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,	:
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Respondent.	:
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REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT SANDEEP AGGARWAL'S PETITION FOR RECONSIDERATION

OS Received 01/28/2022

Table of Contents

OS Received 01/28/2022

Table of Authorities

Cases

Other Authorities

OS Received 01/28/2022

PRELIMINARY STATEMENT

In his opening and supplemental briefs, Sandeep Aggarwal ("Aggarwal") demonstrated compelling circumstances and an equitable need for relief from the remaining bars[1] imposed by the Commission in 2014, particularly in light of unanticipated consequences that have recently resulted from the bars. The Division of Enforcement (the "Division") opposes any and all relief, contending: (i) that the district court injunction provides a continuing basis for the bars; (ii) that because the *nolle prosequi* dismissing Aggarwal's criminal charges "references" the bars, the *nolle* should not be a basis for their removal; and (iii) that the compelling circumstances and unanticipated consequences proffered by Aggarwal are purportedly "the intended effects" of the bars and thus not a basis for the requested relief. *See* Division of Enforcement Response to Petition for Reconsideration ("Div. Opp.") at 1-2. We respectfully submit that the Division's arguments cannot withstand scrutiny.

The existence of an underlying basis for the bars is not dispositive of the Commission's inquiry and the Division's attempted reliance on the 2020 *nolle*, which *dismissed* all criminal charges against Aggarwal, is without merit or support in the law. Notably, the Division does not contest that Aggarwal and his company, Droom, are facing adverse consequences from the mere existence of the bars, instead arguing that such consequences are predictable and intended. This defies logic, as Aggarwal's role as a tech entrepreneur and CEO of Droom is divorced from his previous role as a sell-side securities analyst and Aggarwal has not operated in the securities industry since 2011. As Aggarwal does not engage in any conduct prohibited by or related to the

[1] The bars that remain in Aggarwal's 2014 Administrative Order are the associational broker, dealer, and investment adviser bars, and the penny stock bar. *See Sandeep Aggarwal*, Exchange Act Release No. 93684 (Nov. 30, 2021).

OS Received 01/28/2022

bars, as a matter of fundamental fairness, neither Aggarwal or his company should be adversely affected by the bars and such adverse effects could not have been predicted nor actually intended.

Although Aggarwal has since become a successful tech entrepreneur who has built two unicorn companies in the last decade—including Droom, which employs over 300 people across five locations[2]—the bars against Aggarwal have recently resulted in unanticipated consequences that are hampering Droom's ability to grow and issue its shares on public exchanges. Specifically, such consequences include, for one, the chilling of investments from potential investors due to the ambiguity and uncertainty of the breadth of the bars as they relate to Aggarwal's role at Droom, despite the fact that the bars do not prohibit Aggarwal from acting as CEO, nor do they prohibit him from being involved in raising funds from investors. Moreover, the bars are hindering Droom's plans to go public in India due to the lack of understanding by Indian regulators and exchanges as to: (i) whether and how the bars might prevent Aggarwal from being involved in the public offering, even though he is not barred from participating in a public offering; and (ii) whether Droom stock may qualify as a "penny stock," even though it currently does not and likely will never. *See* Aggarwal Supplemental Petition for Reconsideration ("Supp. Br.") at 4-5. As explained in Aggarwal's supplemental brief, Droom's IPO application in India is currently pending and may be in jeopardy of denial due to confusion as to whether the bars apply to Droom's activities vis-à-vis Aggarwal's position as CEO. *Id.* The Division has not addressed this point.

Accordingly, Aggarwal respectfully requests that the Commission vacate the remaining bars imposed by the 2014 Administrative Order. In the alternative, Aggarwal requests that the Commission temporarily lift or suspend the remaining bars so that Aggarwal can demonstrate

[2] *Droom Technology*, *Overvie*w, https://craft.co/droom_technology (last visited Jan. 26, 2022).

compliant conduct in connection with his role as CEO of Droom and further prove that lifting the bars would be consistent with the public interest and investor protection.

