SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 59141 / December 22, 2008

Admin. Proc. File No. 3-12596

In the Matter of

SALVATORE F. SODANO
c/o William R. Baker III
Latham & Watkins, LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304

ORDER REVERSING INITIAL DECISION AND REMANDING FOR FURTHER PROCEEDINGS

I.

Background

The Commission's Division of Enforcement (the "Division") appeals from the decision (the "Initial Decision") of an administrative law judge. 1/ The Initial Decision dismissed charges that Salvatore F. Sodano, the former Chairman and Chief Executive Officer ("CEO") of the American Stock Exchange LLC (the "Amex"), violated Section 19(h)(4) of the Securities Exchange Act of 1934. 2/

1/ Salvatore F. Sodano, Initial Decision Rel. No. 333 (Aug. 20, 2007), 91 SEC Docket 1313.

2/ 15 U.S.C. § 78s(h)(4). Section 19(h)(4) states, in relevant part, "The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to remove from office or censure any officer or director of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such officer or director has willfully violated any provision of this title, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance . . . in the case of a national securities exchange, with any such provision by any member or person associated with a member."

The Order Instituting Proceedings ("OIP") alleges that Sodano, during his tenure as an Amex officer and director, "without reasonable justification or excuse, failed to enforce compliance with the Exchange Act, the rules and regulations thereunder, and the Amex's rules." 3/ The Division seeks a censure of Sodano for these alleged violations. Prior to a hearing on the merits, the law judge granted Sodano's motion for summary disposition of the proceeding. The Initial Decision concluded that Exchange Act Section 19(h)(4) authorizes the Commission to censure only persons who are currently officers or directors of self-regulatory organizations ("SROs"). Since Sodano resigned from his positions as Amex Chairman and CEO in 2005, and the disciplinary proceeding was instituted on March 22, 2007, the Initial Decision found that the Commission lacked authority under Section 19(h)(4) to censure Sodano and accordingly dismissed the charges.

The sole question before us is whether Exchange Act Section 19(h)(4) authorizes the Commission to censure former SRO officers and directors. We have infrequently exercised our authority under Section 19(h)(4). We recently entered a settled proceeding that, without an admission or denial of the findings, censured James Crofwell pursuant to Exchange Act Section 19(h)(4). 4/ Crofwell had resigned his position as President of the Boston Stock Exchange four years prior to the settlement. We also instituted settled proceedings censuring two other SRO officers pursuant to Section 19(h)(4); both of those officers still held their positions at the time the settlements were reached. 5/ Sodano's case is the first litigated matter pursuant to our authority under Section 19(h)(4).

3/ In September 2000, the Commission instituted a settled administrative proceeding against the Amex in which the Commission found, among other things, that the Amex had failed to enforce adequately certain option order handling rules including critical customer-protection rules relating to firm quote and trading ahead. Certain Activities of Options Exchanges, Securities Exchange Act Rel. No. 43268 (Sept. 11, 2000), 73 SEC Docket 697. The Division alleged in its OIP against Sodano that the regulatory deficiencies of the Amex identified in the settled matter and their continuation after the Commission ordered the Amex to enhance and improve its regulatory programs for enforcing the option trading rules resulted from Sodano's failure to pay adequate attention to and dedicate sufficient resources to regulation. Salvatore F. Sodano, Exchange Act Rel. No. 55509 (Mar. 22, 2007), 90 SEC Docket 876.

4/ Boston Stock Exchange, Inc., Exchange Act Rel. No. 56352 (Sept. 5, 2007), 91 SEC Docket 1443.

5/ William N. Briggs, Exchange Act Rel. No. 40506 (Sept. 30, 1998), 68 SEC Docket 367 (censuring Chief Financial Officer of Philadelphia Stock Exchange and prohibiting him from serving in that capacity for a two-year period) and National Stock Exchange and David Colker, Exchange Act Rel. No. 51714 (May 19, 2005), 85 SEC Docket 1249 (censuring President and CEO of National Stock Exchange for failure to enforce compliance with National Stock Exchange rules pertaining to market orders and trading ahead).

II.

