UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16245

In the Matter of

Rajarengan (a/k/a/ Rengan) Rajaratnam,

Respondent.

BRIEF IN SUPPORT OF RESPONDENT RAJARENGAN RAJARATNAM'S MOTION FOR RELIEF FROM INVESTMENT ADVISER BAR UNDER COMMISSION RULE OF PRACTICE 154

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I. Rengan has been subject to a bar from association for 10 years.

A. In 2013, Rengan was criminally charged with securities fraud and insider trading, and in 2014, he was acquitted.

In March 2013, Rengan was living in Brazil, having tried to create much physical distance between him and his (then imprisoned) brother and with the brothers' large family as well. It was then that Rengan was criminally charged with securities fraud and insider trading, with the government alleging that Rengan had participated in Raj's insider trading scheme by executing securities transactions on the basis of material, nonpublic information belonging to publicly traded companies. The prosecuting office, the U.S. Attorney's Office for the Southern District of New York, dropped four criminal counts brought against Rengan before trial, and the federal district judge then threw out two counts at the close of the government's case at trial.[1] A jury then, in July 2014, returned a verdict of not guilty on the remaining count.[2] Rengan was thus acquitted of insider trading, realizing an outcome markedly different from that of his brother.[3]

B. Despite his acquittal, Rengan chose not to challenge the Commission's allegations and agreed to a bar he believed would last only five years.

Despite the acquittal, Rengan agreed to settle with the Commission to conclude the Commission's parallel, civil insider trading case against him.[4] Not only had the stress of the criminal and civil charges, as well as the criminal trial, caused Rengan to develop symptoms of Crohn's Disease, but also Raj had refused to indemnify, forcing Rengan to drain his bank accounts

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1 *See* Declaration of Rajarengan Rajaratnam ISO Mot. for Relief from Investment Adviser Bar ("Decl.") Ex. 2-3, 6.

2 *See* Decl. ¶ 6; Decl. Ex. 3.

3 *See* Decl. ¶6; Decl. Exs. 2 and 3.

4 *See* Decl. Exs. 7-8.

to pay his criminal defense counsel.[5] Rengan indeed drained his bank accounts to pay for that effective defense, and then found himself entirely supported by his wife, who as a doctor made—and still makes—a relatively moderate income not designed to support the legal fees associated with a competent white-collar defense.[6]

At the time that Rengan was negotiating a settlement with staff in the Commission's Division of Enforcement, it was vital to him that he have the opportunity to reenter the securities industry sooner before later, having never made any significant income outside of finance and vocations with connections with the securities industry. When Rengan agreed to the bar, it was of paramount importance to him to maintain a clean record during its term, after which he anticipated seeking permission to reenter the industry. He did not foresee that he would be unable even to reach the necessary circumstances to request the lifting of his bar.[7]

Ultimately, SEC Enforcement staff and Rengan came to an agreement to settle the Commission's claims against him. The terms of the settlement were two-part: First, that he would agree to an obey-the-law injunction and to pay monetary sanctions exceeding $841,000

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5 *See* Decl. ¶¶ 9(a) and 29.

It is the reality that excellent representation in the face of criminal charges of insider trading and financial fraud is not at all affordable. *See* Sarah Ribstein, *A Question of Costs: Considering Pressure on White-Collar Criminal Defendants*, 58 Duke L.J. 857, 858 (2009) ("Because of the expense of defending white-collar criminal cases, individual corporate defendants can rarely fund their own defenses and often rely on their employers to pay their legal costs."); Joshua K. Byers, *Restoring Access to the Advancement of Defense Costs for White-Collar Defendants: The Inadequacies of the McNulty Memo*, 91 Marq. L. Rev. 549, 549-52 (2007) (describing the enormous pretrial cost of white-collar defense); *see also* Decl. ¶ 9(a).