ARGUMENT

I. Aggarwal Has Demonstrated Compelling Circumstances That Warrant Vacatur of the Remaining Bars.

A. Changed Factual Circumstances of the Underlying Bases for a Bar Order is a Factor Considered by the Commission

While Aggarwal's district court injunction may be an independent basis for the remaining bars, the Commission's inquiry does not end there. The Commission has discretion to vacate or modify bars, taking into consideration "all the facts and circumstances presented," including changed factual conditions such as the status of the underlying bases for the bars. *See generally In re Lewis*, Release No. 51817 (June 10, 2005) at *2; *see also S.E.C. v. Lewis*, 423 F. Supp. 2d 337, 341 (S.D.N.Y. 2006) ("The S.E.C. does not—and indeed cannot—contend that the pardon fails to constitute a changed factual condition.").

In *Lewis*, for example, the Commission considered the fact that Lewis had received a presidential pardon and acknowledged that one of the underlying bases for his bars no longer remained. *In re Lewis*, Release No. 51817 at *2. Although Lewis's district court injunction remained as an underlying basis for the bars, the Commission found that the pardon weighed in Lewis's favor, along with Lewis's distinguished career, his otherwise unblemished disciplinary record, and charitable good works, and *granted* relief, at least in part. *Id.* at 12-13. Lewis subsequently challenged the underlying injunction in the district court, which ultimately found that there were compelling circumstances, including the pardon, that warranted vacatur of the injunction. With no underlying bases left, the Commission thereafter granted full relief and vacated Lewis's remaining bars.

Here, although Aggarwal's *nolle* should factor positively into the equation, *see In re Becker*, Release No. 67795 at 1 n.4 (Sept. 6, 2012) ("We take official notice of the *nolle prosequi* pursuant to our Rule of Practice 452, 17 C.F.R. § 201.452."), the Division irrationally opposes all of Aggarwal's requested relief and appears to give no weight whatsoever to the fact that six years after consenting to, and abiding by, the bars, Aggarwal's criminal case was dismissed. *Cf. In re Lewis*, Release No. 51817 at *11 ("The Division agrees that the pardon also weighs in Lewis's favor."). The Division instead unreasonably relies upon the fact that the *nolle* references Aggarwal's injunction and the administrative bars, erroneously arguing, in effect, that the *nolle* was premised on the bars remaining in place in perpetuity. Div. Opp. at 8-9. There is no such language in the *nolle* or in the district court's entry of the same reflecting the Division's current position. *See* Aggarwal Nolle Prosequi ¶ 5, *U.S. v. Aggarwal*, No. 13-cr-884 (Feb. 14, 2020), Dkt. No. 74. Indeed, setting forth and considering the procedural history and dispositions of parallel civil and/or administrative proceedings as relevant circumstances is standard in such pleadings. *See, e.g.*, Richard Lee Nolle Prosequi ¶ 7-8, *U.S. v. Lee*, No. 13-cr-539 (Nov. 7, 2019), Dkt. No. 90.

The Division does not contest that Aggarwal has founded *two* unicorn companies since 2011. Div. Opp. at 10. Indeed, Aggarwal founded Droom in 2014 after the bars were imposed and was able to successfully raise funds from a number of investors. The bars became problematic for Aggarwal and Droom recently, however, in an unforeseen and unanticipated manner when raising capital and applying for an IPO in India, which is why Aggarwal is seeking relief from the bars now and did not do so earlier. In its opposition, the Division leaves unanswered many of Aggarwal's arguments that demonstrate compelling circumstances and an equitable need for the requested relief, instead wrongfully accusing Aggarwal of a "type of gamesmanship" that is

inconsistent with the public interest. Div. Opp. at 9. To the contrary, Aggarwal is seeking relief from the bars that are now hindering him so that he can continue in his role as a successful tech entrepreneur who has served the public interest by founding a company that created disruptive technology in the automobile space and has provided countless jobs and wealth to many people.

