

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 51817 / June 10, 2005

Admin. Proc. File No. 3-7370

In the Matter of

SALIM B. LEWIS

ORDER GRANTING AND DENYING IN PART PETITION TO VACATE
ADMINISTRATIVE BAR ORDER

Salim B. Lewis seeks to vacate a 1990 Commission bar order ("Bar Order") entered with his consent. Lewis contends that a presidential pardon of his 1989 criminal conviction renders the bar invalid. He also argues that compelling equitable reasons warrant vacating the bar. We find that the Bar Order survives the pardon because a consent injunction against violating the antifraud, recordkeeping, and credit provisions of the securities laws provided an independent basis for the bar. We also find no compelling equitable circumstances justifying the desired relief. We have determined, however, to vacate that portion of the Bar Order prohibiting Lewis from association with a municipal securities dealer, investment adviser, and investment company.

I.

From January 1980 to August 30, 1989, Lewis was a managing general partner associated with a broker-dealer registered with the Commission. On August 13, 1990, the Commission instituted a proceeding pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") 1/ against Lewis. 2/ Lewis consented, without admitting or denying the findings, to the entry of an order containing findings that 1) he pled guilty in federal court in 1989 to one count of stock manipulation, one count of causing recordkeeping violations, and one count of aiding and abetting another person's violation of the credit provisions of the Exchange

1/ 15 U.S.C. § 78o(b)(6).

2/ Salim B. Lewis, Exchange Act Rel. No. 28333 (Aug. 13, 1990), 46 SEC Docket 1733.

Act; ^{3/} and 2) a federal district court permanently enjoined him, with his consent, from violating Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 ^{4/} as well as from aiding and abetting violations of Sections 7(c), 7(f), 8(a), and 17(a)(1) of the Exchange Act, Regulations X and T promulgated thereunder, and Exchange Act Rules 17a-3 and 17a-4. ^{5/} The complaint in the injunctive action alleged that Lewis entered into an agreement with Boyd L. Jefferies to close the price of Fireman's Fund Corporation ("FFC") stock on May 8, 1986, at \$38, and that Jefferies caused purchases of FFC common stock on May 8, 1986 with the effect that the price of FFC common stock increased by one-eighth of one point to close at \$38. The indictment in the criminal case contained similar allegations. Lewis consented to a bar from association with any broker, dealer, investment company, investment adviser, or municipal securities dealer, and the Commission found that the public interest warranted the bar.

On January 20, 2001, the President of the United States granted Lewis a full and unconditional pardon for his criminal conviction. Lewis contends that the pardon invalidates the bar because the Commission may not impose a disability based on the pardoned conviction. Lewis contends alternatively that equitable considerations such as his distinguished career in the securities industry prior to the bar, his otherwise unblemished disciplinary record, and his charitable good works both before and after the bar, combined with the pardon, justify vacating the bar. The Division of Enforcement opposes Lewis's petition.

II.

A conviction and injunction provide independent grounds for imposing a bar, and agency action resting on several independent grounds remains valid so long as one ground legitimately supports the result. An injunction based on a pardoned offender's underlying conduct survives the pardon because a pardon does not invalidate civil or administrative discipline based on the conduct underlying the offense. The Bar Order survives the pardon because the order rests on the injunction entered with Lewis's consent as well as his criminal conviction, and the injunction in turn was based on Lewis's violative conduct.

^{3/} Lewis violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, caused violations of Section 17(a) of the Exchange Act and Exchange Act Rules 17a-3 and 17a-4, 15 U.S.C. § 78q(a) and 17 C.F.R. §§ 240.17a-3 and 240.17a-4, and aided and abetted violations of Section 7(f) of the Exchange Act and Regulation X promulgated thereunder, 15 U.S.C. § 78g(f) and 12 C.F.R. § 224.1-224.3.

^{4/} 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

^{5/} 15 U.S.C. §§ 78g(c), 78g(f), 78h(a), and 78q(a)(1); 12 C.F.R. §§ 224.1-224.3 and 220.1-220.12; 17 C.F.R. §§ 240.17a-3 and 240.17a-4.