6 His wife remains the primary breadwinner in the family to this day. *See* Decl. ¶ 3.

7 *See* Decl. ¶¶ 10-12; *Matthew D. Sample*, Exchange Act Release No. 75893, 2015 WL 5305992, at *2 (Sept. 10, 2015) (describing Rule of Practice 193 relief as a "limited lifting" of a bar for the purpose of permitting association).

resolving the civil action brought against him in federal court.[8] And second, that a forthcoming "follow-on" administrative proceeding ("AP") would be resolved at institution by his agreeing to a bar from engaging in the securities industry with a right to apply for reentry after five years.[9]

On the basis of that agreement, the Commission's Enforcement staff, in October 2014, recommended to the Commission that it accept Rengan's offer of settlement. The Commission approved Enforcement's recommendation; the settlement of the injunctive action was presented to and approved by the district court; and the follow-on AP was brought thereafter.[10] The follow-on AP—an Advisers Act Section 203(f)[11] proceeding—was brought in November 2014 and included two findings: First, that an October 2014 final judgment in the Commission's civil, injunctive action against Rengan had been entered.[12] And second that "it [was] appropriate *and in the public interest* to impose" a bar against Rengan "with the right to apply for reentry after 5 years . . . to the Commission."[13]

C. Rengan attempted without success to have the bar lifted.

After five years had passed from the AP order, Rengan was eager to reenter the investment advisory space. While he came to understand that Commission Rule of Practice 193 impacted his

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[8] These monetary sanctions comprised $372,264 in disgorgement, $96,714 in prejudgment interest, and a $372,264 penalty.

[9] *See* Decl. ¶11; Decl. Ex. 8; *see* SEC Enforcement's Office of Chief Counsel, *SEC Enforcement Manual*, www.sec.gov/divisions/enforce/enforcementmanual.pdf, at *25 (Nov. 28, 2017) (calling Exchange Act Section 15(b) and Advisers Act Section 203(f) proceedings "follow-on" APs); *Nicholas Rowe*, Exchange Act Release No. 75982, 2015 WL 5608532, at *1 (Sept. 24, 2015) (calling a proceeding pursuant to Advisers Act Section 203(f) a "follow-on proceeding").

[10] *See* Decl. ¶ 11; Decl. Exs. 8-9.

[11] 15 U.S.C. § 80b-3(f).

[12] *Rengan Rajaratnam*, Advisers Act Release No. 3954, 2014 WL 5513904, at *1, www.sec.gov/files/litigation/admin/2021/ia-5764.pdf (Nov. 3, 2014).

[13] *Id.* at *2 (emphasis added).

situation, Rengan could not find any firm was willing to employ and thus sponsor him—despite Rengan's countless efforts to locate such a firm.[14] The Commission's order against him and/or the public's confusion between the identities of Rengan and his brother—or both of those factors—meant that Rengan, having expected to have a chance to be free of a bar after a little over five years, found himself asking the Commission's staff to give him freedom to obtain opportunities to work outside of the detailed Rule 193 process.[15]

Specifically, in November 2021, Rengan's legal counsel wrote Sanjay Wadhwa, then Deputy Director of the Division of Enforcement and currently the Acting Director of the Division, about Rengan's administrative bar.[16] The letter addressed Rengan's personal history and experience with criminal and civil charges against him. It also focused on Rengan's various charitable endeavors and explained how he is a good person, with an unfortunate past, whose reentry into the securities industry aligned with the public interest.[17]

Then in April 2022, Rengan's counsel met with Sam Waldon, who was then and remains the Chief Counsel for the Division, and is now also the Acting Deputy Director of the Division.[18]

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[14] 17 C.F.R. § 201.193; *see* Decl. ¶¶ 10, 14-16.

For Rule 193 relief to be considered, it is necessary for an investment advisory firm to state unequivocally, "we will employ the respondent," thereby formally committing to his association, subject to Commission approval. *Sample*, 2015 WL 5305992, at *3 (describing consideration of a Rule 193 application). *See Matthew D. Sample*, Exchange Act Release No. 75893, 2015 WL 5305992, at *3 (Sept. 10, 2015) (stating that "Rule 193 provides a process by which barred individuals can apply to the Commission for consent to become associated with an entity that is not a member of an SRO, e.g., an investment adviser" and explaining that the rule requires that applicants "make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest" and that the applicant addresses "the manner and extent of the supervision to be exercised over the applicant and the capacity or position in which the applicant proposes to be associated") (internal quotations and citations omitted).