Finally, the Division relies heavily on the fact that Aggarwal re-consented to the district court injunction in 2020. Yet this undisputed fact does not militate against granting the petition for at least two reasons. First, in 2020, Aggarwal did *not* re-consent to the 2014 bars at issue here and those bars were not included as part of the 2020 final settlement with the Division. And second, Aggarwal's consent to the injunction in 2020 does not account for the additional passage of two years' time, nor the additional factors set forth in Section I.B., *infra*.

In short, one of the two bases for Aggarwal's 2014 bars no longer exists and such changed factual circumstance should weigh in Aggarwal's favor.

B. Other Factors Considered by the Commission Weigh in Favor of Vacating Aggarwal's Remaining Bars

Incremental Relief. The Division largely fails to address the fact that Aggarwal is stuck between a rock and a hard place when it comes to this factor because he is no longer in the securities industry and is not presently seeking to return. *See In re Wien*, Release No. 49000 (Dec. 29, 2003) (vacating bar—despite the Division's opposition—where petitioner failed to establish a "track record of compliance;" the Commission agreed with the petitioner that he would not be able to establish such track record "given that he has no intention of becoming a financial operations principal or taking responsibility for his firm's books and records . . . and that his firm has no intention to self-clear"); *In Re Cozzolino*, Release No. 49001 (Dec. 29, 2003) (vacating bar and concluding that the Division's position regarding seeking consent to associate before obtaining

relief from the bars appears "unduly restrictive"). As a result, Aggarwal would not be able to make a proper showing under SEC Rule 193, which requires, among other things, details and particulars of the terms of employment and proposed association. *See generally* 17 C.F.R. § 201.193.

Instead, the Division focuses its argument on Aggarwal's alternative request for relief, *i.e.*, a temporary suspension of the bars, and argues that such relief is not warranted because Aggarwal has no intention of associating with the barred industries and thus would not be able to build a track record of compliance. Div. Opp. at 11. As a result of this Catch-22, the Division weighs this factor against Aggarwal. The Division's argument, however, is undermined and contradicted by another of its arguments, that "[g]iven Aggarwal's stated intentions to avail himself of the U.S. markets, it would be consistent with the public interest and the protection of investors to maintain his associational and penny stock bars—especially because Aggarwal's petition does not describe what Aggarwal's contacts with investors have been or will be, as well as what his role is with respect to raising money, selling securities, or seeking or maintaining public securities listings."[3] Div. Opp. at 9.

The Division then cites to *In re Brett Thomas Graham*, Release No. 34-84526, 2018 WL 5734348 (Nov. 2, 2018), which involved an application to associate pursuant to SEC Rule 193, not a petition seeking to vacate or modify a bar order due to compelling circumstances. In that case, the Commission ultimately denied Graham's open-ended application to associate because he merely identified "some theoretical employment options" but did not provide "the detailed

[3] Aggarwal has described his role as CEO of Droom and the activities in which he is engaged, including working closely with the Chief Strategy Officer, VP of Finance, and the Head of Legal in connection with raising funds and applying for an IPO in India. To the extent the Commission would like additional information, Aggarwal would be happy to submit a short supplemental statement. He would also be willing to discuss implementing periodic updates or other conditions that might provide more comfort to the Commission.

information concerning the proposed association that [the Commission] require[s]" pursuant to SEC Rule 193. *Id.* at 3. Specifically, Graham did not specify a proposed employer, the terms and conditions under which he would work and be supervised, or the disciplinary history of the proposed employer and the individuals who would supervise him. *Id.* at 4. Indeed, Graham's case provides a helpful demonstration as to why Aggarwal would not meet the standard under SEC Rule 193, for the reasons explained above and in Aggarwal's opening brief. *See* Aggarwal Petition for Reconsideration ("Opening Br.") at 13.

