UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71260 / January 8, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3752 / January 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15672

In the Matter of Sandeep Aggarwal, Respondent.	:	**RESPONDENT SANDEEP AGGARWAL'S PETITION FOR RECONSIDERATION**

Upon the accompanying memorandum of law and the papers filed in support hereof, Respondent Sandeep Aggarwal respectfully petitions the Securities and Exchange Commission for reconsideration of its January 8, 2014 Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings and Imposing Remedial Sections, in the above-captioned administrative proceeding.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT SANDEEP AGGARWAL'S PETITION FOR RECONSIDERATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

OS Received 11/17/2021

Statutes

Other Authorities

PRELIMINARY STATEMENT

Respondent Sandeep Aggarwal ("Aggarwal") hereby respectfully petitions the Securities and Exchange Commission for reconsideration of its January 8, 2014 Order (the "Administrative Order"), which bars him from associating with brokers-dealers and other classes of industry professionals ("broker-dealer bar") and from participating in any penny stock offering ("penny stock bar").

Aggarwal files this Petition for relief from the bars because he is laboring under the weight of their influence in ways that were unintended and beyond the purpose for which they were designed. Specifically, the bars are hindering the ability of Droom—a billion-dollar, India-based e-commerce company founded by Aggarwal—to raise financing and issue stock on public exchanges due to Aggarwal's affiliation with the company, which is *not* prohibited and is entirely proper. Moreover, due to the entry of a *nolle prosequi* dismissing all criminal charges against Aggarwal, a substantial basis for the Administrative Order no longer exists.

As a result of these unintended consequences and because Aggarwal poses no danger to the public or market participants, the administrative bars against Aggarwal must be removed. If not entirely removed, at the very least, the Administrative Order should be modified to conform with the mandates of *Bartko v. S.E.C.*, 845 F.3d 1217 (D.C. Cir. 2017) and *Teicher v. S.E.C.*, 177 F.3d 1016 (D.C. Cir. 1999).[1] Aggarwal's alleged conduct occurred in July 2009, before passage of the Dodd-Frank Act. Although he was then associated with a broker dealer and investment adviser, he had no association with any municipal securities dealer (or any other classes named in

[1] On October 15, 2021, pursuant to the Commission's expedited program, Aggarwal submitted a request to vacate the collateral bars in his Administrative Order in light of *Bartko v. S.E.C.*

the Administrative Order), nor had he promoted or participated in offering any penny stock. Thus, the bar of those collateral classes and the penny stock bar should be removed.

Finally, and in the alternative, we respectfully request that the broker-dealer bar and the penny stock bar be at least temporarily *suspended* for a finite period of time, to give Aggarwal a chance to build a track record of compliant conduct.

STATEMENT OF FACTS

Aggarwal was born and raised in Chandigarh and now resides in New Delhi, India. He received a bachelor's degree in Commerce and Business from Kurukshetra University in 1992, a master's degree in Finance from Devi Ahilya Vishwavidyalaya in 1996, and an MBA in Strategy in 2001 from Washington University; he worked in the financial services industry from approximately 1995 to 2011, including in the U.S., at Charles Schwab, Microsoft, Citigroup, Oppenheimer, and Collins Stewart.[2] While working as a securities market analyst in the U.S., Aggarwal lived in San Francisco, California with his then-wife and two sons. Aggarwal left his work in the financial services industry to become a tech entrepreneur and in July 2011 founded his first "unicorn" company, Shopclues, an online marketplace headquartered in Gurugram, India.[3]

In 2014, Aggarwal founded what would become yet another "unicorn" company, Droom, an online transactional marketplace for buying and selling used and new automobiles.[4] Over the past seven years, Droom has invested millions of dollars and thousands of human hours to build a

[2] Sandeep Aggarwal, LINKEDIN, https://www.linkedin.com/in/sandeepaggarwal/?originalSubdomain=in (last visited on Oct. 27, 2021).
[3] *ShopClues Next Big e-Preneur Challenge: A chance to win INR 1 Crore*, SHOPCLUES.COM (Mar. 20, 2017), https://www.shopclues.com/blog/news/shopclues-next-big-e-preneur-challenge-a-chance-to-win-inr-1-crore-for-the-next-big-e-commerce-idea.
[4] *See About Us*, DROOM, https://droom.in/about (last visited Oct. 27, 2021).

full technology-based transactional marketplace[5] and is currently in the process of obtaining financing and preparing to issue its stock on public exchanges.[6]

A. The Criminal Proceeding

On July 26, 2013, the U.S. Attorney's Office for the Southern District of New York ("SDNY") charged Aggarwal by complaint with conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349 (the "Criminal Proceeding"). *See U.S. v. Aggarwal*, No. 13 Cr. 884 (CM) (S.D.N.Y.), Dkt. No. 1. The charges alleged that Aggarwal had tipped material non-public information ("MNPI") concerning an anticipated partnership between Microsoft Corp. and Yahoo! Inc. to Richard Lee ("Lee"), then a portfolio manager at the hedge fund SAC Capital, who traded on the information. *Id.*

On November 8, 2013—three months after his arrest—Aggarwal accepted responsibility for his conduct, based upon his then-understanding of insider trading law, and pled guilty, pursuant to a cooperation agreement, to a criminal Information charging him with one count of conspiracy to commit securities fraud and one count of securities fraud. The district court accepted Aggarwal's plea on December 3, 2013. *Id.* at Dkt. No. 18.