[15] *See* Decl. Exs. 1, 10-11.

[16] Decl. Ex. 1.

[17] *See* Decl. Ex. 1 at 1.

[18] Decl. Ex. 10.

Following the meeting, Rengan's counsel submitted a second letter, this one arguing that lifting certain SEC sanctions imposed on Rengan was both appropriate and aligned with established precedent.[19]

Two months later, Rengan's counsel received a letter from the Commission's Office of General Counsel, making reference to this AP's file number, and stating that "the staff has determined that it will not recommend that the Commission agree" to the request "that the Commission agree to lift the administrative bar entered against" Rengan.[20]

II. Rengan now respectfully asks the Commission to lift the bar to allow him the freedom to operate in the securities industry.

A. The Commission should proceed under Commission Rule of Practice 154.

Rengan submits this motion pursuant to Commission Rule of Practice 154, which generally governs motions in APs.[21] It is appropriate for the Commission to proceed under Rule 154, rather than Rule 193, in this instance. A primary reason is that the order underlying Rengan's current motion contains no reference to Rule 193, despite the rule being in effect at the time the order was entered.[22] The order is instead vague, stating that any "reapplication for association . . . will be subject to the applicable laws and regulations governing the reentry process," without specifically

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19 Decl. Ex. 10.

20 Decl. Ex. 11. The letter was electronically signed by "Special Trial Counsel" Timothy McGarey of the Commission's Office of General Counsel. However, the letter provided no clarification on whether the General Counsel's Office was forwarding a recommendation to the Commission regarding Respondent's request. It also failed to explain Respondent's rights of action following this apparent staff denial or identify the delegation of authority under which the request was decided. Additionally, the letter did not clarify McGarey's role or how it related to the staff in the Enforcement Division who had previously received Rengan's correspondence on the matter.

21 17 C.F.R. § 201.154.

22 *See Rengan Rajaratnam*, 2014 WL 5513904 (lacking any mention of Rule 193 and citation to 17 C.F.R. § 201.193). Respondent acknowledges that the rule was referenced toward the end of the settlement offer Respondent signed in connection with this AP, but its lack of prominence remains a substantial issue.

cross-referencing Rule 193. Such a cross-reference would have provided clear notice to Rengan that securing an investment adviser sponsor would be a requirement for his reentry into the industry. It would also have alerted him to the flaw in his understanding that he would be able to resume earning a meaningful income after five years, prompting him to pursue a more realistic and mutually agreeable resolution aligned with Rengan's personal interests.[23]

Second, Rule 154 governs motions "except where another rule expressly governs," and Rule 193 does not expressly apply to the unique circumstances Rengan currently faces.[24] Rengan's motion need not proceed under Rule 193 because he seeks a remedy beyond the scope of what Rule 193 can provide. As Rengan is in an unhirable state within the United States, he cannot present a specific, currently operating U.S. investment adviser able to detail the "nature of the supervision" it would provide to him.[25] An essential step toward securing such a sponsor would be for the Commission to determine that Rengan's reentry into the U.S. investment advisory

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[23] In stark contrast to the *investment adviser* bar context, when a certified public accountant is barred from appearing or practicing before the Commission as *an accountant*, the Commission's order forewarns the settling respondent of the specific requirements for reentering the industry from which they have been expelled. *See, e.g.*, *Ravindranathan Raghunathan, CPA*, Exchange Act Release No. 93133, 2021 WL 4452761, at *11-13 (Sept. 27, 2021) (stating what Raghunathan must do in great detail to obtain reinstatement); *Michael Bellach, CPA*, Exchange Act Release No. 88896, 2020 WL 2537591, at *4-5 (May 18, 2020) (stating in part that reinstatement application must satisfy the Commission that four things have occurred); *Berman & Co.*, Exchange Act Release No. 73427, 2014 WL 5408488, at *7-8 (Oct. 24, 2014) (similar).

[24] *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 78319, 2016 WL 3853756, at *32 (July 13, 2016), 81 Fed. Reg. 50,212, 50229.

[25] 17 C.F.R. § 201.193; *see* Decl. ¶¶ 16 and 17.