A. One Valid Independent Ground Sustains Agency Action

As relevant here, Exchange Act Section 15(b)(6)(A) authorizes the Commission to bar any person associated with a broker or dealer from association with a registered entity if: (i) the person has committed or omitted certain acts, including having willfully violated any provision of the Exchange Act; 6/ (ii) the person has been convicted within the last ten years of certain crimes, including crimes involving the purchase or sale of securities or arising out of the conduct of the business of a broker or dealer; 7/ or (iii) the person is enjoined from certain actions, conduct, or practices, including engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. 8/ A proceeding based on any one of these bases is designed to protect the public from individuals who have shown themselves unfit to be associated with a broker or dealer. 9/ Exchange Act Section 15(b)(6)(A)(ii) and (b)(6)(A)(iii) establish that an injunction and conviction provide separate bases for a bar order even if based on the same underlying conduct. 10/ Agency action resting on several independent grounds remains

6/ See 15 U.S.C. § 78o(b)(6)(A)(i), (b)(4)(D).

7/ See 15 U.S.C. § 78o(b)(6)(A)(ii), (b)(4)(B).

8/ See 15 U.S.C. § 78o(b)(6)(A)(iii), (b)(4)(C).

9/ Cf. Koch v. SEC, 177 F.3d 784, 787 (9th Cir. 1999) ("Though the SEC may prosecute a case based on the independent predicate grounds of an injunction, a conviction, or the misconduct itself, the point of any such proceeding is always the same: to protect the public from individuals who have shown themselves unfit to participate in the penny stock market because of earlier misconduct.").

10/ Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994) (per curiam) ("Under the statutory language, existence of the injunction provides a ground for the bar adequate in itself and independent from the criminal conviction."); see also Charles Phillip Elliott, 50 S.E.C. 1273, 1274-76 & n.7 (1992), aff'd, 36 F.3d 86; Michael J. Markowski, Securities Exchange Act Rel. No. 44086 (Mar. 20, 2001), 74 SEC Docket 1537, 1540 (stating that the statute provides that the same misconduct can result in separate claims under Section 15(b)(6)(A)), aff'd, No. 01-1181 (D.C. Cir. 2002); cf. Dennis Milewitz, 53 S.E.C. 701, 707-08 (1998). In Milewitz, we stated that a criminal conviction and civil injunction constituted two separate statutory disqualifications even if based on the same conduct. We remanded an NASD member's application to employ an individual subject to both statutory disqualifications because NASD considered only the statutory disqualification arising from the conviction. We said that NASD should consider the effect on the application of the statutory disqualification arising from the injunction even though the 10 year limit on the statutory disqualification arising from the conviction had almost elapsed. Exchange Act Section 3(a)(39)(F), 15 U.S.C. § 78c(a)(39)(F).

valid if any of the grounds legitimately support the result, unless there is reason to believe that the combined force of these otherwise independent grounds influenced the outcome. 11/

The Bar Order survives, therefore, because the injunction is an independent ground legitimately supporting the Bar Order. The Bar Order contains no suggestion that the combined force of the conviction and injunction influenced the outcome, and we impute no such synthesis where the injunction alone authorizes the bar. Lewis contends that the Bar Order did not state that the injunction itself warranted the bar. 12/ The Bar Order, however, contains no indication that the Commission would have reached a different result had Lewis been subject solely to an injunction. 13/ Indeed, the seriousness of Lewis's underlying conduct suggests that the Commission would have sought the bar against Lewis based on the injunction regardless of any

11/ Indiana Mun. Power Agency v. FERC, 56 F.3d 247, 256 (D.C. Cir. 1995); Carnegie Natural Gas Co. v. FERC, 968 F.2d 1291, 1294 (D.C. Cir. 1992); see also BDPCS, Inc. v. FCC, 351 F.3d 1177, 1183 (D.C. Cir. 2003) (affirming agency decisions based on multiple grounds so long as one ground is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable).

Lewis asserts that an agency order based on both adequate and legally inadequate grounds cannot stand unless the order makes clear that each basis is independent and alternative and that the agency would have reached the same result based on the legally adequate rationale. Lewis misstates the rule. The order need not state either that each basis is independent and alternative or that the agency would reach the same result based solely on the legally adequate rationale.

12/ Lewis insists that the Bar Order did not make the injunction an independent basis for the bar. In Elliott, we stated explicitly that the injunction provided adequate justification for the bar considered apart from the criminal proceeding. 50 S.E.C. at 1277 & n.19, n.22. Elliott, however, involved a litigated proceeding whereas Lewis consented to his bar.