Statutory Language

The Terms "Officer or Director"

The Supreme Court has made clear that, in interpreting the applicability of any statute, we should look first to the language of the statute. 6/ If the language of a statute entrusted to our administration is ambiguous, our interpretation of the text is entitled to deference by reviewing courts, as long as the interpretation is reasonable. 7/ The text of Section 19(h)(4) neither expressly limits its application to one who "is" an officer or director (which might indicate a Congressional intent to limit the reach of the statute to current officers and directors), nor expressly states that it applies to "former" SRO officers and directors. 8/ It permits us to sanction "any" SRO officer or director if "such" officer or director has engaged in one of the kinds of misconduct specified in the statute. The adjective "any" is an inclusive term broadly interpreted as "one or some indiscriminately of whatever kind." 9/ The use of the word "any"

6/ Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992) (stating, "[I]n interpreting a statute, a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there . . . . When the words of a statute are unambiguous, then this first canon is also the last: judicial inquiry is complete."). Further, where statutory language is clear and unambiguous, even "contradictory indications in the statute's legislative history will not be allowed to alter the plain meaning of the text." Ratzlaf v. U.S., 510 U.S. 135, 147-48 (1994). See also Barnhill v. Johnson, 503 U.S. 393, 401 (1982).

7/ SEC v. Zandford, 535 U.S. 813, 819-20 (2002) (citing U.S. v. Mead Corp., 533 U.S. 218, 229-30 and n. 12 (2001)). See also Fin. Planning Ass'n v. SEC, 482 F.3d 481, 487 (D.C. Cir. 2007).

8/ Sodano cites Driver v. Helms, 577 F.2d 147 (1st Cir. 1978), where the court excluded former officers from a statute applying to "officers or employees of the United States." In Driver, however, the venue statute in question applied to "a civil action in which each defendant is an officer or employee of the United States." (Emphasis added) In contrast, Section 19(h)(4) does not specify that the individual subject to Commission sanctions "is" an officer or director of the SRO.

9/ See Ali v. Federal Bureau of Prisons, 128 S. Ct. 831, 833 (2008) (citing U.S. v. Gonzales, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind'") (citing Webster's Third New International Dictionary 97 (1976)))); Fin. Planning Ass'n, 482 F.3d at 488

(continued...)

before "officer or director" therefore suggests our authority under Section 19(h)(4) to sanction SRO officers or directors is not restricted by whether they are currently or formerly holders of those positions and does not except from its purview former SRO officers and directors.

Sodano notes that Section 19(h)(4) gives the Commission the authority to sanction "if [the Commission] finds, on the record, after notice and opportunity for hearing, that such officer or director [has engaged in specified misconduct]." Sodano asserts that this language makes clear that Section 19(h)(4) "unambiguously applies only to someone who can be accurately described as 'such officer or director' at the time of the hearing." However, the statute does not include the words "at the time of the hearing," the modifier urged by Sodano. We believe that "after notice and opportunity for hearing" is a predicate to the Commission making its findings, not a statement of when the respondent must be an officer or director for jurisdictional purposes. Sodano's interpretation of this phrase would require us to prosecute a case through to the conclusion of a hearing before knowing whether we had jurisdiction over the respondent, an unreasonable result we are not required to reach. 10/

Sodano contends that, in Lewis v. Varnes, 11/ the court adopted a "plain meaning of 'director or officer'" under Section 16(b) of the Exchange Act. The basis for the decision in Lewis demonstrates that it does not assist our analysis here. In that case, the court found that the right to recover short swing profits from a retired director pursuant to Section 16(b) applies only to matching trades where at least the first of the two trades was made prior to the director's retirement. The court rejected appellant's contrary position that neither of the trades had to occur during the director's tenure as inconsistent with the language of the statute. The court concluded, based on precedent, that Congress intended Section 16(b) to be applied as a "'a relatively arbitrary rule capable of easy administration.'" As a result, a flexible approach to the application

---

9/ (...continued)
("The word 'any' is usually understood to be all-inclusive") (citing New York v. EPA, 443 F.3d 880, 885 (D.C. Cir. 2006)). But see Nixon v. Missouri Municipal League, 541 U.S. 125, 126 (2004) ("'any' can and does mean different things depending upon the setting").