The extent of Rengan's efforts to secure employment is exemplified by his obtaining a statement from a foreign firm expressing interest in hiring him for a specific role. *See* Decl. ¶ 33 and Decl. Ex. 17. This role would involve contributing to the development of a fund focused on advancing Sri Lanka's infrastructure, healthcare, and other critical areas of economic growth. The firm, which has a spotless compliance record and a demonstrated commitment to ethical practices, has pledged to provide comprehensive supervision of Rengan's activities and to collaborate with Commission staff. Additionally, the firm has proposed maintaining an open line of communication between Rengan's attorney and the Commission to ensure transparency and robust oversight. Regardless, through this motion, Rengan demonstrates his commitment to seeking a Commission order that might meaningfully address and remedy his employability and professional standing *within the United States*.

industry would align with the public interest. Until such a determination is made, Rengan remains unable to attract a U.S.-based adviser.

We assume that the Commission's authority to impose an investment adviser bar is limited to activity connected to investment advisers operating within the United States, as opposed to in foreign jurisdictions.[26] And although it is not unequivocal, it seems that a "proposed association" (i.e., sponsorship) as part of Rule 193 application would necessarily involve a U.S. investment adviser.[27] Rengan, nonetheless, given his situation where he was repeatedly unable to procure a sponsor, considered leveraging the support of a foreign firm to pursue the Rule 193 route.[28] But this was only due to his inability to secure sponsorship with a domestic firm, which remains his preference. It is his preference because his adult life has been entirely based in the United States, and this country is the home of his wife and young son. It is therefore of significant importance to him that the Commission specifically address his future ability to operate in the domestic investment adviser space.

Third, Rule 193 should not be the analytical framework applied here because it would be fundamentally unfair to allow the Division of Enforcement to decide this request for relief. Although Rengan agreed to proceed under Rule 193 as part of an offer of settlement, he was never provided with fair disclosure that the Rule 193 process falls under the delegated authority of the Division of Enforcement.[29] Although the Commission's own rules delegate the authority to grant

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[26] *See Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255-56 (2010) (holding that U.S. laws are presumed to apply only within the territorial jurisdiction of the United States unless Congress clearly indicates otherwise).

[27] 17 C.F.R. § 201.193(a), (c).

[28] *See* Decl. Ex. 17 (indicating that a foreign sponsor has been identified).

[29] A rarely noticed portion of rules that govern the practical operations of the Commission's staff in part delegate authority to the Director of the Division of Enforcement to grant or deny Rule 193 applications. *See* 17 C.F.R. §

or deny Rule 193 applications to the Division of Enforcement, it was neither open nor fairly disclosed to Rengan at the time of settlement that the Rule 193 process would be driven primarily by investigative and prosecutorial staff within the Commission's Division of Enforcement rather than the Commission itself. Given this, it was unreasonable to expect Rengan to have understood that Enforcement would control the Rule 193 process.

The Commission should instead proceed under Rule 154's normal adjudicatory approach, in part to maintain the separation of the Commission's adjudicatory and enforcement functions—a principle the Commission itself has recently recognized.[30] Furthermore, it is problematic that Rule 193 allows investigative and prosecutorial staff to evaluate relief from a sanction (an associational bar) that they initially sought to impose on a respondent.[31] Allowing the same group,

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200.30-4(a)(5) (delegation "to the Director of the Division of Enforcement to be performed by him or under his direction" to "grant or deny applications made pursuant to Rule 193 of the Commission's Rules of Practice, § 201.193 of this chapter, provided, that, in the event of a denial, the applicant shall be notified that such a denial may be appealed to the Commission for review."); *see Applications by Barred Individuals for Consent to Assoc. with a Registered Broker, Dealer, Mun. Sec. Dealer, Inv. Adviser or Inv. Co.* ("Adopting Release"), Exchange Act Release No. 20783, 1984 WL 547096, at *1 (Mar. 16, 1984) (reflecting that the Director has held such delegated authority since 1984); *see also SEC News Digest*, Issue 84-59 (Mar. 26, 1984), www.sec.gov/news/digest/1984/dig032684.pdf (summarizing the rule's adoption and the delegation to Enforcement).