It is important to note that the Commission has fully vacated bars even where the petitioner did not seek or obtain incremental relief. *See, e.g.*, *In re Fred F. Liebau, Jr.*, Release No. 92353 (July 8, 2021) (explaining that although Liebau did not seek and obtain consent to associate in various capacities in the securities industry, he instead maintained regular employment in the industry for two decades and did not have one regulatory mark against him during that timeframe). Similar to Liebau, Aggarwal has maintained employment in a tangentially related industry for almost a decade and maintained an unblemished record. Unlike Liebau, however, the Division opposes Aggarwal's request for relief.

The Division cannot have it both ways: it is fundamentally unfair for the Division to argue, on the one hand, that Aggarwal should not be granted even the alternative relief of temporary suspension because (without plans to engage in the barred activity) he will not be able to build a track record of compliant conduct; and on the other, that investors and the public still need protection from Aggarwal since he is "avail[ing] himself of the U.S. markets." Div. Opp. at 11. For one, there is simply no basis to contend that investors need protection from Aggarwal, as discussed immediately below. In any event, the Division gives no reason why, if there were such a need, Aggarwal should not be permitted to at least build a track record of compliant conduct.

Nature of the Misconduct. The Division weighs this factor against Aggarwal and asserts that "there can be no dispute that Aggarwal's conduct in 2009 was egregious." Div. Opp. at 8. As set forth in Aggarwal's opening brief, the underlying conduct was an isolated event that occurred over twelve years ago, Aggarwal did not trade on MNPI, nor did he receive any financial benefit or cause great financial harm in connection with the alleged conduct. Opening Br. at 12.

In securities fraud cases where courts have found underlying conduct to be "egregious," such conduct often involved years-long schemes with multiple incidents of fraud, great losses and harm to investors, a lack of remorse and slow progress in repaying penalties or restitution, subsequent lies and cover ups resulting in obstruction charges, and recidivism. *See, e.g.*, *S.E.C. v. Rand*, No. 1:09-CV-01780-AJB, 2019 WL 11502733, at *8 (N.D. Ga. Mar. 30, 2019), *aff'd*, 805 F. App'x 871 (11th Cir. 2020) (finding defendant's conduct "egregious" where he engaged in a scheme that spanned seven years while working as a corporate controller and chief financial officer, and involved several different acts, including improperly accounting for his company's reserves, improperly recognizing revenue on certain transactions, and lying to auditors and accountants); *S.E.C. v. Tsao*, 317 F.R.D. 31, 32 (D. Md.), *aff'd*, 671 F. App'x 157 (4th Cir. 2016) (finding underlying conduct "exceptional" and "egregious" where defendant was charged and pled guilty to securities fraud and obstruction of justice arising out of three incidents of insider trading occurring in a twenty-six month period; defendant misappropriated confidential information from his employer, used his father's name to open a brokerage account, realized profits from the trades, and then induced his wife and father to lie to the SEC by claiming that they were responsible for the trades).

Moreover, the Commission has granted relief in cases where the underlying conduct was clearly much more extensive than Aggarwal's. *See, e.g.*, *In re John Gardner Black*, Release No.

3015 (Apr. 13, 2010) (vacating bars in part where petitioner who "exhibit[ed] no remorse for his actions" engaged in a two-year ongoing fraud scheme which resulted in the loss of millions of dollars of municipal bond proceeds invested by school districts by misrepresenting the value of the assets, overstating the actual value of the assets, and misappropriating millions of dollars of client funds to pay for personal and business expenses); *In re Gaecke*, Release No. 2681 (Dec. 4, 2007) (vacating bars in part despite finding that Gaecke's past misconduct of misappropriating advisory client funds was "serious"); *see also In re Liebau, Jr.*, Release No. 92353 (July 8, 2021) (fully vacating bars where Liebau failed to properly supervise a registered representative who was operating a Ponzi scheme that resulted in significant financial losses to investors).