10/ See, e.g. Zandford, supra n.7, 535 U.S. at 819-20 (finding that a reasonable Commission interpretation of ambiguous statutory language will receive deference from reviewing courts); Georgetown Univ. Hospital v. Sullivan, 934 F.2d 1280, 1282 (D.C. Cir. 1991) (favoring "the more reasonable interpretation of ambiguous statutory language").

11/ 505 F.2d 785, 787-89 (2d Cir. 1974).

of Section 16(b) "would actually contravene the Congressional purpose and imply ambiguities in the statute that do not exist." 12/

Here, our reading of Section 19(h)(4) is consistent with the language of the statute. Furthermore, there is no indication that Congress intended Section 19(h)(4) to be applied as an arbitrary rule. Rather, as discussed below, legislative history indicates Congress intended the statute to provide the Commission with sufficient flexibility to oversee SROs. 13/

Verb Tense

Section 19(h)(4) authorizes sanctions in the public interest if we find, among other things, that the officer or director "willfully abused his authority or without reasonable justification or excuse has failed to enforce compliance" with SRO rules. Each of the verbs describing the conduct subject to sanction is in the past tense, indicating that the statute is intended to remedy past action. A plain reading of these phrases is that such misconduct could have occurred during a former officer or director's tenure. Thus, for example, once an SRO officer or director "has failed" to enforce compliance with SRO rules, a violation of Section 19(h)(4) over which we have jurisdiction has occurred, regardless of whether that officer or director remains in his or her position at the time of the subsequent disciplinary proceeding.

Sodano argues that the use of the past tense in Section 19(h)(4) is irrelevant, stating that "statutes always penalize acts that occurred in the past." This assertion is not accurate. For example, Exchange Act Section 21(d) authorizes the Commission to seek an injunction in the appropriate court "whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation" of relevant provisions. 14/ In any event, Sodano does not dispute that the use of the past tense is consistent with a reading of the statute to include Commission censure authority over former SRO officers and directors.

12/ Lewis, 505 F.2d at 789. Sodano correctly observes that the Supreme Court adopted a "literal" reading of Section 16(b) in Reliance Elec. Co. v. Emerson Elec. Co. 404 U.S. 418, 423-24 (1972). That case involved the applicability of the short-swing profits provision to "beneficial owners," not to officers and directors as in Lewis v. Varnes. The Court relied on the text of Exchange Act Section 16(b), which states, "This subsection shall not be construed to cover any transaction where [the] beneficial owner [of more than ten percent of any class of any security] was not such [beneficial owner] both at the time of the [relevant] purchase and sale, or sale and purchase. . . ." As Lewis v. Varnes highlights, there is no similar exemptive language in Section 16(b) for a person who is an "officer" or "director."

13/ See n.21 infra and accompanying text.

14/ 15 U.S.C. § 78u(d).

The Initial Decision noted that Exchange Act Section 3(a)(7) defines the term "director" as "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or not." 15/ The Initial Decision concluded that the use of present tense verb forms in this definition indicates an intention that, absent a clear statement in the text of a statute that the statute applies to former directors, the term "director" should be interpreted to mean only sitting directors. However, we believe that the use of the present tense in a definitional section like Section 3(a)(7) is less relevant than Section 19(h)(4)'s use of the past tense describing the misconduct to be sanctioned, coupled with the adjective "any" in describing which officers and directors are subject to Section 19(h)(4). There is no dispute that, at the time of the alleged violations, Sodano was, in fact, "performing the functions" of a director of a corporation for the Amex.

Sanctions

Section 19(h)(4) permits the Commission to impose on SRO officers and directors removal from office or censure. While only a sitting officer or director may be removed from office, the same is not true of a censure. A censure serves a separate and distinct remedial purpose from that served by removal from office because a censure notifies the public of the officer or director's past misconduct, regardless of whether the individual currently remains an SRO officer or director.

The Initial Decision relied on Black's Law Dictionary's definition of "censure": "an official reprimand or condemnation." 16/ The Initial Decision stated, "[g]iven this definition and the order in which the remedies are listed, it is plain from the statutory construction that Congress's inclusion of censure in Section 19(h)(4) provides a less severe alternative remedy when sanctioning an incumbent officer and director."