[30] *See Second Commission Statement Relating to Certain Administrative Adjudications* (June 2, 2023), www.sec.gov/newsroom/speeches-statements/second-commission-statement-relating-certain-administrative-adjudications (where the Commission expressed "regret that the agency's internal systems lacked sufficient safeguards surrounding access to Adjudication memoranda"); *see also Statement of CFTC Commissioner Caroline D. Pham on SEC v. Jarkesy*, www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement062824 (stating, "As I've said before, 'administrative proceedings, where the agency is the prosecutor, judge, and jury, lack the checks-and-balances imposed by separation of powers between the executive and judicial branches of government to ensure a fair hearing and due process.' The Court's opinion explicitly recognizes this truism, and reinforces the law of the land. There's more work to be done at the Commission to ensure that our adjudications and settlements can withstand scrutiny, particularly when they deprive others of property without appropriate due process and in violation of the Constitution.").

[31] *See* 5 U.S.C. § 554(d) ("An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title."); 17 C.F.R. § 201.121 (any Commission employee engaged in performance of investigative or prosecutorial functions in a proceeding may not participate or advise in the decision in that proceeding, except as a witness or counsel); *Grolier Inc. v. FTC*, 615 F.2d 1215, 1218 (9th Cir. 1980) ("In an effort to minimize any unfairness caused by this consolidation of responsibilities, the APA mandates an internal separation of the investigatory-prosecutorial functions from adjudicative responsibilities.").

who previously argued that Rengan posed a danger and should be barred from investment advisory activities, to now assess and determine his request for relief from that bar is inherently unfair. To be clear, we posit that the Rule 193 process is not only cumbersome and outdated (as discussed below) but also constitutionally suspect. The delegation of authority to the Enforcement Director to decide Rule 193 petitions creates inherent conflicts of interest. And while the Commission allows for appeals of denials to the full body of Commissioners, such a right to appeal does not sufficiently cure the lack of impartiality in the initial decision-making process.

Fourth, the Commission should recognize that the Rule 193 process is outdated and was not designed for present-day circumstances. Enacted over forty years ago without any public commentors participating in the rulemaking process, the rule was created under vastly different factual conditions, including a pre-Internet era where publicity around a settlement could effectively prevent a respondent from ever finding an investment adviser willing to risk association with the respondent or involvement in the Rule 193 process.[32] Today, Rengan's legal history is readily accessible online, drastically altering the landscape in which Rule 193 now operates. However, the delegation of authority under Rule 193 has remained unchanged since 1984, despite significant changes in circumstances. It is now both timely and appropriate for the Commission to reconsider the rule's applicability to Rengan specifically, as well as its broader application to future barred individuals.

Yet another reason why Rengan finds himself here, pleading for vacatur, is that Rule 193's outdated framework creates a chilling effect on firms' willingness to sponsor individuals subject

[32] *See* Adopting Release, 1984 WL 547096, at *1 ("The Commission solicited public comment on Rule 29 [predecessor to Rule 193] in Release No. 34-20393 . . . . No comment letters were received. The Commission has determined to adopt the Rule as proposed.").

to bar orders. As the adopting release for Rule 193 makes clear, even if a Rule 193 application is granted, the Commission retains the authority to take enforcement action if it later determines that the individual's actual job functions differ from those represented in the Rule 193 petition.[33] This provision places investment advisory firms in an untenable position. If a sponsored individual's job functions evolve in practice—a wholly foreseeable and routine occurrence—or if the Commission merely perceives a deviation, the sponsoring firm risks enforcement action for allegedly permitting an association in violation of the bar order.[34] This uncertainty effectively dissuades firms from engaging in Rule 193 sponsorship altogether. And as Rengan has personally experienced, the chilling effect created by this outdated framework makes Rule 193 sponsorship nearly impossible to achieve.[35]

B. Under Commission Rule of Practice 154, relief from the bar should be granted consistent with the public interest and on the bases of a significant change of circumstances and compelling circumstances.

1. Relief should be granted consistent with the public interest.

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[33] Adopting Release, 1984 WL 547096, at *2 nn.20-22 and associated text.