Aggarwal's sentencing date, originally scheduled for May 2014, was repeatedly adjourned to accommodate developments in the law of insider trading and in the criminal proceedings related to co-defendant Lee. In December 2014, the Second Circuit decided *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), which clarified the law with respect to the insider-trading charges to

[5] Manish Singh, *Indian automobile marketplace Droom valued at $1.2 billion in pre-IPO funding*, TECH CRUNCH (July 28, 2021), https://techcrunch.com/2021/07/27/indian-automobile-marketplace-droom-valued-at-1-2-billion-in-200-million-pre-ipo-funding/

[6] *Droom, online marketplace for automobiles, files Rs 3,000 cr IPO papers*, THE FREE PRESS JOURNAL (Nov. 12, 2021), https://www freepressjournal.in/business/droom-online-marketplace-for-automobiles-files-rs-3000-cr-ipo-papers.

which Aggarwal had pled guilty. *See also Salman v. United States*, 137 S. Ct. 420 (2016); *United States v. Martoma*, 869 F.3d 58 (2d Cir. 2017); *United States v. Martoma*, 894 F.3d 64 (2d Cir. 2018) (amending decision from 2017).

On June 21, 2019, based on *Newman* and its progeny, the district court granted co-defendant Lee's motion to withdraw his guilty plea, which was substantially similar to Aggarwal's. Thereafter, in or around November 2019, the SDNY filed a *nolle prosequi* dismissing the charges against Lee and Lee subsequently settled his civil charges with the SEC.

On February 13, 2020, the SDNY filed a *nolle prosequi* with respect to Aggarwal, concluding that his further prosecution would not be in the interests of justice. *U.S. v. Aggarwal*, Dkt. No. 74. Chief Judge McMahon entered the *nolle prosequi* on February 14, 2020. *Id*. Accordingly, all criminal charges against Aggarwal were withdrawn and dismissed as of that date.

B. The SDNY Civil Proceeding

On July 30, 2013, the Commission filed an amended complaint against Aggarwal, charging him with civil violations of the securities laws, based on the same conduct as that alleged in the Criminal Proceeding (the "SDNY Civil Proceeding"). *See SEC v. Lee & Aggarwal*, No. 13-cv-5185 (S.D.N.Y. 2013), Dkt. No. 5. On December 6, 2013, the court entered judgment against Aggarwal, on consent, enjoining him from violating Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder (the "initial SDNY Injunction"), a judgment that would serve as a precursor to the Administrative Order. *Id.* at Dkt. No. 20. This judgment further ordered Aggarwal to pay a civil penalty of an indeterminate amount upon motion by the SEC. *Id.* Similar to the Criminal Proceeding, the SDNY Civil Proceeding was then adjourned for several years while the courts worked their way through insider trading jurisprudence.

On February 18, 2020, at or about the same time that Aggarwal received a *nolle prosequi* dismissing all criminal charges against him, a final judgment, containing the same mandate as set forth in the initial SDNY Injunction, was entered in Aggarwal's SDNY Civil Proceeding (the "final SDNY Injunction"). *Id.* at Dkt. No. 92. In connection with the final judgment, Aggarwal entered a Consent without admitting or denying the allegations in the Amended Complaint and paid a civil penalty in the amount of $32,428.95. *Id.* The final judgment did not incorporate or otherwise modify the terms of the 2014 Administrative Order, and Aggarwal did not re-consent to the Administrative Order.

C. The Instant Administrative Proceeding

Based on Aggarwal's guilty plea in the Criminal Proceeding and the initial SDNY Injunction entered on December 6, 2013, on January 8, 2014, the Commission issued its Administrative Order against Aggarwal. The Administrative Order bars Aggarwal from:

> (i) associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (i.e., the broker-dealer bar); and (ii) participating in any offering of a penny stock, including by acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock (i.e., the penny stock bar). *Id.*

In anticipation of those proceedings, Aggarwal submitted an Offer of Settlement, which the Commission accepted. At that time, the *Newman* decision that began the series of cases that clarified insider trading law—including the theory under which Aggarwal was being prosecuted—had not yet been issued; rather, *Newman* was decided 11 months after the Administrative Order.

The Commission made five findings in connection with its Administrative Order, the first three of which, in relevant part, set forth that Aggarwal: (i) worked at a registered broker dealer and investment adviser; (ii) was charged on July 30, 2013 by amended complaint with securities

OS Received 11/17/2021

laws violations; and (iii) was permanently enjoined from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder on December 6, 2013. Order § III. at ¶¶ 1-3. The last two findings related to Aggarwal's Criminal Proceeding, noting simply that he had pled guilty to securities fraud and conspiracy to commit securities fraud on November 8, 2013. *Id.* at ¶¶ 4-5. As noted above, however, the Criminal Proceeding was later dismissed on the motion of the prosecutors. The Administrative Order has been in place since January 8, 2014, without any infraction on Aggarwal's part.

