedly held in client accounts, as collateral for loans to the IW Affiliates. The government further asserted that the IW Affiliates, with the "knowledge, approval and direction of" Zollino, engaged in a series of "circular financial transactions, designed to conceal the true financial condition of the InverWorld Group from its auditors, clients, and counterparties," i.e., banks and other financial institutions with which the IW Affiliates did business. The government estimated investor losses at a "ballpark figure" of $325 million. Although Zollino challenged the exact amount of investor losses, he acknowledged to the court that "the government could prove the facts alleged in their factual basis."[3] On October

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2/ U.S. v. Zollino, SA-01-CR-160-(1)-EP (W.D. Tex. Oct. 28, 2002).

3/ During Zollino's plea hearing, Zollino was asked whether he understood that he was pleading guilty to "conspiracy to commit fraud and conspiracy to launder monetary instruments." Zollino responded that he did. Zollino was then asked whether he pleaded guilty or not guilty to the charge of conspiracy to commit fraud and he answered "[g]uilty." He was then asked whether he pleaded guilty or not guilty to the charge of conspiracy to launder monetary instruments and he again answered "[g]uilty." At the same hearing, Zollino's attorney later stated that, while Zollino "does not agree with all the facts recited by [the Assistant U.S. Attorney], while he is not aware of some others, Mr. Zollino is prepared to stipulate and agree under oath that the government could prove the facts alleged in their factual basis." In explaining the factual assertions to which Zollino took exception, Zollino's attorney explained that his client disputed the amount of the losses claimed by the prosecution. The judge then asked Zollino whether he was

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28, 2002, Zollino was sentenced to 144 months imprisonment and ordered to pay restitution of $341,787,496.[4] The record indicates that Zollino is currently incarcerated.

After Zollino's sentencing in the criminal proceeding, the Division moved for partial summary judgment in the civil enforcement proceeding that had been pending, and requested entry of an injunction.[5] On January 7, 2004, the court granted the Division's motion,[6] and enjoined Zollino from violating the antifraud provisions of the Securities Act of 1933,[7] the Securities Exchange Act of 1934,[8] and the Investment Advisers Act of 1940.[9]

3/ (...continued)
admitting to the government's factual recitation, with the caveat about the disputed amount of losses. Zollino responded that "with that [, the amount of the loss,] notation, yes, sir."

4/ According to Zollino, and notwithstanding his guilty plea and acknowledgment that the government could prove the allegations against him, he is appealing the conviction. It is unclear from the record what the basis is for Zollino's appeal or its current status. We note that Zollino had challenged the conviction based on his claim that he had ineffective assistance of counsel, but that such claim was rejected by the district court. Zollino v. U.S., Nos. SA-03-CA-0986-XR, SA-01-CR-180, 2004 WL 692154 (W.D. Tex. Mar. 29, 2004). We further note that Zollino appealed the denial of two post-judgment motions challenging the validity of his restitution order, his "Writ of Error to Correct Judgment," and his motion to vacate the district court's "Orders of Issuance of Writ of Garnishment, where no Restitution Order [was] Valid or Outstanding," and that this appeal was dismissed. U.S. v. Zollino, Nos. 03-51250, 04-50106, 2005 WL 1993790 (5th Cir. Aug. 18, 2005). The Division represented in its brief that it is "not aware that any aspect of Zollino's criminal proceeding is currently under appeal," and Zollino does not substantiate his claim of a pending appeal. However, even if Zollino is currently appealing his conviction, "the pendency of an appeal does not preclude us from acting to protect the public interest." Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002).

5/ The record contains the complaint that had been filed in the injunctive action, but does not include the motion for partial summary judgment or documents that had been filed in support of, or in opposition to, the motion, if any.

6/ SEC v. InverWorld, Inc., Civil Action No. SA-99-CA-0822 (FB) (W.D. Tex. Jan. 7, 2004).

7/ 15 U.S.C. § 77q(a).

8/ 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

9/ 15 U.S.C. § 80b-6.