Even if an agency explains its decision with less than ideal clarity, a reviewing court will not upset that decision so long as the agency's path can be reasonably discerned. Alaska Dept. of Env'tl. Conservation v. EPA, 540 U.S. 461, 497 (2004). Lewis himself recognizes that the Commission's findings in the Bar Order correspond to the specific subparagraphs in Exchange Act Section 15(b)(6)(A). The Bar Order clearly relied on the injunction as an independent basis for the bar.

13/ See Carnegie Natural Gas Co., 968 F.2d at 1294-95 (sustaining agency's decision despite criticisms of the agency's other rationales because the valid rationale alone supported the agency's decision and no indication existed that the agency would have reached a different result had it based its decision on this rationale alone).

criminal proceedings. As a result, the bar survives despite its alternative reliance on the conviction. ^{14/}

Lewis cites two courts of appeals decisions for the proposition that an agency order resting on both legally inadequate and legally adequate grounds cannot stand. These cases, however, involved an agency's post-hoc rationalization and an agency's failure to adequately explain its decision, both in violation of SEC v. Chenery Corp. (Chenery I), ^{15/} rather than an agency's decision resting on one legally adequate ground and one ground subsequently deemed legally inadequate. Lewis also relies on a Supreme Court case for the proposition that the Bar Order must be vacated if it now has an impermissible basis. That case held only that an agency's refusal to grant a rehearing violated the right to a fair hearing where the changed economic conditions caused by the Great Depression eliminated the basis for the agency's order. ^{16/} Accordingly, the Bar Order survives because it still rests on legally adequate grounds.

B. Pardon Does Not Nullify Civil or Administrative Discipline Based on Underlying Conduct

Lewis contends that the Commission may not base a disability on the pardoned conviction, but he acknowledges that a disability based on the conduct underlying the conviction survives the pardon. Professor Samuel Williston explicated this point in 1915:

The true line of distinction seems to be this: The pardon removes all legal punishment for the offense. Therefore if the mere conviction involves certain disqualifications which would not follow from the commission of the crime without conviction, the pardon removes such disqualifications. On the other hand, if character is a necessary qualification and the commission of a crime would disqualify even though there had been

^{14/} Lewis contends that the injunction does not change the fact that the conviction was taken into account in the Bar Order. The Commission was entitled, however, to consider the conviction in 1990 because Lewis had not yet been pardoned. See Bjerkan v. United States, 529 F.2d 125, 128 n.2 (7th Cir. 1975) (stating that the fact of conviction after a pardon may not be taken into account in subsequent proceedings). We simply could not rely on Lewis's conviction to deny this petition to vacate the bar.

^{15/} 318 U.S. 80, 92-95 (1943). Mid-Tex Elec. Coop., Inc. v. FERC, 773 F.2d 327, 353 (D.C. Cir. 1985), involved an agency offering post-hoc rationalizations for its order, and Int'l Union, United Mine Workers v. United States Dep't of Labor, 358 F.3d 40, 44-45 (D.C. Cir. 2004), involved an agency's failure to provide an adequate explanation for its decision. Chenery I prohibits post-hoc rationalizations, 318 U.S. at 93, and requires that an agency make the findings necessary to support its judgment. 318 U.S. at 88. Here, the Commission provided an adequate explanation for the bar by finding that a federal district court enjoined Lewis and that the public interest warranted a bar.

^{16/} Atchison, T. & S.F. Ry. Co. v. United States, 284 U.S. 248, 262 (1932).

no criminal prosecution for the crime, the fact that the criminal has been convicted and pardoned does not make him any more eligible. 17/

Modern courts endorse this analysis 18/ and impose professional discipline for misconduct notwithstanding a pardon. 19/ The Justice Department commends Williston's reasoning and concludes that a pardoned offender may be held accountable for the underlying conduct by a governmental entity determining suitability for a position of confidence or trust. 20/ The fact that professional discipline based on the conduct underlying the pardoned offense rather than simply the fact of conviction survives a pardon supports maintenance of the Bar Order. 21/

Lewis contends that the Bar Order does not make any findings about the actual conduct underlying the offenses. We note that the Bar Order evaluates Lewis's underlying conduct. It

17/ Samuel Williston, Does a Pardon Blot Out Guilt?, 28 Harv. L. Rev. 647, 653 (1915).

18/ Bjerkan v. United States, 529 F.2d 125, 128 n.2 (7th Cir. 1975); United States v. Noonan, 906 F.2d 952, 959 (3d Cir. 1990); In re Abrams, 689 A.2d 6, 11 (D.C.) (en banc) (finding no decision rejecting Williston's reasoning), cert. denied, 521 U.S. 1121 (1997).