D. Unintended Collateral Consequences from the Administrative Order

In August 2014, Aggarwal was permitted to return to India to await sentencing and reunite with his then-wife and two sons. *U.S. v. Aggarwal*, Dkt. No. 24. During that same year, Aggarwal founded his second company, Droom. As of July 2021, Droom was valued at $1.2 billion.[7]

Droom has imminent plans to go public and issue stock on exchanges in India, Singapore, and the U.S. *See* Exhibit 1, Letter from Amarpreet Singh, Droom's Vice President of Finance at 1. Indeed, the company is currently gearing up to list its stock on the National Stock Exchange of India Ltd. Unfortunately, however, the Administrative Order has adversely affected the company in ways that were presumably unintended by the Commission, including by chilling potential investments and business opportunities.

On its face, the Administrative Order does not bar Aggarwal from serving as an officer or director of a public company or from being involved in promoting its initial public offering. However, several significant potential investors have declined to do business with Droom expressly because of the ambiguity surrounding the bars in the Administrative Order. *See* Exhibit

[7] Manish Singh, *Indian automobile marketplace Droom valued at $1.2 billion in pre-IPO funding*, TECH CRUNCH (July 28, 2021), https://techcrunch.com/2021/07/27/indian-automobile-marketplace-droom-valued-at-1-2-billion-in-200-million-pre-ipo-funding/.

2, Letter from Vineet Bahl, Droom's Associate Vice President of Legal ("I have attended several clarifications and follow-up calls with the legal and/or compliance teams of various institutional investors who could not develop full comfort from their legal and/or compliance teams to invest in Droom, specifically due to the Order against Mr. Aggarwal."). The Administrative Order has also led Droom to face unforeseen scrutiny from Indian regulators, including the Securities and Exchange Board of India ("SEBI"), in connection with its plans to go public. *See Id.*

Specifically, in 2020, after Aggarwal's criminal charges were dismissed and the SDNY Civil Proceeding was settled, Droom began securing its pre-IPO funding. During this critical time, and even though the Administrative Order does not bar Aggarwal from serving as Droom's CEO or from being involved in the company's initial public offering, many investors declined to invest in Droom specifically because of the uncertainty and ambiguity in the Administrative Order as to what exactly Aggarwal can and cannot do with respect to Droom. *See* Exhibit 3, Letter from Akshay Singh, Droom's Chief Strategy Officer ("[T]here have been several examples when investment teams of institutional investors found Droom's story very compelling and were quite keen to invest in Droom but could not get final approval or comfort from their compliance and/or legal teams due to the SEC Administrative Order against Sandeep Aggarwal."). These unforeseen and unintended consequences of the Administrative Order are not only punishing Aggarwal and Droom, but also its investors and employees who have devoted an extraordinary amount of time and effort to build the company with the goal of eventually issuing shares on stock exchanges around the world. *See* Exhibit 1 ("Droom, under the leadership of Mr. Aggarwal, has the potential to build a $20-$25bn. company in the next 5-6 years and generate hundreds of thousands of direct and/or indirect jobs. However, the terms of the SEC administrative order against Mr. Aggarwal makes most institutional investors nervous and serves as an investment overhang.").

Moreover, in connection with Droom's plans to go public in India, the company has faced questions from SEBI because it is not clear to that regulator the breadth or extent of the bars in the Administrative Order and whether they might bar Aggarwal, as Droom's CEO, from being involved in the initial public offering. *See* Exhibit 2.

ARGUMENT

We respectfully submit that the Administrative Order should be vacated or, alternatively, modified because it is harming Aggarwal and his company in ways that were unintended and go well beyond its scope and purpose by chilling investment in Aggarwal's company and generally harming his productive life as an entrepreneur. These consequences have ensued even though Aggarwal has no plans to associate with any broker dealer (or other barred entities) and does not intend to participate in the offering of any penny stock. The Administrative Order is thus overbroad and more punitive than intended or agreed to by Aggarwal when he consented to its entry in 2014. Moreover, one of the two primary bases for entry of the Administrative Order—the Criminal Proceeding—was dismissed. For these reasons, the Administrative Order should be vacated.

If not entirely vacated, the Administrative Order should at least be modified to comply with the mandates of *Bartko* and *Teicher*, to prevent its retroactive application to conduct with which Aggarwal had no nexus at the time of imposition. Finally, in the alternative, we respectfully request that the broker-dealer bar and the penny stock bar be at least temporarily suspended to allow Aggarwal to demonstrate a satisfactory compliance record.