We do not believe the Black's definition resolves the issue. The statute as written merely provides censure as an alternative to removal. While we agree that censure is a less severe alternative to removal, that does not compel the conclusion that Congress intended censure to be available only in cases where removal is also available, i.e., where the officer or director still holds office. A construction that is at least equally sensible is that censure was intended as an alternative where removal is no longer necessary or available due to the resignation of the officer or director. Censure can still serve the remedial purpose of alerting the public, including other SROs and their officers and directors, of the unacceptability of the conduct at issue, a purpose that cannot be achieved in those circumstances where removal is unavailable due to the resignation of the officer or director.

15/ 15 U.S.C. § 78c(a)(7). The Exchange Act does not define "officer."

16/ Black's Law Dictionary 237 (8th ed. 2004).

Sodano agrees with the Initial Decision that, because one of the two sanctions authorized under Section 19(h)(4) -- removal from office -- can only apply to current SRO officers and directors, the other sanction available, censure, must also be limited to current SRO officers and directors. Sodano cites the theory of statutory interpretation that words grouped in a list should be given similar meaning. 17/ The theory cited by Sodano, however, "is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress." 18/ The word "censure" is not "capable of many meanings." The question at issue is not the meaning of the word "censure" itself, but rather the types of persons on whom the sanction may be imposed under Section 19(h)(4). 19/

* * *

We conclude that the language of Section 19(h)(4) favors a reading that our authority extends to former, as well as current, SRO officers and directors. The use of the adjective "any" in describing the officers and directors subject to the statute, the use of past tense verbs in describing conduct covered by the provision, and the inclusion of a sanction that clearly may be applied to former officers and directors all support the inference that the respondent's current status as an SRO officer or director is not relevant. The statute is not without ambiguity, however. In circumstances where a statute is not clear on its face, the Supreme Court instructs us that we should interpret the statute based on available guidance from the legislative history. 20/

17/ See Dole v. United Steel Workers of America, 494 U.S. 26, 36 (1990) ("[T]he traditional canon of construction, noscitur a sociis, dictates that [the] 'words grouped in [the] list should be given related meaning" (quoting Massachusetts v. Morash, 490 U.S. 107, 114-15 (1989))).

18/ Washington State Dept. Of Social and Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371, 384-85 (2003) (citing Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307 (1961)).

19/ Even if we accepted Sodano's argument that noscitur a sociis applied here, this would not lead to the conclusion that Section 19(h)(4) applies only to current SRO officers and directors. Because the "list" of sanctions available under Section 19(h)(4) includes only removal from office and censure, Sodano urges a reading of Section 19(h)(4) under which censure is "given a related meaning" to removal from office, which, by definition, only applies to current SRO officers and directors. Censure, however, can be "related" to removal in the sense that they are both options provided to the Commission for sanctioning any SRO officer or director for past misconduct. The sanctions are connected by a disjunctive; there is no basis for concluding that one can be imposed only where the other can.

20/ Blum v. Stenson, 465 U.S. 886, 896 (1984).

III.

Legislative History of Section 19(h)(4)

Section 19(h)(4) was added to the Exchange Act as part of the 1975 amendments to the federal securities laws. 21/ Prior to 1975, then-Section 19(a)(3) of the Exchange Act authorized the Commission to suspend or expel members or officers of SROs for violations of the Exchange Act and the rules and regulations thereunder. New Section 19(h)(4) deleted the reference to members in then-Section 19(a)(3), and added: (a) directors to the scope of the provision's applicability; (b) the authority to censure officers and directors (the sanction at issue in this proceeding); and (c) as bases for the imposition of sanctions, violations of the rules of the SRO, willful abuse of authority, and failure to enforce compliance with the above-referenced statutes and rules by a member or associated person.