[34] It is untenable from the sponsored individual's perspective as well. The rule's adopting release states that approval of a Rule 193 application is strictly limited to association in a specific capacity with a particular registered entity and is "subject to terms and conditions." Adopting Release, 1984 WL 547096, at *2 n.21. This rigid framework requires a new application to be submitted whenever a sponsored individual's duties change or they seek association with another registered entity. In other words, they must repeat the entire application procedure both for internal job function changes within a sponsoring employer and for transitions to new roles with other employers.

[35] While Rule 193 is a good candidate for amendment or repeal, any petition for such amendment or repeal by a respondent appears to be an ineffective strategy given an apparent history of prolonged inaction by the Commission as to such petitions. *See* 17 C.F.R. § 201.192(a) (rule governing applications to the Commission for amendment or repeal of Commission rules); *see, e.g.*, *Silberstein v. SEC*, 153 F. Supp. 3d 233 (D.D.C. 2016) (concluding in January 2016 that a district court lacked jurisdiction over claims that the Commission unreasonably delayed acting on a May 2014 petition); *Alpine Sec. Corp.*, Exchange Act Release No. 98867, 2023 WL 7379397, at *3 n.24 (Nov. 6, 2023) (referencing a December 2018 petition for rulemaking that as of November 2023 remained pending). It is clear, nonetheless, that Rule 193 today fails to fulfill its intended purpose of facilitating a pathway toward industry employment for individuals subject to longstanding bars. A modernized and more practical approach to addressing such bars is necessary. Without such modernization, a time-limited investment adviser bar becomes, in effect, a permanent bar, even if the individual subject to it has no such realization when agreeing to it.

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In October 2014, the Commission imposed a bar on Rengan, with the right to reapply after five years, based on its determination that such action was "in the public interest."[36] The settled order does not explain why a five-year bar, based on the facts of Rengan's case, serves the public interest.[37] And while it may have once been deemed necessary to bar Rengan from securities industry participation, circumstances have since changed. Now past the ten-year mark, the continued enforcement of this bar is not consistent with the public interest. Since 2014, Rengan has strictly complied with the federal court's injunction requiring adherence to securities fraud provisions and has abided by the imposed industry bar, much of which was lifted on legal grounds in July of last year.[38] His history of compliance, coupled with the time elapsed and Rengan's

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[36] *Rengan Rajaratnam*, 2014 WL 5513904, at *1.

Beyond establishing "the statutory prerequisites" to instituting an Advisers Act Section 203(f) proceeding, the Commission must determine, based on evidence, that the chosen sanction "is in the public interest." *Nicholas Rowe*, Exchange Act Release No. 75982, 2015 WL 5608532, at *1, *4 (Sept. 24, 2015) (concluding that there must be sufficient evidence to support a conclusion that the chosen sanction is "in public interest" in the context of Advisers Act Section 203(f) proceedings); *see Hai Khoa Dang*, Advisers Act Release No. 6630, 2024 WL 3028381, at *4 & n.12 (June 17, 2024) (explaining that there are three elements to a bar under Advisers Act Section 203(f) including that "such a sanction is in the public interest," and citing 15 U.S.C. §§ 80b-3(f), 80b-3(e)(2).

[37] When the Commission issues a settled order resolving a follow-on proceeding at its institution, it does not publicly articulate exactly how the public interest supports a bar; it articulates only that it has made the finding of the public interest supporting the bar. *Compare, e.g.*, *Order Instituting Administrative Proceedings Pursuant to Section 203(f) . . . and Imposing Remedial Sanctions*, *Chauncey Forbush Lufkin, III*, Advisers Act Release No. 6635, 2024 WL 3179338, at *1-2 (June 26, 2024) (where the Commission made determinations without providing further color that it is "appropriate and in the public interest" to bring the proceeding and "to impose the sanctions agreed to" in the respondent's offer of settlement to the Division of Enforcement); *Order Instituting Administrative Proceedings Pursuant to Section 203(f) . . . and Imposing Remedial Sanctions*, *Britt Wright*, Advisers Act Release No. 6619, 2024 WL 2861776, at *1-2 (June 5, 2024) (same); *Order Instituting Administrative Proceedings Pursuant to Section 203(f) . . . and Imposing Remedial Sanctions*, *George McKown*, Advisers Act Release No. 6583, 2024 WL 1571554, at *1-2 (Apr. 10, 2024) (same), *with Ron K. Harrison,* Advisers Act Release No. 6599, 2024 WL 1961107, at *3-4 (May 3, 2024) (Commission opinion in litigated matter where Commission includes robust analysis of how public interest supports an industry bar); *Stephen Condon Peters*, Advisers Act Release No. 6556, 2024 WL 624010, at *3-5 (Feb. 14, 2024) (same); *Mark J. Moskowitz*, Advisers Act Release No. 5728, 2021 WL 1718863, at *4-5 (Apr. 30, 2021) (same).