On July 7, 2004, this administrative proceeding was instituted to determine the extent to which Zollino should be subject to remedial action based on his criminal conviction and injunction. On September 23, 2004, the law judge issued an initial decision barring Zollino from association with any broker, dealer, or investment adviser.[10] Zollino appealed the law judge's decision and, on April 29, 2005, we remanded the proceeding back to the law judge for further consideration based on the limited amount of time Zollino had been given to review the Division's investigative file and the law judge's failure to hold a prehearing conference.[11] On remand, the law judge held a prehearing conference at which Zollino confirmed that he had been able to complete his review of the investigative file. Zollino also introduced sixteen exhibits, which the law judge admitted.[12] On March 2, 2006, the law judge, finding that there was no genuine issue with regard to any material fact, granted the Division's Motion for Summary Disposition and issued a supplemental initial decision, again barring Zollino from association with any broker, dealer, or investment adviser.[13] The law judge found that Zollino's conduct caused enormous losses, was "recurring and egregious," and evidenced a "high degree of scienter." Moreover, the law judge found that, despite his guilty plea, Zollino refused to acknowledge wrongdoing and sought to relitigate the basis for his conviction and injunction. The law judge noted that, while Zollino was given an opportunity to present mitigative evidence, he failed to do so except to claim that future violations were unlikely because IW Advisers and IW Securities have been liquidated. Further noting that Zollino had worked in the securities industry for many years before his incarceration, the law judge concluded that a bar was necessary to prevent him from "reenter[ing] his previous occupation when he regains his freedom."

10/ Jose P. Zollino, Initial Decision Rel. No. 258 (Sept. 23, 2004), 83 SEC Docket 3058.

11/ See supra note 1.

12/ Zollino seeks to "resubmit[] all issues specified in these [earlier] briefs and petitions" that he had filed with the law judge. Under Rule 411(d) of our Rules of Practice, 17 C.F.R. § 201.411(d), our review of a law judge's initial decision "shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order . . . ." See Sandra K. Simpson, 55 S.E.C. 766, 797 n.50 (2002) (declining to consider issue that had not been raised in the petition for review). Moreover, Zollino's effort to incorporate these prior filings would appear to violate our requirement, under Rule 450(c) of our Rules of Practice, that "opening . . . briefs shall not exceed 14,000 words," which include the number of words contained in pleadings incorporated by reference. 17 C.F.R. § 201.450(c). We have, accordingly, limited our review to the issues raised in Zollino's petition for review, and his opening and reply briefs, without reference to any additional issues he may have raised in his filings before the law judge.

13/ Jose P. Zollino, Initial Decision Rel. No. 308 (Mar. 2, 2006), 87 SEC Docket 1651.

III.

A.

Under Exchange Act Sections 15(b)(4) and (6)[14] and Advisers Act Sections 203(e) and (f),[15] we may impose sanctions on a person associated with a broker, dealer, or investment adviser, consistent with the public interest, if, among other things, the associated person (a) has been convicted of a crime within the past ten years that involves the purchase or sale of securities, or that arose out of the conduct of the broker-dealer or investment adviser; or (b) has been permanently enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities. The record establishes that the statutory basis for imposing remedial sanctions has been met here because of Zollino's associational status with IW Advisers and IW Securities and his conviction and injunction.

1. Although he does not deny his association with those firms or that he has been convicted and enjoined, Zollino argues that we nevertheless lack jurisdiction to impose remedial sanctions because, he claims, all of the conduct that formed the basis for his conviction and injunction involved "foreign entities that sold products and securities, issued monthly client statements and maintained a base of clients, none of which . . . were U.S. citizens or residents, and none of which took place within the U.S.A."[16] The record does not support Zollino's claim that the misconduct that formed the basis for the criminal and injunctive proceedings occurred entirely outside the United States and did not implicate federal securities laws.[17] As part of

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14/ 15 U.S.C. §§ 78o(b)(4) and (6).

15/ 15 U.S.C. §§ 80b-3(e) and (f).

16/ Zollino also complains that the law judge and the Division have blurred the distinction between InverWorld entities based in the United States, which he admittedly controlled and which, he claims, did nothing wrong, and "other non-U.S. entities," which he asserts he did not "control[] or own." According to Zollino, the two groups of companies are "linked only by limited service contract agreements [and] should not be grouped together to imply that the alleged wrongdoing took place in the U.S. and was directed by Zollino." The district court, however, entered summary judgment based on allegations that Zollino controlled and directed both the foreign and domestic InverWorld entities that were involved in the fraudulent scheme, and that he had financial interests in them. Zollino's admissions in the criminal proceeding were not inconsistent with these allegations.