19/ See Grossgold v. Supreme Court of Illinois 557 F.2d 122, 125-26 (7th Cir. 1977) (holding that a presidential pardon did not relieve an attorney from discipline because the pardon did not wipe out the moral turpitude inherent in the factual predicate supporting the attorney's conviction); Abrams, 689 A.2d at 7 (holding that presidential pardon did not nullify court's authority to impose professional discipline because pardon did not require court to close its eyes to attorney's misconduct).

20/ Walter Dellinger, Effects of a Presidential Pardon, 19 Op. Off. Leg. Counsel 160, 164, 165 (June 19, 1995).

21/ The Commission could have sought a bar directly on the basis of Lewis's underlying conduct pursuant to Exchange Act Section 15(b)(6)(A)(i) because Lewis allegedly committed several acts, including manipulating the price of a security, in violation of various provisions of the Exchange Act. Instead, the Commission chose to pursue a bar pursuant to Section 15(b)(6)(A)(iii) after first obtaining, on the basis of this manipulative conduct, an injunction against violating, among other provisions, Exchange Act Section 10(b) and Exchange Act Rule 10b-5. A bar obtained in this manner pursuant to Section 15(b)(6)(A)(iii) retains the same validity in the face of a pardon for a related criminal conviction as would a bar obtained pursuant to Section 15(b)(6)(A)(i). The injunction which gives us the authority to impose the bar is based in turn on the underlying conduct. See Koch, 177 F.3d at 787 (stating that the substance of the Commission's case remained the underlying misconduct even though the Commission sought a bar on the basis of an injunction based on that misconduct). Professional discipline based on underlying conduct rather than the fact of conviction survives a pardon.

states that the injunctive complaint alleged that Lewis entered into an agreement with Boyd L. Jefferies to close the price of FFC stock on May 8, 1986, at \$38, that Jefferies caused Jefferies & Co. to make purchases of FFC common stock on May 8, 1986 pursuant to that agreement, and that the price of FFC common stock consequently increased by one-eighth of one point to close at \$38. The Commission gives considerable weight to the injunctive allegations in assessing the public interest in administrative proceedings based on consent injunctions. 22/

Lewis also could not challenge those allegations in the administrative proceeding because he consented to the injunction. 23/ He consented to the bar, moreover, and may not now protest that the text of the Bar Order failed to include separate findings about his conduct. 24/ The Commission relied on the injunction, to which Lewis consented, which in turn was based on that

22/ Marshall E. Melton, Investment Advisors Act Rel. No. 2151 (July 25, 2003), 80 SEC Docket 2812, 2814-15; see also Elliott, 50 S.E.C. at 1277 ("We recognize that the injunction was entered by consent and without findings of fact. Nevertheless, those circumstances do not prevent our acting on the basis of, or deriving conclusions from, the injunction [T]he action required in the public interest as the result of an injunction may be inferred from all the circumstances surrounding the injunctive action."). In Elliott, we found that the circumstances underlying the injunction required the bar. 50 S.E.C. at 1274.

23/ Michael J. Markowski, Exchange Act Rel. No. 44086 (Mar. 20, 2001), 74 SEC Docket 1537, 1542.

24/ Edward I. Frankel, Exchange Act Rel. No. 38378 (Mar. 10, 1997), 64 SEC Docket 131, 134 n.5 (stating that respondent consented to his Bar Order and could not complain in his petition to vacate the bar that the record was inaccurate or incomplete) .

conduct. 25/ The Commission considered the conduct alleged in the injunctive complaint and concluded that the public interest warranted a bar from association. 26/

25/ In 1990, the Commission could have obtained the injunction and issued the bar even if the government had declined to prosecute Lewis. The Bar Order deserves the same effect where the government pursued criminal penalties and the president pardoned the resulting conviction since the order relied, by virtue of the injunction, on the underlying conduct rather than simply the fact of conviction. See Grossgold, 557 F.2d at 126 (stating that a disciplinary proceeding based on the attorney's allegedly criminal conduct would not be precluded even if the attorney had been acquitted of the criminal charge); Abrams, 689 A.2d at 12 (stating that courts discipline attorneys notwithstanding their pardons because the obligation to protect the public from the unethical practitioner and to maintain the honor and integrity of the profession does not depend on whether a prosecutor pursues criminal penalties).

