UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15170

In the Matter of

I. JOSEPH MASSOUD,

Respondent.

I. JOSEPH MASSOUD'S REPLY BRIEF

In our August 5, 2025 filing, we asked the Commission to vacate Joe Massoud's bar from association with an investment advisor. Our request was based on three key facts: (1) Mr. Massoud's conduct was reckless, not intentional; (2) Mr. Massoud is a uniquely charitable person who is unlikely to err again; and (3) almost thirteen years have passed since the imposition of the bars in this case.

Although the Division of Enforcement ("Division") has opposed our request, it does not dispute any of these facts, nor could it. The Division suggests that the extraordinary and compelling circumstances test for relief has not been met by focusing on the rarity with which past Commissions have granted relief and suggests that a petitioner must first obtain Rule 193 relief before requesting a bar be lifted. We disagree. The Division also argues that Mr. Massoud's contention that he settled this case because he acknowledged he was reckless rather than deliberate somehow is an impermissible attempt to relitigate his case. This misconstrues Mr. Massoud's position. Contrary to the SEC staff's assertion, Mr. Massoud does not deny that his conduct amounted to insider trading. Mr. Massoud always has maintained, however, that his violation of the securities laws was reckless rather than deliberate. The Department of Justice, which declined

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to prosecute in this matter, did not dispute this conclusion.

Nearly thirteen years have elapsed since the imposition of the bars in this case, and no one disputes that Mr. Massoud has complied fully with all sanctions imposed on him. All the collateral bars have been lifted. Also undisputed is that Mr. Massoud has been extraordinarily charitable with his time and money throughout his adult life, both before and after the charges in this case. Mr. Massoud's charitable contributions are additional indicia of his character and demonstrate that the conduct that led the Commission to charge him with insider trading was not deliberate.

For these reasons, and as discussed in more detail below, Mr. Massoud now asks the Commission to vacate his bar from association with an investment advisor.

MR. MASSOUD IS NOT A RISK TO INVESTORS SO HIS BAR SHOULD BE VACATED

The Commission has the authority to modify or vacate consent orders, including administrative bars, "in compelling circumstances." *In re Salim B. Lewis*, Release No. 51817 (June 10, 2005) at *2 (vacating bar order in part where petitioner received a presidential pardon and demonstrated equitable reasons for vacating the bar).

The Commission historically has required a petitioner seeking to have a bar lifted to demonstrate "that there would be no adverse impact on the public interest and the protection of investors if the bar were vacated." *In re Cozzolino,* Exchange Act Rel. No. 49001, 2003 SEC LEXIS 3083, 2003 WL 23094746, at *2 (Dec. 29, 2003). In the past, the Commission has weighed a variety of factors when deciding whether the public impact test was met. No one factor is dispositive. *In re Lewis*, Release No. 51817at *10. Those factors here weigh heavily in favor of vacating Mr. Massoud's remaining bar.

A. The Circumstances of the Violation Weigh In Favor of Vacating the Bar

The factual circumstances of Mr. Massoud's violation are not disputed. Mr. Massoud started trading in the securities of Patriot for his personal account in 2007 and continued that

trading through 2010. On April 7, 2009, Patriot publicly announced that it was entertaining proposals for strategic investments, including the sale of the company. On May 7, 2009, Mr. Massoud executed a non-disclosure agreement on behalf of his company, Compass Group Management LLC ("Compass Group") with Patriot. Mr. Massoud did not access any new information concerning a merger, acquisition, or other major event that would have had an impact on the price of Patriot's shares after signing the NDA. At the time, Mr. Massoud's firm had entered into approximately 165 NDAs. Almost all the NDAs involved private companies Those companies therefore did not have publicly traded stock. Regrettably, when Mr. Massoud executed the NDA with Patriot capital, he overlooked the fact that he was prohibited from trading in the shares of that company. When Mr. Massoud continued to trade in Patriot stock he did so in his own name and brokerage account. This case is the only time Mr. Massoud has violated the law.

The Division neither addresses any of these circumstances in its Opposition, nor does it cite any cases with similar facts to support its contention that relief is not warranted. Instead, it focuses on the fact that Mr. Massoud was not criminally prosecuted and suggests that he has not suffered significant consequences due to his misconduct.[1] This argument disregards the fact that the Department of Justice declined prosecution in this case because Mr. Massoud's violation was aberrant and not intentional.