17/ Zollino faults the law judge for stating in a footnote that Exchange Act Section 15(b)(4)(B) and Advisers Act Section 203(e)(2) provide that "a bar against association with a broker-dealer or investment adviser in the United States can be based on a conviction in a foreign court of a 'substantially equivalent crime' as those listed in those sections." Zollino argues that the law judge's statement shows that she recognized "that

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Zollino's criminal prosecution, the Assistant United States Attorney asserted, and Zollino admitted the government could prove, among other things, that Zollino directed the IW Affiliates' fraudulent activities from offices in San Antonio, Texas. Moreover, the injunctive complaint alleged that, as part of the fraudulent scheme, investors wired funds to bank accounts in the United States and deposited funds at IW Advisers' Texas offices. The court granted the Division's motion for summary judgment in the injunctive proceeding and, under the Federal Rules of Civil Procedure, such a motion shall be granted only when the court finds that "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law."[18] Based on Zollino's admissions and on the court's summary judgment in favor of the Division, we believe that it is appropriate to consider the allegations made against Zollino, including those that relate to the domestic aspects of the fraud, as true.

In any event, our authority to impose sanctions under the relevant Exchange Act and Advisers Act provisions is not limited as Zollino argues. Those provisions, as indicated, authorize us to impose sanctions against an individual who was associated with a broker, dealer, or investment adviser and who was convicted and/or enjoined in connection with the purchase or sale of securities. It is undisputed that Zollino satisfies these statutory requirements and that our jurisdiction, therefore, is clear.

2. Zollino further seeks to challenge this proceeding by contesting the factual basis for the underlying criminal and injunctive proceedings. He claims that "there is no evidence of fraud, material misrepresentations or omissions by him or participation in unlawful activities or evidence of his diverting client funds." According to Zollino, "if this proceeding was to rely solely on a previous conviction, such consideration is not contemplated by any of the Rules and Regulations of the Commission . . . [and] is, in essence unlawful and unconstitutional."[19]

Zollino's argument betrays a misunderstanding of the basis for, and purpose of, this proceeding. The basis for this proceeding is the action of the district court -- in convicting and

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17/ (...continued)
no Securities laws were violated in the United States" and that she "stretches her reach and discretion by implying that in the particular case, a bar is based on a conviction in a foreign court" (emphasis added). This argument is without merit. The law judge accurately stated the law. Contrary to Zollino's assertion, the law judge did not state or imply that no securities laws were violated in the United States or that Zollino's bar was based on a conviction in a foreign court.

18/ Fed. R. Civ. P. 56(c).

19/ Zollino criticizes the law judge for having the "audacity to state that Zollino's actions were recurring and egregious, that Zollino acted with high degree of scienter, and that Zollino had not fully acknowledged the wrongful nature of his conduct." As discussed herein, we find no basis for disputing the law judge's assessment on all of these points.

enjoining him -- and its purpose is not to revisit the factual basis for that action[20] but, rather, to determine what remedial sanctions, if any, should be imposed in the public interest. Indeed, and contrary to Zollino's assertion, Exchange Act Section 15(b) expressly authorizes us to impose remedial sanctions based on either a criminal conviction or an injunction where, as here, they involved activities related, among other things, to the purchase or sale of securities.[21] Moreover, as discussed, we consider it appropriate to consider the allegations made in the criminal and injunctive proceedings as true, based on Zollino's admissions and on the district court's grant of summary judgment.

B.

1. Zollino raises various procedural objections to the law judge's handling of the case. Zollino complains that, by precluding him from disputing the merits of the underlying court proceedings, the law judge "foreclose[d him] from arguing and presenting mitigating evidence." While Zollino may not challenge the allegations that provide the basis for the court action, he was free to introduce evidence regarding the "circumstances surrounding" those allegations as

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20/ It is well established that "a party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding." Galluzzi, 55 S.E.C. at 1115-16. See also Charles Trento, Securities Exchange Act Rel. No. 49296 (Feb. 23, 2004), 82 SEC Docket 785, 789-90 (noting that "it is well established that a respondent may not collaterally attack his criminal conviction in administrative proceedings before this Commission"); Ira William Scott, 53 S.E.C. 862, 866 (1998) ("[a] criminal conviction cannot be collaterally attacked in an administrative proceeding"); Demetrios Julios Shiva, 52 S.E.C. 1247, 1249 (1997) (rejecting attempts to challenge basis for injunction and noting that "we have long refused to permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against the respondent"). To the extent that Zollino wishes to challenge the basis of the prior proceedings, "those matters properly are addressed to the appellate court." Michael Batterman, Investment Advisers Act Rel. No. 2334 (Dec. 3, 2004), 84 SEC Docket 1349, 1356. As indicated, it does not appear that Zollino has done so. See supra note 4.