A. Legal Standard

1. Standard of Review for Modifying or Vacating Bars

Pursuant to Exchange Act § 15(b)(6)(A), the Commission is authorized to bar from association with a broker or dealer or participation in an offering of any penny stock, anyone associated, or seeking to become associated with, a broker or dealer, or any person who was participating in the offering of a penny stock if such bar is in the public interest and:

> (i) the person has committed or omitted certain acts, including having willfully violated any provision of the Exchange Act; (ii) the person has been convicted within the last ten years of certain crimes, including crimes involving the purchase or sale of securities arising out of the conduct of the business of a broker or dealer; 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 a security. 15 U.S.C.A § 78o(b)(6)(A).

The Commission has held that "[a]gency action resting on several independent grounds remains 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." *In re Salim B. Lewis*, Release No. 51817 (June 10, 2005) at *2.

The Commission will vacate a bar "in compelling circumstances." *In re Lewis*, Release No. 51817 at *2 (vacating bar order in part where defendant received a presidential pardon and demonstrated equitable reasons for vacatur); *see also In re Sandeep Goyal*, Release No. 4339 (Feb. 23, 2016) (finding compelling circumstances and vacating bar order where defendant received a *nolle prosequi* and vacatur of his civil judgment); *In re Linus N. Nwaigwe*, Release No. 69967 (July 11, 2013) (vacating bar order where criminal conviction was reversed).

Several factors guide the inquiry into whether a bar should be vacated or modified:

> (i) The nature of the misconduct at issue in the underlying matter; (ii) the time that has passed since issuance of the administrative bar; (iii) the compliance record of, and regulatory interest in, the petitioner since

> issuance of the administrative bar; (iv) the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar; (v) whether the petitioner has identified verifiable, unanticipated consequences of the bar; (vi) the position and persuasiveness of the Division of Enforcement; (vii) 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. *In re Lewis*, Release No. 51817 at *4.

The Commission also considers whether it is consistent with the public interest to permit the petitioner to function in the industry without the safeguards. *In re Stephanie Hibler*, Release No. 70140 (Aug. 8, 2013).

The Commission generally prefers to grant incremental relief rather than fully vacate a bar. *See In re Jesse M. Townsley, Jr.*, Release No. 52161 (July 29, 2005). Where appropriate, the Commission will modify a bar by vacating a portion of it so that the petitioner can associate with certain entities while still being subject to the remaining bar and, thus, the Commission's oversight. *See, e.g.*, *In re Lewis*, Release No. 51817 at *5; *see also In re Hibler*, Release No. 70140 at *3. Relatedly, the Commission prefers that petitioners first seek consent to associate with a regulated entity to establish a "track record" of association without incident. *In re Hibler*, Release No. 70140 at *3) ("Because [Hibler] has not previously obtained Commission consent to associate with a regulated entity and thus cannot establish a 'track record' of association without incident, Hibler falls short of what we previously have found to constitute compelling circumstances sufficient to vacate a bar order.").

2. Standard of Review for Impermissibly Retroactive Collateral Bars

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), the Commission may collaterally bar a participant from associating with all classes in the securities market in one proceeding. A collateral bar prohibits a participant "from

associating in a capacity in the securities industry with which [the participant] was not associated or [was] not attempting to associate at the time of [the] securities law violations."[8]

Before Dodd-Frank, the Commission was required to show, among other things, that the participant was associated—or seeking to become associated—with each class or industry from which debarment was sought. *See Bartko*, 845 F.3d at 1226. If the Commission intended to bar a participant from associating with classes or industries with which he was not associated, it had to conduct an analysis to determine whether it was in the public interest to do so. *Id.*

Dodd-Frank effectively removed the industry-specific "nexus" required before barring a participant from a class with which he was not associated, making available an industry-wide ban for class-specific misconduct. *Bartko*, 845 F.3d at 252-53 (citing *Teicher*, 177 F.3d at 1020-21). The application of post-Dodd-Frank penalties to pre-Dodd-Frank misconduct constitutes a quintessential example of "attaching new legal consequences to events contemplated before Dodd-Frank's enactment" and is legally impermissible because Congress did not expressly authorize such retroactive application. *Id.* (citing *Vartelas v. Holder*, 566 U.S. 257, 273 (2012)).

B. Analysis

1. Compelling Circumstances Justify Removing the Bars Against Aggarwal

Compelling circumstances in this case militate in favor of the Commission's removal of the bars in the Administrative Order. As set forth above, the Commission looks to several factors to determine whether it should vacate or modify a bar. *See In re Lewis*, Release No. 51817 at *4. As applied to Aggarwal, those factors overwhelmingly demonstrate that there are compelling reasons to vacate or, at the very least, modify the bars against him.

[8] *Commission Statement Regarding Decision in Bartko v. SEC*, SEC.GOV (Feb. 23, 2017), https://www.sec.gov/news/statement/commission-statement-regarding-bartko-v-sec.html; *see also Bartko*, 845 F.3d at 1226.