The legislative history of the 1975 amendments is silent on the specific question of whether our authority under Exchange Act Section 19(h)(4) to censure extends to former, as well as current, SRO officers and directors. However, the Senate Report, in its general discussion of Exchange Act Section 19, states, "In order to enhance the oversight powers of the Commission . . . and to provide [it] with greater regulatory flexibility, the bill would significantly increase the regulatory options available to [the Commission] to deal with perceived self-regulatory shortcomings." 22/ In its general introductory discussion of the full 1975 amendments, the Senate Report states that "[t]he SEC would be expected to play a much larger role than it has in the past to ensure that there is no gap between self-regulatory performance and regulatory need." 23/

The realization of these goals is evident in these amendments to Section 19(h)(4). In creating Section 19(h)(4) from pre-existing Section 19(a)(3), the 1975 amendments focused the Commission's authority on the self-regulators themselves, deleting "members" (whose conduct is more fully addressed by other provisions of the Exchange Act), and adding directors, thereby bringing all those with authority over the SROs within the Commission's oversight. The amendments expanded the Commission's sanctioning authority to include not just violations of the securities statutes, but misconduct pertinent to the governance and mission of the SROs: violations of the rules of the SRO, willful abuse of authority, and failure to enforce compliance. The amendments also enhanced the Commission's sanctioning options by adding censure.

21/ See S. Rep. No. 94-75 (1975), reprinted in 1975 U.S.C.C.A.N. 179.

22/ 1975 U.S.C.C.A.N. at 213.

23/ Id. at 181.

These amendments reflect the Congressional goal of enhancing Commission oversight so "that there is no gap between self-regulatory performance and regulatory need." 24/ Our construction of Section 19(h)(4) as authorizing actions against former as well as current SRO officers and directors is both reasonable and consistent with the Congressional goals of increasing our regulatory options for dealing with possible SRO shortcomings. In particular, Section 19(h)(4) is the only federal securities law provision under which the Commission can sanction an SRO officer or director for willful abuse of authority or failure to enforce compliance (the basis of the charges against Sodano). 25/ The goal of enhanced Commission oversight of SROs would be frustrated if our authority to sanction errant officers and directors could be thwarted by their resignation before the conclusion of proceedings against them. 26/ As discussed above, nothing in the language of the statute requires such a restrictive view of our authority. 27/

This construction of the statute and its history is also consistent with Supreme Court precedent urging that the securities laws should be "construed flexibly, not technically and restrictively." 28/ We are mindful of the Supreme Court's cautionary language in Aaron v. SEC,

---

24/ Id.

25/ Sodano contends that the Division's argument that his position would permit an SRO officer or director to avoid "any form of punishment" by resigning from his or her position is without merit because many other securities law provisions would apply to the conduct. Sodano is incorrect.

26/ In general, statutory interpretation should "favor an interpretation which would render the statutory design effective in terms of the policies behind its enactment." Nat'l Petroleum Refiners Ass'n v. FTC, 482 F.2d 672, 689 (D.C. Cir. 1973) (citing Bird v. United States, 187 U.S. 118 (1903)).

27/ Sodano cites our decision in George C. Kern, Jr., 50 S.E.C. 596 (1991), in support of his claim that the legislative history of the 1975 amendments does not support the conclusion that Congress broadened the scope of Section 19(h)(4) to include former officers and directors of SROs. At issue in Kern was whether Exchange Action Section 15(c)(4), 15 U.S.C. § 78o(c)(4), permitted orders of general future compliance or was limited to orders to correct existing violations. In concluding that the statute was limited to correcting existing violations, we cited specific language in the legislative history stating that the purpose of the amendment to Section 15(c)(4) was to compel corrective filings to existing, misleading public reports. 50 S.E.C. at 601. Here, the legislative history lacks specific language supporting either interpretation. We therefore have looked to the general purposes of the amendments.

28/ Zandford, 535 U.S. at 819 (citing Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, 151 (1972) (quoting SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963)).

cited by Sodano, that "generalized references to the remedial purposes of the securities laws will not justify reading a provision more broadly than its language and the statutory scheme reasonably permit." 29/ However, in Aaron, the Supreme Court found, "[t]he language of [Securities Act of 1933] Section 17(a)(1), 30/ which makes it unlawful 'to employ any device, scheme, or artifice to defraud,' plainly evinces an intent on the part of Congress to proscribe only knowing or intentional misconduct." 31/ By contrast, the language, statutory scheme, and legislative history of Section 19(h)(4) evince a Congressional intent to expand our authority and close regulatory gaps in our oversight of SROs, and reasonably permit the conclusion that the statute applies to former SRO officers and directors.