21/ As we have held, in a disciplinary proceeding under Exchange Act Section 15(b), "it is only necessary that evidence be adduced with respect to grounds for remedial action that are specified in Section 15(b)(6) . . . . While additional evidence relating solely to the issue of sanctions may be adduced, such evidence is not required for a determination of that issue under Section 15(b)(6)." Bruce Paul, 48 S.E.C. 126, 127 (1985).

means of addressing "whether sanctions should be imposed in the public interest."[22] Although the law judge properly rejected Zollino's effort to challenge the underlying criminal and injunctive proceedings, her doing so in no way precluded Zollino from introducing evidence related to the determination of an appropriate sanction. Indeed, both the law judge and our earlier opinion informed Zollino that he could present evidence of mitigative factors,[23] and Zollino concedes that he was accorded this opportunity.[24] However, even though he was aware of this opportunity, Zollino largely failed to take advantage of it.

To support his claim of mitigating circumstances, Zollino introduced affidavits from persons who were familiar with the operations of the IW Affiliates or who invested with these entities. These affidavits purport to support his contention that he did not engage in the misconduct that formed the basis for the underlying district court proceedings.[25] As we

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22/ Schield Management Company, Exchange Act. Rel. No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 859-60 (quoting Blinder, Robinson & Co., Inc. v. SEC, 837 F.2d 1099, 1109 (D.C. Cir. 1988)).

23/ In our original opinion, we expressly directed that, "in addition to holding a prehearing conference, the law judge should determine on remand whether Zollino has now had a reasonable opportunity to review the Investigative File and whether Zollino should be permitted to present mitigative evidence and additional arguments in response to the Division's motion for summary disposition." Zollino, 85 SEC Docket at 1296-97. In response to our directive, the law judge informed Zollino at the prehearing conference that he had the opportunity to present additional arguments, and she granted him the time that he requested to prepare his filing.

24/ Zollino notes in his brief that we had "originally remanded the proceeding . . . to allow him to present mitigative evidence and additional arguments, which [he] complied with painstakingly and at length, offering not only substantial evidence, but arguments and authorities that support [his] defense." As discussed below, we do not believe that Zollino has presented mitigative evidence to support a sanction less than a bar.

25/ For example, Zollino submitted the declaration of Ignacio Negrete Perales, a former chief executive officer and managing director of Corporacion Asesora Internacional, S.A. de C.V. ("CAI"). CAI was a Mexican investment services company that offered its clients, among other products, securities issued by an affiliate of IW Advisers. Mr. Perales stated that his company's advisers did not take instructions from Zollino, IW Advisers, or any other affiliated entity, and CAI's advisers were not required to use the services or purchase investments from, or through, these entities. Zollino also submitted the declarations of several non-U.S. investors who had purchased securities through IW Securities and other affiliated entities and who stated that they were satisfied with their investments and were never told that the securities they purchased were risk free.

explained above, Zollino may not challenge his criminal conviction or injunction here.[26] To the extent that the affidavits address the public interest factors relevant to a determination of the appropriate sanction, they are considered and discussed below.

2. Zollino also faults the law judge for not having reviewed the Division's investigative file before issuing her Supplemental Initial Decision and argues that this "showed insufficient due process." We do not believe that the law judge had an obligation to review the investigative file or that Zollino, for this or any other reason, was denied due process. Our Rules of Practice provide only that a respondent be provided access to the Division's investigative file.[27] The burden is on the respondent to review the file and seek to introduce anything from the file that supports his or her arguments on appeal.[28] Contrary to Zollino's assertion, there is no requirement that the law judge review the contents of an investigative file.

Zollino also criticizes the law judge for holding only a prehearing conference, and not a full hearing, which, according to Zollino, "would [have] otherwise [brought] the facts and afford[ed] justice and due process to a citizen of the United States." The law judge did not hold a hearing in this matter because she had granted the Division's motion for summary disposition after finding, as required by Rule of Practice 250(b),[29] that there was no genuine issue with regard to any material fact in the case. We find that the law judge acted properly in granting summary disposition. Our rules do not mandate the holding of an evidentiary hearing.

IV.