First, the underlying conduct sustaining the bars occurred 12 years ago and there is no evidence that anything similar has occurred since. *See S.E.C. v. Coldicutt*, 258 F.3d 939, 943 (9th Cir. 2001) (holding that "an extended period of compliance is a factor supporting termination of an injunction"). Aggarwal was never convicted of the alleged crime on which the Administrative Order is partially based; the charges were dropped and dismissed in 2020 pursuant to a *nolle prosequi*. With respect to the nature of the conduct, Aggarwal did not trade on MNPI, nor did he receive any financial benefit in connection with the alleged conduct. *See In re Lewis*, Release No. 51817 at *4. Rather, he is alleged to have tipped MNPI to Lee, who allegedly traded on the information and whose guilty plea was later vacated. The initial "tipper," who allegedly provided MNPI to Aggarwal, was never prosecuted.

Moreover, the legal theory on which Aggarwal was prosecuted was subsequently clarified by several courts, including the Second Circuit and U.S. Supreme Court. Before the filing of charges against him, Aggarwal had an unblemished record. Likewise, since the imposition of the initial SDNY Injunction and the Administrative Order—approximately 8 years ago—there has been no infraction on Aggarwal's part. He had a satisfactory compliance record before the 12-year-old alleged conduct and although he has not worked in any specific capacity in the securities industry since 2011, he has maintained a record of compliance with the law and, therefore, the SDNY Injunctions. *See S.E.C. v. Lewis*, 423 F. Supp. 2d 337, 341 (S.D.N.Y. 2006) ("The passage of some twenty years since Lewis committed his crime, during which time he has maintained continued compliance with the law, and therefore, the injunction, is not to be ignored.").

The Commission also looks to whether the petitioner has been granted prior relief. *See In re Lewis*, Release No. 51817 at *4. For example, SEC Rule of Practice 193 permits barred individuals to apply for consent to associate or "re-enter" the securities industry. *See* 17 C.F.R. §

201.19(a)(2). Among other things, applicants must show that they have a proposed employer, set forth the terms of such planned employment, and explain the manner and extent of supervision to be exercised over the applicant. *See, e.g.*, *In re Michael L. Silver*, Release No. 4691 (Apr. 26, 2017). An application may not be granted if it is in the form of "a general, unconditional request" for consent to associate. *See In re Brett Thomas Graham*, Release No. 5060 (Nov. 2, 2018).

These criteria are inapplicable to Aggarwal, however, as he has no intention to re-enter the securities industry as an analyst, no intention to associate with any of the classes of securities industry professionals with whom he is barred from associating, and no desire to participate in any penny stock offering. In fact, ***Aggarwal has never been associated with most of the classes of professionals in the broker-dealer bar and has never participated in a penny stock offering***. He ceased working as a market analyst in the securities industry *before* he was charged with the underlying conduct and has since become a successful entrepreneur in the tech space.

That Aggarwal no longer works for a broker-dealer or investment adviser (and does not intend to), and that he does not seek to participate in the promotion of any penny stock, all support the conclusion that any application by Aggarwal to re-enter the securities industry pursuant to SEC Rule of Practice 193 would therefore be futile. *See In re Graham*, Release No. 5060 at *7. To this end, Aggarwal is instead seeking relief from the Administrative Order due to unintended consequences that are having overbroad and chilling effects on Aggarwal's company and his career as an entrepreneur, neither of which has anything to do with the underlying conduct, nor are they related to the intended purpose of the broker-dealer bar and penny stock bar. *See id.* ("[T]he Commission will act in response to those situations in which the equitable need for relief warrants vacating or modifying the bar order.").

The SEC also considers whether it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar. *See In re Hibler*, Release No. 70140 at *2. Aggarwal is not seeking to function in the securities industry and thus investors do not need protection from his activities. Moreover, the SEC always retains the ability to pursue claims against Aggarwal, as against all others, should he violate the U.S. securities laws. *See Lewis*, 423 F. Supp. 2d 337 at 341.

Aggarwal's case is akin to that in *S.E.C. v. Lewis*, in which the district court vacated an SEC injunction after the petitioner received a presidential pardon of his 12-year-old criminal conviction. *Id.* at 341-42. In vacating Lewis's injunction, the court held that "the permanent injunction and bar order appear to represent little more than continued punishment, something a pardon clearly prohibits." *Id.* The court explained that the injunction required only that Lewis "obey the law" if he engaged in future securities trading, a requirement to which he would be subject in any event. *Id.* The court also concluded that the SEC's concerns that vacating the injunction would threaten the validity of an important enforcement mechanism could be mitigated because Lewis received a presidential pardon and federal regulations now outlaw the very practice that his actions were designed to thwart. *Id.* at 341.

Similar to Lewis, Aggarwal's alleged misconduct occurred in 2009—almost 12 years ago—but, unlike Lewis, Aggarwal was never convicted of a crime. Instead, he received a *nolle prosequi* dismissing all charges, which, like a pardon, constitutes a changed factual condition since imposition of the Administrative Order. Before the charges, Aggarwal worked in the securities industry for almost 15 years and had an unblemished record. Likewise, since the alleged misconduct and imposition of the bars in 2014, Aggarwal, like Lewis, has had a spotless and

OS Received 11/17/2021

satisfactory compliance record. *See Lewis*, 423 F. Supp. 2d at 340-41. Unlike, Lewis, moreover, Aggarwal is also able to demonstrate unintended consequences of the Administrative Order.