[38] *Rajarengan (a/k/a Rengan) Rajaratnam*, Advisers Act Release No. 6638, 2024 WL 3470184, www.sec.gov/files/litigation/opinions/2024/ia-6638.pdf (July 18, 2024) (vacating broker, dealer, municipal securities dealer, and transfer agent bars).

rehabilitative efforts, means that he no longer poses a risk warranting a bar, especially given his good character, charitable commitments, and disassociation from his brother.[39]

Moreover, Rengan is willing to comply with conditions, including hours of insider trading education (or training) and confidential reporting of equity holdings over the course of an appropriate number of years.[40] And his intended reentry into the industry partially aims to support charitable endeavors benefiting Sri Lanka.[41] The public interest now supports granting relief from the bar, given Rengan's rehabilitation, his proactive commitment to ethical conduct, and the hardships he has endured.

Finally, it is also important to recognize that, here, if Rengan had found an investment adviser sponsor to support a Rule 193 application, the Commission or its staff would presumably have granted his Rule 193 application.[42] And, as discussed, a significant portion of the 2014 bar order against Rengan has already been lifted through a process established by the Commission.[43] There is no compelling reason to continue barring Rengan from engaging in the investment advisory business, especially considering that he is already free from any legal restrictions on participating in other adjacent sectors of the securities industry, and there is no indication that his current freedom to participate has resulted in any negative consequences.

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[39] *See* Decl. ¶¶ 5, 36, 37(a), 37(e); Decl. Ex. 1.

[40] *See* Decl. ¶ 36; Decl. Ex. 17.

[41] *See* Decl. ¶ 32.

[42] Adopting Release, 1984 WL 547096, at *2 n.23 ("In those cases where the Commission bar order specifies that a person may apply for consent to associate after a specified period of time, *the Commission generally will grant the application upon a proper showing* made after expiration of the specified period of time." (emphasis added)).

[43] *See supra* note 34; *see also*

2. Relief should be granted on the basis of a significant change of circumstances.

Alternatively, a "significant change in circumstances" since 2014 supports vacating the bar.[44] Unlike in 2014, Rengan has now faced ten years of effective unemployment and is increasingly willing to meet any conditions the Commission may impose to regain their trust and resume work in entrepreneurial or financial sectors. Rengan has found that no American investment adviser is willing to engage with him, likely due to the accessibility of information regarding his history with the Commission and possibly due to the association of his distinctive last name and the similarity between his first name, "Rajarengan," and that of his brother, "Rajakumaran."[45] Rengan now seeks the opportunity to earn a meaningful income to support his young son's education, a goal he has not been able to achieve since 2014, and it is apparent that goal cannot be realized without the bar's removal.[46]

With every intention to respect the requirement of him under Rule 202.5(e), Rengan respectfully requests that the Commission carefully review his declaration in support of this motion and consider the context surrounding his previous decision to settle the civil case against him.[47] Specifically, Rengan consented to an injunction and a bar to promptly resolve Commission enforcement actions following his jury acquittal in a related criminal insider trading case.[48] This

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[44] *Stephen S. Wien*, Exchange Act Release No. 40239, 1998 WL 404638, at *2 (July 21, 1998) (applying the significant change in circumstances standard in the context of a respondent's motion to vacate aspects of a bar).

[45] *See* Decl. ¶¶ 16, 17, 34.

[46] *See* Decl. ¶¶ 4, 16-18, 34.