26/ Lewis argues that a pardon precludes "punishment" for underlying misconduct and that the Bar Order constitutes impermissible punishment because the D.C. Circuit Court of Appeals held in Johnson v. SEC, 87 F.3d 484 (D.C. Cir. 1996), that a Commission suspension constitutes a punishment or penalty for purposes of the limitation set forth in 28 U.S.C. § 2462. Lewis fails to recognize, however, that Johnson stated explicitly that a suspension might not constitute punishment in other contexts. Johnson, 87 F.3d at 491. Courts have not held that professional discipline constitutes impermissible punishment when imposed on pardoned offenders based on their underlying misconduct, even in situations where such discipline has been characterized as punishment in another context. In In re Ruffalo, for example, the Supreme Court held that disbarment, designed to protect the public, constitutes a punishment or penalty for purposes of due process. 390 U.S. 544, 550 (1968). In In re Abrams, 689 A.2d 6, however, the court authorized disciplinary proceedings against a pardoned attorney based on his misconduct. The court said that

[d]isciplinary sanctions are designed to maintain the integrity of the profession, to protect the public and the courts, and to deter other attorneys from engaging in similar misconduct. "[The] purpose in conducting disciplinary proceedings and imposing sanctions is not to punish the attorney; rather, it is to offer the desired protection by assuring the . . . fitness of an attorney to practice law."

Abrams, 689 A. 2d at 12 (citations omitted). Similarly, proceedings instituted pursuant to Exchange Act Section 15(b)(6)(A) are designed to protect the public from individuals who have shown themselves unfit to be associated with a broker or dealer. Cf. Koch v. SEC, *supra* note 6; see also SEC v. Coven, 581 F.2d 1020, 1027-28 (2d Cir. 1978) (stating that the primary purpose of a Commission enforcement action is to protect the public rather than to punish the offender). Accordingly, the Commission may impose a

(continued...)

C. Lewis May Seek Relief if Court Vacates Injunction

Lewis may file a motion with the federal district court to vacate the injunction. 27/ In Michael T. Studer, 28/ we said that the injunction entered against Studer was a valid basis for administrative action unless and until it was vacated, but we also stated that any action based on the injunction would be vacated on Studer's application if Studer obtained a reversal of the injunction. 29/ Similarly, the bar based on the injunction entered against Lewis would be vacated on Lewis's application if the district court vacated Lewis's injunction. Under Federal Rule of Civil Procedure 60(b), the court may relieve a party from a final judgment, order, or proceeding if it is no longer equitable that the judgment should have prospective application or for any other reason justifying relief from the operation of the judgment. 30/ Lewis, therefore, may again petition to vacate his bar if the court vacates his injunction. 31/

26/ (...continued)

bar in the public interest based on a pardoned offender's underlying conduct just as a state may disbar a pardoned attorney based on such conduct, even though such discipline has been characterized as punishment in other contexts.

Lewis also contends that the Bar Order constitutes punishment because it says that it is imposing "sanctions." In Abrams, however, the court authorized the disciplinary proceeding even though it described the proceeding as imposing sanctions.

27/ See, e.g., SEC v. Clifton, 700 F.2d 744 (D.C. Cir. 1983); SEC v. Blinder, Robinson & Co., Inc., 855 F.2d 677 (10th Cir. 1988); SEC v. Worthen, 98 F.3d 480 (9th Cir. 1996).

28/ Exchange Act Rel. No. 50411 (Sept. 20, 2004), 83 SEC Docket 2853.

29/ 83 SEC Docket at 2859.

30/ Fed. R. Civ. Pro. 60(b)(5)-(6). Rule 60(b) states in full that on motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

31/ We take no position here on whether the court should vacate Lewis's injunction.

III.

Lewis contends that compelling equitable reasons warrant vacating the bar even if the pardon does not require vacating the Bar Order. We believe that Lewis has not established that vacating the bar from association with a broker or dealer is consistent with the public interest.