As discussed herein, the effect of the bars against Aggarwal has extended well beyond their intended or permitted reach, causing undue hardship and unintended consequences. Indeed, the bars have become substantially more onerous as shown by the unforeseen obstacles Aggarwal has faced in trying to promote and raise funds for his company, Droom.[9] Although the bars in no way prohibit Aggarwal from serving as the CEO of Droom (or any public company), now that Droom has turned to the public markets, investors have shown a reluctance to invest in the company expressly due to questions about the bars imposed by the Administrative Order. *See* Attached Exhibits 1-3. In this way, the bars are having the unintended consequence of hampering Droom's ability to secure financing and offer its stock on public exchanges. As a result, the Administrative Order has a substantial chilling effect, making it more punitive than intended or warranted.[10]

Dismissal of the criminal case (which was based on an isolated event, *see S.E.C. v. Warren*, 583 F.2d at 121), Aggarwal's unblemished record before and after the alleged conduct in 2009, his positive impact on the tech industry and the market via Droom, and the unintended consequences that flow directly from the Administrative Bar, all militate in favor of granting the petition for reconsideration to remove the bars. *In re Lewis*, Release No. 51817 at *4-5.

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[9] *See S.E.C. v. Crofters, Inc.*, No. C-2-70-351, 1982 WL 1362, at *5 (S.D. Ohio Aug. 23, 1982) ("[T]here is a stigma imposed upon [defendants] as a result of the injunction. The stigma is real and affects not only their public image, but also has some effect on their attractiveness to potential investors. . . . Given the low level of necessity for prospective application of the injunction, and the harm imposed by the injunction, equity requires that it be dissolved. A decade of the injunction's existence during which significant legal and factual changes have occurred demonstrates that the injunction is no longer effective in achieving its objective and that it would be inequitable to allow it to continue in this manner.").

[10] *See S.E.C. v. Warren*, 583 F.2d 115, 121 (3d Cir. 1978) (vacating injunction where 10 years had elapsed since the underlying misconduct, which was an isolated offense in an esoteric area of the law; there was no evidence of any recurrence or recidivism, particularly since the injunction was entered; and the defendant had suffered personal humiliation and business embarrassment, including being resigned from corporate boards and foreclosed from certain substantial business opportunities).

2. The Administrative Order Includes Impermissibly Retroactive Collateral Bars and Must be Modified

The bars against Aggarwal in the Administrative Order are based solely on conduct that occurred in 2009, prior to Dodd-Frank. Because the bars include classes and industries with which Aggarwal was not associated at the time and because they are impermissibly retroactive, they must be removed. *Bartko*, 845 F.3d at 1220–21; *Koch v. S.E.C.*, 793 F.3d 147, 158 (D.C. Cir. 2015). As Aggarwal was only associated with a broker dealer and investment adviser at the time of his alleged conduct, barring him from associating with a municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization is an impermissibly retroactive application of Dodd-Frank. *See Bartko*, 845 F.3d at 1220–21.

Moreover, although Congress authorized the Commission to impose penny stock bars in 1990, prior to Aggarwal's alleged conduct, Aggarwal has never been involved with penny stock and has no intention to participate in any offering of penny stock. Thus, the penny stock bar is an impermissible collateral bar as applied to Aggarwal. *See Teicher*, 177 F.3d at 1019-20 (concluding that the Commission could not bar a participant from a class with which he had no association or nexus). The petitioner in *Bartko* was not barred from participating in any offering of penny stock so the court did not reach the issue. However, the same principles from *Bartko* and *Teicher* apply here, where Aggarwal has been barred from a sector or industry with which he had no nexus at the time of the imposition of the bars. Further, Aggarwal and his company, Droom, are suffering unintended, punitive consequences from the ambiguity surrounding the language in the penny stock bar and thus equitable reasons militate in favor of removing the bar.

3. Alternatively, the Broker-Dealer Bar and the Penny Stock Bar Should be Temporarily Suspended or Lifted so that Aggarwal Can Establish a Track Record of Compliant Conduct.

Finally, and in the alternative, we respectfully request that the broker-dealer bar and the penny stock bar be at least temporarily suspended or lifted for a finite period of time, so that Mr. Aggarwal can build a track record of compliant conduct. *See, e.g.*, *In re Hibler*, Release No. 70140 at *4; *In re Lewis*, Release No. 51817 at *4-5. As mentioned, *supra*, Aggarwal does not intend to associate with any of the barred classes or entities, nor does he intend to promote or participate in the offering of any penny stock. Thus, Aggarwal has had no basis upon which to make a formal application for consent to associate pursuant to SEC Rule of Practice 193. However, the Commission has discretion to lift or modify a bar order when it comports with the public interest and investor protection. *In Re Cozzolino*, Release No. 49001 (Dec. 29, 2003) (vacating bar order where, if petitioner could not obtain new employment in the industry, he "[would] not be in a position to establish the 'track record' of association without restrictions that the Division indicates it would wish to see before supporting relief from the bar").