Sodano argues that the censure remedy was intended to provide the Commission with a less severe sanction option to removal from office for current SRO officers' and directors' violations of Section 19(h)(4), relying on the 1975 Senate Report statement that the provisions of amended Exchange Act Section 19(h)(1) "to censure and place restrictions on the activities, functions, and operations of a self-regulatory agency . . . are intended to provide more usable sanctions than the SEC's traditional 'big stick.'" 32/

However, Exchange Act Section 19(h)(1) pertains to the Commission's authority to sanction an SRO itself, while Section 19(h)(4) authorizes the Commission to sanction the individual SRO officers and directors. Congress may well have believed that the inclusion of censure as an alternative to suspension and deregistration of an SRO as an entity under Section 19(h)(1) furthered the goals of the 1975 amendments. Unlike an SRO officer or director who resigns from the position, a deregistered or suspended SRO would face significant hurdles before it could re-enter the industry. Congressional recognition that the Commission needs an alternative sanction to forced deregistration of an SRO does not provide instructive guidance about whether Congress intended to limit the applicability of the censure remedy under Section 19(h)(4) to current SRO officers and directors.

Sodano argues that Congress's decision not to include an industry bar among the remedies available under Section 19(h)(4) "provides additional evidence of [Congressional] intent to limit the provision to active officers and directors." Sodano attempts to distinguish

---

29/ Aaron v. SEC, 446 U.S. 680, 695 (1980) (citing Touche Ross & Co. v. Redington, 442 U.S. 560, 578 (1979) (quoting SEC v. Sloan, 436 U.S. 103, 116 (1978))).

30/ 15 U.S.C. § 77q(a)(1).

31/ Id. at 696. See also Ernst & Ernst v. Hochfelder, 425 U.S. 185, 199-201 (1976) (finding that Exchange Act Section 10(b) does not apply to negligent acts and rejecting a reading of the statute that would encompass negligent acts because the Court found that the language of the statute "clearly connotes intentional misconduct").

32/ 1975 U.S.C.C.A.N. at 212.

between "typical penalties that the securities laws use to *punish past misconduct*" (emphasis in Sodano's brief) such as disgorgement, civil fines, and industry bars, and those he characterizes as "corrective, or forward-looking in character" such as the removal and censure provided for in Section 19(h)(4), which he claims "serve a similar prophylactic purpose." He provides no basis for this purported distinction. While removal and censure serve the prophylactic purpose of preventing the respondent from committing further misconduct, they also both punish past misconduct, and the D.C. Circuit has concluded that censure is also a penalty. 33/

Sodano contends that:

> [the SRO industry] is not a large and anonymous industry like broker-dealers or investment advisers, where such tactics [as resigning to avoid sanctions and then re-entering the industry with a new firm] are within the realm of possibility. If an officer or director of an SRO did resign in the face of imminent Section 19(h)(4) proceedings, doing so would essentially represent a decision to voluntarily accept the harshest punishment authorized by that section -- removal from office -- and would be understood that way by the securities industry and the regulatory community.

We disagree. If an officer's resignation successfully avoided enforcement action by the Commission, it would hamper the possibility of the Commission making public findings of misconduct and informing the public of the standard of conduct expected of an SRO officer or director.

1987 Securities Law Amendments

As part of the 1987 amendments to the federal securities laws, 34/ Congress amended Exchange Act Section 15(b)(6) 35/ and Section 203(f) of the Investment Advisers Act of 1940 36/ in order to make clear the Commission's authority to impose sanctions pursuant to those provisions on individuals both currently and formerly associated with broker-dealers or

---

33/ See Johnson v. S.E.C., 87 F.3d 484, 487 (D.C. Cir. 1996) (finding that five-year statute of limitations applies to Commission proceedings to censure and suspend respondent because such actions fit the "'common-sense' definition of a 'penalty'").

34/ See S. Rep. No. 100-105 (1987), reprinted in 1987 U.S.C.C.A.N. 2089.