On December 29, 2003, the Commission issued three opinions reviewing and summarizing its precedents concerning the standard for vacating bar orders. 32/ The Commission vacates bars only in compelling circumstances and bars will remain in place in the usual case. 33/ Preservation of the status quo ensures that the Commission, in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals' activities. 34/ The factors that guide the inquiry are:

the nature of the misconduct at issue in the underlying matter, the time that has passed since issuance of the administrative bar, the compliance record of, and regulatory interest in, the petitioner since issuance of the administrative bar, the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar, whether the petitioner has identified verifiable, unanticipated consequences of the bar, the position and persuasiveness of the Division of Enforcement, . . . and whether there exists any other circumstances that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors. 35/

32/ See Stephen S. Wien, Exchange Act Rel. No. 49000 (Dec. 29, 2003), 81 SEC Docket 3758; Ciro Cozzolino, Exchange Act Rel. No. 49001 (Dec. 29, 2003), 81 SEC Docket 3769; Edward I. Frankel, Exchange Act Rel. No. 49002 (Dec. 29, 2003), 81 SEC Docket 3778.

33/ Wien, 81 SEC Docket at 3766; Cozzolino, 81 SEC Docket at 3775; Frankel, 81 SEC Docket at 3785; see also Mark S. Parnass, Exchange Act Rel. No. 50730 (Nov. 23, 2004), 84 SEC Docket 727, 729.

34/ Wien, 81 SEC Docket at 3766; Cozzolino, 81 SEC Docket at 3775; Frankel, 81 SEC Docket at 3785; see also Parnass, 84 SEC Docket at 729.

35/ Wien, 81 SEC Docket at 3765; Cozzolino, 81 SEC Docket at 3775; Frankel, 81 SEC Docket at 3784-85.

The Commission considers whether lifting or modifying an administrative bar is consistent with the public interest and investor protection under all the facts and circumstances. ^{36/} This standard reflects the Commission's traditional approach to motions to vacate bars. ^{37/} We apply the standard enunciated in the December 29, 2003 opinions because they synthesized the decisions reflecting the Commission's long-standing approach to petitions to vacate or modify bar orders.

Under that standard, we find that no compelling circumstances justify vacating the bar. Lewis committed serious misconduct by engaging in stock price manipulation. ^{38/} The fourteen-year period since the bar order is not unduly lengthy. Lewis sought no prior relief from the bar, we have not lifted any of its restrictions, and Lewis has not re-entered the securities industry and established a satisfactory compliance record. The Division of Enforcement argues that Lewis committed serious violations justifying stringent sanctions and that he has not demonstrated compelling reasons for removing the sanctions. Lewis identifies no unanticipated consequences from the bar.

We acknowledge that Lewis's distinguished career in the industry prior to his misconduct, his otherwise unblemished disciplinary record, and his charitable good works militate in favor of relief. The Division agrees that the pardon also weighs in Lewis's favor. Nonetheless, we cannot vacate the bar where almost all the factors cited in the

^{36/} See Wien, 81 SEC Docket at 3765; Cozzolino, 81 SEC Docket at 3774; Frankel, 81 SEC Docket at 3784.

^{37/} Wien, 81 SEC Docket at 3764-65; Cozzolino, 81 SEC Docket at 3774-75; Frankel, 81 SEC Docket at 3784-85. Lewis intimates that we should apply a more lenient standard. He believes that we heightened the standard for vacating bar orders in a 1994 published letter, and that his petition should not be subject to this standard because the Commission imposed his bar in 1990. That letter, however, addressed reentering the securities industry following a bar rather than vacating a bar order. See Letter re: Unqualified Bar Orders, Exchange Act Rel. No. 34720 (Sept. 26, 1994), 57 SEC Docket 1941. It affects only applications to re-enter the securities industry. See Charles M. Zarzecki, Order Approving Application for Relief From a Statutory Disqualification, Exchange Act Rel. No. 42098 (Nov. 4, 1999), 70 SEC Docket 3231, 3232 n.1 (holding that letter did not affect barred individual's application to associate because the Commission imposed the bar in 1993). The letter did not alter our standard for vacating bar orders and does not impact our decision here.

^{38/} Lewis contends that he engaged in the manipulative conduct "solely to thwart the unethical and manipulative conduct of others." Our rules, however, do not permit individuals to respond to perceived wrongdoing by committing wrongdoing of their own. John Gordon Simek, 50 S.E.C. 152, 159 (1989) ("Wrongful conduct by another does not justify a respondent's own unauthorized actions at the expense of innocent third parties.").