Passage of Time and Compliance Record. Aggarwal is 49 years old and had worked in the securities industry for almost two decades with an unblemished record before the underlying charges were filed against him. Likewise, since the bars were imposed in 2014, Aggarwal has maintained a spotless record with no infractions, regulatory or otherwise, and he continues to be a good corporate citizen. The Division does not appear to have addressed the passage of time since the underlying conduct or the imposition of the bars, nor does it address Aggarwal's satisfactory compliance record.

Unanticipated Consequences. Finally, the Division has no satisfactory response to Aggarwal's demonstration of the unanticipated consequences suffered by Aggarwal and Droom in connection with Droom's pending and planned initial public offerings. As Aggarwal has shown, and the Division has not contested, foreign regulators and potential investors have expressed profound confusion and uncertainty as to whether the bars (particularly, the penny stock bar) prohibit Droom from going public while Aggarwal is at the helm of the company. *See* Opening

Br. at 6-7; *see generally* Supp. Br. The Division *ignores* this argument and instead responds to a straw man argument of its own making.

The Division misleadingly contends that Aggarwal should not be heard to complain if investors are "engaging in enhanced due diligence" regarding Aggarwal, as such inquiries are an anticipated and intended consequence of the bars. Div. Opp. at 10. This disingenuous argument is unavailing, as Aggarwal is not remotely complaining about general "enhanced due diligence" or reputational damage from the bars. Rather, his well-founded concern, as set forth in his opening brief, is that "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." Opening Br. at 15; *see also id.* at 7 ("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"); *id* at Exs. 1 and 3. In other words, it is not the mere existence of the bars or any negative reputational consequence resulting from the alleged past misconduct, but rather confusion from certain investors and regulators about whether Aggarwal's bars are applicable to his role at Droom, given that he is not associating with barred industries nor is he participating in penny stock offerings. It is the ambiguity and overbreadth of the bars—and the fact that they are reaching and harming Aggarwal's entirely permissible conduct as CEO of Droom—about which Aggarwal complains.

Finally, the Division also contends that Aggarwal's complaint of unwanted prejudice from the bars rings hollow because he was able to found two unicorn companies since 2011. Div. Opp. at 10. This argument is a non-sequitur. The fact that Aggarwal was previously able to succeed,

notwithstanding unforeseen and unintended consequences of the bars, does not logically respond to Aggarwal's argument that the bars are *presently* harming him in unfair and unintended ways. In any event, the reason that the bars are harming him *now* is because his company is turning to public markets to raise funds. Thus, prior to this time, neither Aggarwal nor Droom had need to complain of any problem raising funds stemming from the bars. Now that they are turning to markets however, the bars are sowing confusion and impediments that are entirely unwarranted as the broker-dealer/investment adviser bar and the penny stock bar were *not* meant to stand in the way of Droom's fundraising efforts.

II. Aggarwal Has Demonstrated an Equitable Need for the Relief He Seeks and Such Relief Would Be Consistent with the Public Interest and Investor Protection.

The Commission has stated that although in the usual case the bar will remain in place, "[it] would act in response to those situations in which, under all the facts and circumstances, the equitable need for relief, consistent with the public interest and investor protection, warrants vacating or modifying a Commission bar order." *See In Re Cozzolino*, Release No. 49001 (Dec. 29, 2003) (finding that it was consistent with the public interest and investor protection to vacate bars even where various factors weighed against relief, including nature of the misconduct, unanticipated consequences, and incremental relief).

The Division argues that investors need protection from Aggarwal's activities because he is purportedly "availing himself of the U.S. markets" and raising money from "investors globally." Div. Opp. at 9. A reasonable interpretation of the Division's argument implies that any activity Aggarwal ever engages in that involves or touches the U.S. markets or investors would be covered by the bars. That is not what the bars provide, not what Aggarwal consented to in 2014, and not consistent with the Commission's philosophy of "prevent[ing] a recurrence of the conduct that led

to the imposition of the bar." *See* 17 C.F.R. § 201.193 (Preliminary Note). The consequences and effects of the bars should align with their intended purposes. Unfortunately for Aggarwal, the bars have resulted in unanticipated consequences completely untethered from "the [alleged] conduct that led to the imposition of the bar."