We now turn to a determination of whether the public interest requires the imposition of sanctions against Zollino. Zollino claims that "there is not sufficient evidence to establish facts which provide a basis for a permanent bar." In determining the appropriate sanction to impose on Zollino, we are guided by the following factors:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's

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26/ See supra note 20.

27/ Rule of Practice 230(a)(1) provides that "the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings." 17 C.F.R. § 201.230(a)(1).

28/ During the prehearing conference, in which Zollino fully participated, he confirmed that he had reviewed the investigative file.

29/ Rule of Practice 250(b) provides that a hearing officer may grant a motion for summary disposition "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250(b).

> assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.[30]

This requires that we "address[] the nature of the violation and the mitigating factors presented in the record."[31] In making this determination, "we recognize that conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions under the securities laws."[32] Based on a consideration of the relevant factors, and all of the circumstances in this case, we believe that the public interest requires that Zollino be barred.

Zollino played a pivotal role in a massive fraudulent scheme. That scheme, which extended over a two-year period, resulted in staggering investor losses. As a result of his misconduct, Zollino was criminally convicted of conspiracy to commit fraud and conspiracy to launder monetary instruments, ordered to pay approximately $342 million in restitution, and enjoined from violating the antifraud provisions of the federal securities laws. Zollino's misconduct was both egregious and recurring, and evidences a high degree of scienter.

Throughout these proceedings, Zollino has shown no recognition of the wrongful nature of his conduct, nor has he shown any remorse. He has also provided no assurance against future violations. Zollino's failure to acknowledge guilt or show remorse indicates that there is a significant risk that, given the opportunity, Zollino would commit further misconduct in the future.[33] We are not persuaded by Zollino's claim that he is unlikely to engage in future misconduct because IW Advisers and IW Securities have been liquidated. Absent a bar and after he has served his prison sentence, he could seek to reenter the securities industry through an association with another broker, dealer, or investment adviser.

We have held repeatedly that, absent "extraordinary mitigating circumstances," an individual who has been criminally convicted in connection with activities related to the

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

31/ McCarthy v. SEC, 406 F.3d 179, 190 (2d Cir. 2005).

32/ Marshall E. Melton, Investment Advisers Act Rel. No. 2151 (July 25, 2003), 80 SEC Docket 2812, 2825.

33/ Indeed, as noted, Zollino continues to insist that "[t]here is no evidence of fraud, material misrepresentations or omissions by him or participation in unlawful activities or evidence of his diverting client funds . . . ."

purchase or sale of securities cannot be permitted to remain in the securities industry.[34] There are no such circumstances here. Zollino's purported mitigative evidence, contained in written statements by former investors in, and various other persons connected to, the IW Affiliates,[35] seek to challenge the basis for the district court proceeding. As discussed, he is precluded from making such a challenge in this proceeding. To the extent that these statements seek to minimize the seriousness of Zollino's misconduct, we believe that the record compels a contrary conclusion and demonstrates Zollino's unfitness to remain in the securities industry.

In our view, Zollino's actions constituted "an egregious abuse of the trust placed in him as a securities professional."[36] By engaging in the misconduct that provided the basis for his criminal conviction and injunction, Zollino "demonstrated a complete disregard for the fundamental standards of honesty and fair dealing that govern those who are employed in the securities industry."[37] We believe that, based on his prior actions, he represents a significant risk to the public and should be prevented from acting as a securities professional in the future. Accordingly, we have determined to bar Zollino.

An appropriate order will issue.[38]

By the Commission (Chairman COX and Commissioners CAMPOS, NAZARETH, and CASEY); Commissioner ATKINS not participating.

Nancy M. Morris
Secretary

34/ Frederick W. Wall, Exchange Act Rel. No. 52467 (Sept. 19, 2005), 86 SEC Docket 857, 863. See also Melton, 80 SEC Docket at 2825-26 (holding that, "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions [of the federal securities laws]").

35/ See supra note 25.

36/ John S. Brownson, 55 S.E.C. 1023, 1029 (2002) (respondent barred based on his conviction for conspiracy to commit securities fraud).

37/ Wall, 86 SEC Docket at 863 (respondent barred based on conviction for securities fraud).

38/ 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
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Admin. Proc. File No. 3-11536

In the Matter of

JOSE P. ZOLLINO

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Jose P. Zollino be, and he hereby is, barred from association with any broker, dealer, or investment adviser.

By the Commission.

Nancy M. Morris
Secretary