[47] *See* Decl. ¶ 9; Decl. Exs. 7-9; *see also Final Rule: Consent Decrees in Judicial or Administrative Proceedings*, 37 Fed. Reg. 25,224, 25,224 (Nov. 29, 1972) (codified at 17 C.F.R. § 202.5(e)).

[48] *Compare* Decl. Ex. 3 (stating that Respondent was determined not guilty by a jury on July 8, 2014), *with* Decl. Ex. 7 (reflecting that Respondent was negotiating the terms of settlement with the Commission between mid-July 2014 and early October 2014).

decision to settle the Commission's claims was driven by practical and economic considerations.[49] At the time, his limited financial resources made it difficult to continue retaining qualified counsel.[50] Consequently, he consented to both the federal court injunction and the bar, under the mistaken belief that the bar would apply for only five years.[51] Rengan further never knowingly consented to the reality that the bar was a permanent bar order unless he could find a financial firm who would agree to employ him after five years had passed—a feat that would prove impossible.

3. Relief should be granted on the basis of compelling circumstances.

In the same vein that a significant change in circumstances compels the granting of Rengan's request to lift the bar, his case presents "compelling circumstances" justifying such lifting.[52] Notably, Rengan agreed to settle under a fundamental misunderstanding of the agreement's scope and the controlling effect of the Rule 193 process. Furthermore, Rengan's inability to participate in the Rule 193 process, despite his integrity, charitable contributions, and exemplary conduct over the past decade, underscores the compelling nature of his circumstances and the need for relief in this case.

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[49] *See, e.g.*, Frank H. Easterbrook, Justice and Contract in Consent Judgments, 1987 U. Chi. Legal Forum 19, 19-21 (1987) (describing settlement as an economic calculation considering "costs that include legal fees, the expenses of discovery, the expenses of waiting" and acknowledging that "[d]isputes may arise about the meaning of the [settlement] contract"); Frank H. Easterbrook, *Criminal Procedure as a Market System*, 12 J. of Legal Stud. 289, 289-90 (1983) (explaining that settling in response to government allegations provides a mechanism to maximize efficiency through application of basic free market principles and acknowledging that party interactions are influenced by "budgets"); *see also* Decl. ¶¶ 9 inclusive of subparts.

[50] *See* Decl. ¶¶ 9(a).

[51] *See* Decl. ¶¶ 9(c), 10.

[52] *See Edward I. Frankel*, Exchange Act Release No. 49002, 2003 WL 23094747, at *4 (Dec. 29, 2003) ("Consistent with the Commission's long-standing approach in this area, Commission administrative bars, which are imposed in response to findings of misconduct, *will remain in place in the usual case and be removed only in compelling circumstances*. Preserving the status quo ensures that the Commission, in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals[']activities." (emphasis added)).

III. Conclusion.

For the reasons outlined above, the Commission should grant Respondent Rengan Rajaratnam's motion and lift the investment adviser bar currently imposed against him.

/s/ [redacted]

CHRISTINA Z. MILNOR

Virginia State Bar No. 79249
District of Columbia Bar No. 996793
MINCEY BELL MILNOR, affiliated with Cranfill Sumner LLP
2001 K Street NW, Suite 250 North Tower
Washington, D.C. 20006
Telephone: 771.208.1485
Facsimile: 771.212.9347
Email: milnor@minceybellmilnor.com
Attorney for Rengan Rajaratnam.

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2025, a true and correct copy of RESPONDENT RAJARENGAN RAJARATNAM'S MOTION FOR RELIEF FROM INVESTMENT ADVISER BAR UNDER COMMISSION RULE OF PRACTICE 154 has been submitted via the Commission's Electronic Filings in Administrative Proceedings and sent via email to gottesmand@sec.gov and waldons@sec.gov, and also by U.S. Postal Service Priority Mail to the address noted below, as I understand to be consistent with 17 C.F.R. § 201.150(c) and *Instructions for Electronic Filing and Service of Documents in SEC Admin. Procs. and Tech. Specs.*, www.sec.gov/efapdocs/instructions.pdf.

U.S. Securities and Exchange Commission
c/o Division of Enforcement's Trial Unit
100 F St NE
Washington, DC 20549

/s/ [redacted]
CHRISTINA Z. MILNOR