Aggarwal is not and has never been categorically barred from the market or from raising money from investors. The Division seems to have lost its perspective and is attempting to unfairly punish Aggarwal for conduct that is not and was never covered by the bars. For example, the Division's position that "raising funds as an entrepreneur may be more difficult considering the bars," Div. Opp. at 10, demonstrates the bars' broad and unfair reach as to Aggarwal. And, the Division's acceptance of such consequences, even when Aggarwal is engaging in no conduct prohibited by the bars, is troubling. Div. Opp. at 10.

Aggarwal was barred from participating in the offering of any penny stock and from associating with certain classes in the securities industry in connection with his prior role as a sell-side securities analyst. He has not only abided by the bars and maintained a spotless record but he also exited the securities industry in 2011, before he was charged with the underlying conduct. Now in his role as a successful entrepreneur in the tech industry, the bars have followed Aggarwal and are unfairly hampering his new business endeavors that are unrelated to his work as a sell-side securities analyst. In other words, the bars are now having effects beyond their intended or permitted reach and are punishing Aggarwal and Droom for conduct that is otherwise permissible. These unanticipated consequences are unfairly impacting not just Aggarwal but Droom, its employees, investors, customers, and the public at large.

Aggarwal's redemption and success as one of the most promising technology entrepreneurs in India should not disqualify him from obtaining relief or be held against him by the Division,

who argues that because Droom has been able to raise $114 million from investors, granting relief "is simply not necessary." Div. Opp. at 11. To the contrary, the fact that Aggarwal has been successful in spite of the bars (and without any violation or infraction) should weigh in favor of granting the requested relief so that he can continue to contribute to the public and to the economy cutting edge technology, wealth, and jobs.

For the reasons set forth above, and in the opening and supplemental briefs, granting the requested relief would be consistent with investor protection and the public interest, especially in light of the passage of time since the alleged misconduct, Aggarwal's compliant conduct since the imposition of the bars, and the fact that the nature of the misconduct involved an isolated incident from which Aggarwal did not trade or profit financially. Moreover, he showed remorse by agreeing to settle the allegations and promptly paying the penalty assessed.

III. Alternatively, the Remaining Bars Should be Temporarily Suspended or Lifted So that Aggarwal Can Establish A Track Record of Compliant Conduct.

The Division argues in closing that granting the alternative relief sought by Aggarwal "is simply not necessary" since such alternative relief would not enable him to build a track record of compliance and because he has already founded two separate companies in the past decade and raised $100 million from investors globally. Div. Opp. at 11. However, as the Commission is aware, whether the relief is "necessary" is not the appropriate standard. More importantly, because Aggarwal has founded two unicorn companies and successfully raised funds while the bars have been in place, he has effectively demonstrated a track record of compliance. Aggarwal respectfully requests that the Commission provide him the chance to continue demonstrating that he can operate successfully and prudently in a tangentially related industry without the weight of bars that no longer serve their intended purpose.

CONCLUSION

For the forgoing reasons, we respectfully request that the Commission remove the remaining bars in their entirety. In the alternative, we respectfully request that the Commission temporarily lift or suspend the remaining bars so that Aggarwal can further demonstrate compliant conduct in connection with his role as CEO of Droom.

Dated: New York, New York
January 28, 2022

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Certificate of Service

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 151, I hereby certify that a copy of Respondent Sandeep Aggarwal's Reply Memorandum of Points and Authorities in Further Support of his Petition for Reconsideration was served on the following party on January 28, 2022, via email, at the email address indicated below:

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