December 29, 2003 opinions counsel against granting relief. Lewis's failure to seek re-entry into the securities industry and establish a satisfactory compliance record before moving to vacate the bar is illustrative. 39/ We generally first grant incremental relief in our cases vacating bars. 40/ In this case, we do not have an adequate basis for concluding that removal of the bar would be consistent with the public interest without an opportunity to assess Lewis's activity in the

39/ Lewis contends that the bar prevents him from applying to re-enter the securities industry. We may permit barred individuals to re-enter the industry if we find that re-entry would not harm the public interest. See Applications for Relief from Disqualification, Exchange Act Rel. No. 11267 (Feb. 26, 1975), 6 SEC Docket 346. The bar remains in place and each application to associate is considered individually. See id. n.2; Laurie Jones Canady, Exchange Act Rel. No. 41250 (Apr. 5, 1999), 69 SEC Docket 1468, 1489-90 (stating that permanently barred individual's employment status remains subject to Commission review so long as bar remains in effect even if individual re-enters securities industry by showing that re-entry is consistent with public interest), petition denied, 230 F.3d 362 (D.C. Cir. 2000). We believe, based on our experience, that it is advisable for barred individuals to pursue this approach before moving to vacate their bars. See Peter E. Aaron, Exchange Act Rel. No. 31470 (Nov. 16, 1992), 52 SEC Docket 3813, 3816-17 ("Aaron's current petition is not a vehicle for such re-entry. Rather, it seeks the extraordinary relief of completely eliminating the bar Maintaining the bar helps ensure that employment, if allowed, is appropriate.").

Any application to re-enter the industry that Lewis might make should be judged on its own merits according to the applicable standards. See Reuben D. Peters, Exchange Act Rel. No. 51237 (Feb. 22, 2005), __ SEC Docket __. We take no position on any such future application.

40/ See, e.g., Cozzolino, 81 SEC Docket 3769 (vacating supervisory bar where we previously permitted petitioner to reenter as a registered representative followed by a series of subsequent associations in a supervised capacity); Wien, 81 SEC Docket at 3758 (vacating two-year proprietary bar where we previously permitted petitioner to associate with NASD member firm and then acquire a proprietary interest in that firm); John W. Bendall, Jr., Exchange Act Rel. No. 38326 (Feb. 24, 1997), 63 SEC Docket 2790 (vacating bar where we previously permitted petitioner to return as a registered representative and then acquire stock and act as a supervising principal in a corporation); Mark E. Ross, Exchange Act Rel. No. 43033 (July 13, 2000), 72 SEC Docket 2587 (vacating bar where we previously permitted petitioner to associate with insurance companies and broker-dealer firms); Bruce William Zimmerman, Exchange Act Rel. No. 36275 (Sept. 25, 1995), 60 SEC Docket 883 (vacating bar where we previously permitted petitioner to associate in supervisory and non-supervisory capacities).

securities industry after his re-entry. 41/ Accordingly, we decline to vacate the bar against association with a broker or dealer. 42/ We have determined, however, that it is appropriate to modify the bar against Lewis by vacating the portion of the Bar Order prohibiting Lewis from association with a municipal securities dealer, investment adviser, or an investment company. 43/

Accordingly, IT IS ORDERED that the petition of Salim B. Lewis to vacate the bar order entered against him on August 13, 1990, as it applies to the bar from association with any broker or dealer, be, and it hereby is, DENIED; and it is further

ORDERED that the order be, and it hereby is, vacated insofar as it bars Lewis from association with any investment adviser, investment company, or municipal securities dealer.

By the Commission.

Jonathan G. Katz
Secretary

41/ See Salvatore F. Geswaldo, Exchange Act Rel. No. 37896 (Oct. 30, 1996), 63 SEC Docket 342, 346 (rejecting applicant's petition to vacate bar because, even though applicant had not been subject to further disciplinary proceedings, applicant had spent less than three years working in the securities industry since the bar).

42/ We reject Lewis's argument that we should vacate the bar because we imposed lesser sanctions in similar cases. See Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 187 (1973) ("The employment of a sanction within the authority of an administrative agency is thus not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases."). The cases are also irrelevant because they involved imposing sanctions rather than modifying sanctions previously imposed.

We also reject Lewis's argument that Norvin T. Harris, 29 S.E.C. 519 (1949), supports vacating the bar. In Harris, the Commission granted the applicant's application for registration based in part on his pardon. The Commission did not vacate a bar previously imposed.

43/ See Peter F. Comas, Exchange Act Rel. No. 49894 (June 18, 2004), 83 SEC Docket 251.