Aggarwal's company has no intention of issuing penny stock in connection with its upcoming initial public offerings and it appears very unlikely, given its large scale, that Droom will ever become a "penny stock" by default.[11] However, because it is in the realm of theoretical (if unlikely) possibility that, in the future, the company's stock could fall into the SEC's definition of a "penny stock" pursuant to 17 C.F.R. § 240.3a51-1, the Commission should grant incremental relief to Aggarwal by suspending the penny stock bar and/or permitting Aggarwal to promote or participate in the offering of penny stock for a finite period of time so that he can continue in his role as CEO of Droom and build a track record of successful compliant conduct.

[11] *See* Exhibit 2.

Likewise, although Aggarwal does not intend to associate with broker dealers or investment advisers, Droom and/or its employees may affiliate with such classes or entities in connection with its initial public offerings or otherwise. Thus, the Commission should, in the alternative, grant the same incremental relief by suspending the broker-dealer bar and/or permitting Aggarwal to associate with the barred classes for a period of time to demonstrate a compliant track record or to otherwise show, as CEO of Droom, that he can operate in a tangentially related industry (for purposes of Droom's initial public offerings) and abide by the law.

CONCLUSION

For the forgoing reasons, we respectfully request that the Commission remove the Administrative Order's broker-dealer bar and penny stock bar in their entirety. In the alternative, we request that the Administrative Order at the very least be modified, pursuant to *Bartko* and *Teicher*, to remove: (i) the bars against association with a municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and (ii) the penny stock bar. Finally, and also alternatively, we respectfully request that the Commission temporarily lift or suspend the broker-dealer bar and the penny stock bar so that Aggarwal can demonstrate compliant conduct in connection with his role as CEO of Droom.

Dated: November 17, 2021
New York, New York

By: */s/* Jeffrey A. Udell
Jeffrey A. Udell
Amanda Senske

Attorneys for Respondent

WORD LIMITATION CERTIFICATION

I hereby certify that this Petition complies with the Commission's Rules of Practice, including the length limitation set forth in 17 C.F.R. § 201.154(c). The Petition contains 5,923 words, excluding the table of contents and table of authorities, as calculated by the word processing system.

Dated: November 17, 2021
New York, New York

WALDEN MACHT & HARAN LLP

By: */s/* Jeffrey A. Udell
Jeffrey A. Udell

Certificate of Service

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 151, I hereby certify that copies of Respondent Sandeep Aggarwal's Petition for Reconsideration and its accompanying Memorandum of Points and Authorities and Exhibits 1-3 were served on the following party on November 17, 2021, via email, at the email address indicated below:

Thomas P. Smith, Jr., Esq.
Assistant Regional Director
New York Regional Office
Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, NY 10281-1022
smiththh@sec.gov

/s/ Jeffrey A. Udell

Jeffrey A. Udell
Counsel for Respondent

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71260 / January 8, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3752 / January 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15672

In the Matter of Sandeep Aggarwal, Respondent.	X : : : : : : : : : : : : : X

SANDEEP AGGARWAL'S INDEX OF ATTACHMENTS

Attachment	Description
1	Letter from Amarpreet Singh
2	Letter from Vineet Bahl
3	Letter from Akshay Singh

EXHIBIT 1

DROOM TECHNOLOGY LIMITED
(Formerly Known as Droom Technology Private Limited)
CIN: U72300DL2014PLC271386

TO WHOMSOEVER IT MAY CONCERN

My name is Amarpreet Singh and I am the Vice President (VP) of Finance at Droom Technology Limited (Droom). Droom is a Singapore holding company and runs India's largest E-Commerce platform for used automobiles. The company is currently preparing for an Initial Public Offering (IPO) and plans to be listed and issue stock on exchanges in India in 2021 and very likely in Singapore and the United States by next year.

In my role as VP of Finance, I work very closely with Droom's founder and CEO, Sandeep Aggarwal, and other senior leadership. Among other things, I am involved in helping Droom raise capital from institutional investors globally.

Droom is a technology and data-science driven company with market leadership in the online automobile industry in India, with approximately over $2bn. in annual revenue. To my knowledge, Sandeep Aggarwal is the only technology entrepreneur in India who has founded two unicorn companies in the last 10 years — ShopClues in 2011 and Droom in 2014. Although Droom has successfully raised $114mill. to date from global investors, raising capital for Droom has been fraught with issues and roadblocks due to the SEC administrative order against Mr. Aggarwal.