35/ 15 U.S.C. § 78o(b)(6).

36/ 15 U.S.C. § 80b-3(f).

investment advisers, respectively. 37/ The legislative history of the 1987 amendments suggests that, in amending those provisions, Congress was concerned that Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) could be interpreted to "allow persons who had violated the federal securities laws to avoid administrative sanctions merely by leaving the business and stating that they were no longer associated with a broker-dealer, municipal securities dealer, or investment adviser and were not seeking to become so associated." 38/

Sodano points to these amendments as evidence that, when Congress wants to extend the Commission's jurisdiction to individuals no longer occupying a particular position, it knows how to do so. Sodano contends that Congress would have changed the language of Section 19(h)(4) similarly if it intended for Section 19(h)(4) to apply to former SRO officers and directors. He argues that Congress's failure to make such changes "was conspicuous and no mere oversight," given the extensive list of additional changes to the securities laws proposed in the 1987 amendments. 39/

We disagree. As an initial matter, there is nothing in the legislative history of the 1987 amendments to suggest that Congress considered the reach of the Commission's authority under Section 19(h)(4) at the time of the 1987 amendments. 40/ The Commission brought no disciplinary proceedings under Section 19(h)(4) before the 1990s. In contrast, prior to the

---

37/ Prior to the 1987 amendments, Exchange Act Section 15(b)(6) authorized the Commission to impose sanctions on "any person associated, or seeking to become associated, with a broker or dealer" if the Commission found that the imposition of sanctions was in the public interest and such a person had engaged in violative conduct. The 1987 amendments expressly amended the statute to include any person who, "at the time of the alleged misconduct . . . was associated or seeking to become associated with a broker or dealer." The 1987 amendments also made analogous revisions to Advisers Act Section 203(f).

38/ 1987 U.S.C.C.A.N. at 2111.

39/ In support of his contention that "Congress demonstrably conducted a thorough and comprehensive review of the securities laws" at the time of the 1987 amendments, Sodano notes the inclusion in the 1987 amendments of corrections of several minor typographical errors in the Exchange Act. The legislative history does not indicate how these errors were brought to Congress's attention, leading to their inclusion in the amendments.

40/ See Aaron v. SEC, 446 U.S. 680, 695 n.11 (rejecting as support for Commission's interpretation of statute the fact that Congress failed to act after being expressly informed of such interpretation when significant amendments to the securities laws were enacted because "legislative consideration of those statutes was addressed principally to matters other than those at issue here").

passage of the 1987 amendments, the Commission was aware of arguments by respondents suggesting a narrow reading of Sections 15(b)(6) and 203(f). 41/ Moreover, the language of the pre-1987 versions of Sections 15(b)(6) and 203(f) differed from Section 19(h)(4). The pre-1987 versions of Sections 15(b)(6) and 203(f) applied to "any person associated or seeking to become associated" with a broker-dealer or investment adviser, respectively, whereas Section 19(h)(4) applies to "any officer or director of [an SRO]."

IV.

Our review of the statute and the authorities discussed above leads to our conclusion that Section 19(h)(4) authorizes the Commission to censure both current and former SRO officers and directors. As a result, we reverse the Initial Decision dismissing the proceeding against Sodano. In accordance with this determination, we remand this proceeding to the administrative law judge for a hearing that will consider the underlying charges against Sodano, 42/ which were never reached because the Initial Decision dismissed the proceeding on Sodano's motion for summary disposition. 43/

Accordingly, it is ORDERED that the initial decision be, and it hereby is, reversed and that this proceeding be remanded to the administrative law judge for further proceedings consistent with this order.

By the Commission.

Florence E. Harmon
Acting Secretary

41/ See John Kilpatrick, 48 S.E.C. 481, 487 (1986).

42/ On November 15, 2007, Sodano filed a motion seeking oral argument, which we deny. Rule 451(a) of our Rules of Practice, 17 C.F.R. § 201.451(a), provides that "[m]otions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable." However, given the age of this proceeding, we believe that oral argument would be inadvisable in light of our determination to remand this proceeding to create a further record; Sodano may request oral argument if he is aggrieved by the results from the subsequent hearing.

43/ 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.