The Division also argues that by addressing the fact that his violation was reckless rather

[1] The Division claims that *S.E.C. v Happ*, which assessed the appropriateness of a civil penalty initially imposed in an insider trading case, supports its position. *S.E.C. v. Happ*, 392 F.3d 12, 32 (1st Cir. 2004). The factors enumerated in *Happ* are "(1) the egregiousness of the violations; (2) the isolated or repeated nature of the violations; (3) the defendant's financial worth; (4) whether the defendant concealed his trading; (5) what other penalties arise as the result of the defendant's conduct; and (6) whether the defendant is employed in the securities industry." *Id.* Contrary to the SEC staff's assertion, five of these factors support vacating Mr. Massoud's bar. As we have explained, Mr. Massoud's violation was not egregious as it was not deliberate. Mr. Massoud only violated securities law once. Mr. Massoud did not conceal his trading. Mr. Massoud paid disgorgement and agreed to have a number of different bars imposed on him. Finally, Mr. Massoud is not currently employed in the securities industry.

than deliberate, Mr. Massoud somehow supposedly is denying that he violated the securities laws. This is not correct. Since the inception of the matter over thirteen years ago, Mr. Massoud unequivocally has acknowledged that his trades of Patriot stock were improper. Indeed, contrary to the SEC staff's assertion, the fact that Mr. Massoud settled this case and agreed to a full array of sanctions prior to the staff instituting an action itself evidences that he clearly accepted responsibility for his conduct. The facts, however, demonstrate that Mr. Massoud's violation was the result of recklessness, not deliberate misconduct. Mr. Massoud recognizes that recklessness is a sufficient basis for an insider trading violation. *S.E.C. v. Obus*, 693 F.3d 276, 286 (2d Cir. 2012).

B. Public Interest Considerations Weigh in Favor of Vacating the Bar

Mr. Massoud has been incredibly charitable with both his time and money for his entire adult life, a fact that the Division does not dispute. Indeed, in the Division's words Mr. Massoud has been, "a generous, charitable, accomplished professional both before and after the 2009 conduct underlying his insider-trading violation."

The Division argues that this is not "a compelling reason for why it would be in the public interest to vacate the bar." This argument is contradicted by at least one decision in which the Commission has said that a lengthy history of charitable works is a factor in favor of relief. *In re Lewis*, Release No. 51817at *11.

Mr. Massoud's substantial charitable contributions of his time and money are evidence of his good character and support the conclusion that vacating his bar is in the public interest both because it will allow Mr. Massoud to make even greater charitable contributions in the future and because these indicia of his good character are evidence that he will not violate the securities laws again.

RULE 193 RELIEF IS NOT SUITED TO MR. MASSOUD'S GOALS

In its opposition the Division notes that Mr. Massoud has not sought interim Rule 193 relief before asking the Commission to lift his bar. No rule or law requires such a course.

Mr. Massoud has not sought relief pursuant to Rule 193 because he is the CEO of his own private company. He does not have anyone in his company who can provide the kind of supervision that would satisfy Rule 193.

Moreover, to the extent that the Division suggests that prior Commission decisions have said that interim relief is required before the Commission will agree to terminate, it misreads *Cozzolino*, which makes it clear that "prior relief," is only one factor in determining whether a bar should be lifted. Here, Mr. Massoud's collateral bars have been lifted as improperly imposed.

RECENT DECISIONS HIGHLIGHT THAT LIFETIME BARS ARE DISFAVORED

The Division focuses its argument on the fact that prior Commissions have rarely granted relief from associational bars. Although this historically may have been true, recently there has been a shift in how both courts and the Commission approach lifetime bars. This case – at any time - presents the unique constellation of facts that make the lifting of the associational bar appropriate.

In the past few years, courts across the country have issued decisions highlighting that permanent bars are an extreme remedy that should be reserved only for egregious conduct. See e.g.: *Sec. & Exch. Comm'n v. Miller*, No. CV DLB-19-2810, 2024 WL 4534512 (D. Md. Oct. 21, 2024) (holding that even though defendant's conduct was egregious, the court was concerned about recidivism, and the defendant showed no remorse, a lifetime bar was too severe a penalty because defendant was a first-time offender); *United States Sec. & Exch. Comm'n v. Findley*, 718 F. Supp. 3d 125 (D. Conn. 2024), aff'd sub nom. *United States Sec. & Exch. Comm'n v. Halitron,*

Inc., No. 24-1052, 2025 WL 678776 (2d Cir. Mar. 3, 2025) (holding that even though defendant's actions were carried out with scienter and for personal enrichment, they were not so egregious as to warrant a permanent bar); *Sec. & Exch. Comm'n v. Ibrahim Almagarby*, 92 F.4th 1306 (11th Cir. 2024) (finding that a permanent penny-stock bar was an abuse of discretion because defendant's conduct, though recurrent, lacked scienter and was not egregious).

Notably, in April 2025, the Commission issued two orders granting reentry, explicitly abandoning the stringent "extraordinary circumstances" test in applications pursuant to Rule 193 historically applied to in determining whether to vacate bars. See *In re Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on Behalf of Roger T. Denha*, Release No. 40-6872; *In re Application on Behalf of Manish Singh*, Release No. 3311372 (vacating prohibition against trading in penny stocks).

CONCLUSION

Accordingly, we request that the Commission vacate Mr. Massoud's bar from association with an investment advisor for the three reasons set forth at the beginning of this memorandum: the fact that Mr. Massoud's violation was not deliberate, the passage of time since the bar was imposed, and Mr. Massoud's extraordinary charitable contributions.

Dated: November 21, 2025

Respectfully submitted,

//s// Robert J. Anello
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