There have been many instances when institutional investors have liked Droom's story and wanted to invest in Droom but could not get final approval or comfort from their legal or compliance teams due to the perceived ambiguity surrounding the bars in the SEC administrative order against Mr. Aggarwal. Similarly, Droom has faced unforeseen and challenging inquiries from the Securities and Exchange Board of India (SEBI) with respect to its IPO plans in India due to uncertainties and ambiguities surrounding the language of the bars in the SEC administrative order. For example, our understanding is that SEBI has grappled with whether the bars in the SEC administrative order might prevent Mr. Aggarwal, as Droom's CEO, from being involved with the IPO.

Moreover, Droom has no plan of issuing any "penny stock" in connection with its upcoming IPO and, given Droom's average revenue and large scale, it seems very unlikely that Droom's stock will ever become a "penny stock."

We believe that Droom, under the leadership of Mr. Aggarwal, has the potential to build a $20-$25bn. company in the next 5-6 years and generate hundreds of thousands of direct and/or indirect jobs. However,

the terms of the SEC administrative order against Mr. Aggarwal make most institutional investors nervous and serves as an investment overhang.

I am available via email or phone call to add more context or background on this topic.

Yours sincerely,

Amarpreet Singh

Vice President- Finance
Droom Technology Ltd.
Email: amarpreet.singh@droom.in
Phone: +91 9654423990

Dated: November 5, 2021

EXHIBIT 2

DROOM TECHNOLOGY LIMITED
(Formerly Known as Droom Technology Private Limited)
CIN: U72300DL2014PLC271386

TO WHOMSOEVER IT MAY CONCERN

My name is Vineet Bahl and I have been heading the Legal Department at Droom for the past four (4) years.

Droom is a disruptive company with clear market leadership in the automobile e-commerce industry in India and has very compelling and steady unit economics. Droom has imminent plans to go public and issue stocks in India before the end of 2021 and plans to go public in Singapore and in the USA in 2022.

The SEC Administrative Order (hereinafter referred to as the "Order") relates to Mr. Aggarwal's role as a Wall Street Equity Research Analyst from an incident in 2009. However, the Order has led to many issues for Droom, a company and industry unrelated to Mr. Aggarwal's prior career, with respect to raising capital and listing its shares publicly. Over the years, I have attended several clarifications and follow-up calls with the legal and/or compliance teams of various institutional investors who could not develop full comfort from their legal and/or compliance teams to invest in Droom, specifically due to the Order against Mr. Aggarwal.

Further, the Order has led to exacting questions from the Securities and Exchange Board of India ("SEBI") in connection with Droom's plans to go public. Droom continues to be faced with questions and requests for clarification regarding the Order, as, for example, the SEBI is not clear on the extent or reach of the bars in the Order and thus it is uncertain if SEBI might try to prevent Mr. Aggarwal from being involved in Droom's Initial Public Offering (IPO).

Further, Droom has no intention of issuing any "penny stock" in connection with the upcoming IPOs. Because of Droom's extensive market leadership and average revenue, it is very unlikely that Droom's stock will ever become a "penny stock."

Droom, our existing investors and hundreds of employees, would have unleashed larger potential but for the Order acting as a hindrance to many other institutional investors who were looking forward to investing in Droom.

I am available in case of any questions or background on this topic.

Yours sincerely,

Vineet Bahl
AVP- Legal
Droom Technology Limited
Email: vineet.bahl@droom.in
Phone: +91- 9810914336

Dated: November 5, 2021

OS Received 11/17/2021

EXHIBIT 3

DROOM TECHNOLOGY LIMITED

(Formerly Known as Droom Technology Private Limited)
CIN: U72300DL2014PLC271386

TO WHOMSOEVER IT MAY CONCERN

My name is Akshay Singh and I am the Chief Strategy Officer at Droom Technology Limited (Droom). Droom PTE is the Singapore holding company of Droom, – India's largest e-commerce platform for used automobiles. The company is IPO-bound with plans to be listed on exchanges in India (later this year, 2021), Singapore, and the United States, likely in 2022.

In my role as Chief Strategy Officer, I work very closely with Droom's founder and CEO, Sandeep Aggarwal, and my responsibilities include helping Droom raise capital from venture capital and private equity firms, as well as other institutional investors on a global scale.

Droom has clear market leadership in the online automobile industry in India and operates on a large scale. In my numerous discussions with potential investors, there have unfortunately been several examples when investment teams of institutional investors found Droom's story very compelling and were quite keen to invest in Droom but could not get final approval or comfort form their compliance and/or legal teams due to the SEC Administrative Order against Sandeep Aggarwal.

The presence of the bars in the SEC Administrative Order and the uncertainty as to what Mr. Aggarwal can and cannot do with respect to Droom makes institutional investors uncomfortable. The SEC Administrative Order has also led to unforeseen questions and roadblocks from third parties and regulators in India, including the Securities and Exchange Board of India, particularly in connection with Droom's plan to go public.

I am available via phone call to add more context or background on this topic.

Yours sincerely,

Akshay Singh
Chief Strategy Officer

Droom Technology Ltd.
Email: akshay.singh@droom.in
Phone: +91-9052222879

Dated: November 5, 2021