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

DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION FOR RELIEF FROM INVESTMENT ADVISER BAR

DIVISION OF ENFORCEMENT
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February 18, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Administrative Proceedings

Cases

Regulations

The Division of Enforcement ("Division") respectfully submits this memorandum of law in opposition ("Opposition") to Respondent Rajarengan (a/k/a Rengan) Rajaratnam's ("Respondent") Motion for Relief from Investment Adviser Bar Under Commission Rule of Practice 154 (the "Motion") in which he requests that the Securities and Exchange Commission ("Commission") lift the investment adviser bar currently imposed against him in its entirety.

I. PRELIMINARY STATEMENT

Respondent is subject to a Commission order entered by consent on November 3, 2014 (the "Order"), which, among other things, barred him from associating with an investment adviser, with the right to apply for reentry after five years. Respondent now asks the Commission to lift his bar because it has had the entirely foreseeable effect of complicating his ability to work in the investment adviser business.

Respondent's Motion should be denied because Respondent is unable to demonstrate—as he must—compelling circumstances warranting revocation of his investment adviser bar. In evaluating whether such compelling circumstances exist, the Commission considers a range of factors, such as the nature of the misconduct at issue, the time passed and Respondent's compliance record since the issuance of the bar, the Respondent's age and securities industry experience, whether the Respondent has identified unanticipated consequences of the bar, the extent to which the Commission has granted prior relief from the bar, and whether the requested relief is inconsistent with the public interest and investor protection. Under the facts and circumstances presented here, these factors weigh against finding that compelling circumstances exist to rescind Respondent's investment adviser bar, and accordingly, the Motion should be denied.[1]

[1] For purposes of this Opposition, the Division addresses the Respondent's Motion on its chosen terms—that is, as a motion under Commission Rule of Practice 154 ("Rule 154"), rather than as an application under Commission Rule of Practice 193 ("Rule 193"). To the extent the Division's consent motion for an extension of time to oppose the Motion conveyed that Rule 193 is the exclusive mechanism that could govern Respondent's Motion, the Division

II. PROCEDURAL BACKGROUND

A. Respondent Consented to the Entry of an Order Imposing Associational Bars, including an Investment Adviser Bar.

On Respondent's consent, the Commission instituted this proceeding on November 3, 2014, based on a final district court consent judgment entered against him in the civil action captioned *SEC v. Rajarengan (a/k/a Rengan) Rajaratnam*, 13-CV-1894 (JGK) (S.D.N.Y.), enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder. *See* Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions, dated November 3, 2014 (the "Order") at Jaroslawicz Decl., Ex. B. As set forth in the Order, the District Court complaint alleged that Respondent, a portfolio manager at an investment adviser, had participated in multiple insider trading schemes to illegally trade securities based on material nonpublic information, generating substantial profits for himself and the portfolios he managed. Pursuant to the Order, the Commission barred Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent, with the right to apply for reentry after five years.

In consenting to the entry of the Order, Respondent signed an Offer of Settlement ("Offer"). *See* Offer of Settlement, Jaroslawicz Decl., Ex. A.[2] Per the Offer, Respondent agreed to the bars set out in the Order. *Id.* at 2-3. In addition, Respondent waived his rights, *inter alia,* to a hearing, fact finding, all post-hearing procedures, and judicial review by any court as set out in the Commission's Rule of Practice 240(c). *Id.* at 3 (waiving "those rights specified in Rule[] 240(c)(4)

withdraws that argument. Nevertheless, as discussed below, Respondent's assertions that Rule 193 is "unfair" and "outdated" are without merit, and his failure to seek the incremental relief provided under Rule 193 belies the notion that compelling circumstances exist to lift the bar in its entirety.

[2] All references to "Jaroslawicz Decl." are to the Declaration of Debra Jaroslawicz, dated February 18, 2025.

. . . of the Commission's Rules of Practice").

B. Respondent Sought Removal of His Associational Bars.

On November 18, 2021, Respondent submitted a letter to the Division requesting that the Division recommend that the Commission (1) lift the associational bars entered against him in the Order and (2) seek to vacate the obey-the-law injunction entered on his consent by the District Court. *See* Respondent Decl. at Exhibit 1 at 1.[3] On June 8, 2022, Commission staff advised Respondent that it would not recommend that the Commission agree to either request.

On June 12, 2024, Respondent submitted a request to vacate his collateral bars, in accordance with *Bartko v. Securities and Exchange Commission*, 845 F. 3d 1217 (D.C. Cir. 2017) (finding that collateral bars constituted impermissible retroactive penalty). On July 18, 2024, the Commission vacated the Order with respect to the bars from associating with a broker, dealer, municipal securities dealer, or transfer agent because "[t]he bars at issue were imposed based solely on conduct occurring before the Dodd-Frank Act took effect". *See* Respondent Decl. at Exhibit 12. The bar prohibiting Respondent from associating with an investment adviser remained in place because Respondent was associated with an investment adviser during the time period of the misconduct at issue in the Order.

On January 27, 2025, Respondent filed the instant Motion seeking to lift the portion of the Order which barred him from association with any investment adviser, with the right to apply for reentry after five years.

III. ARGUMENT

The Commission should deny the Motion because Respondent has failed to demonstrate

[3] All references to "Respondent Decl." are to the Declaration of Rajarengan Rajaratnam in Support of Motion for Relief from Investment Adviser Bar, dated January 21, 2025.

compelling circumstances warranting revocation of his investment adviser bar.

The Commission has repeatedly held that "bars should remain in place in the usual case and be removed only in compelling circumstances." *Kenneth W. Haver, CPA,* Exch. Act Rel. No. 54824, 2006 WL 3421789, at* 3 (Nov. 28, 2006) (cleaned up); *see also Stephen S. Wien*, Exch. Act Rel. No. 49000, 2003 WL 23094748, at *4 (Dec. 29, 2003) (same). In determining whether a respondent has shown such "compelling circumstances" the Commission considers:

> the nature of the misconduct at issue in the underlying matter (more serious and extensive allegations militate against relief); the time that has passed since issuance of the administrative bar; the compliance record of, and any regulatory interest in, the petitioner since issuance of the administrative bar; the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar; whether the petitioner has identified verifiable, unanticipated consequences of the bar; the position and persuasiveness of the Division of Enforcement, as expressed in response to the petition for relief; and whether there exists any other circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors.

Haver, 2006 WL 3421789, at* 2. "Not all of these factors will be relevant in determining the appropriateness of relief in a particular case, and no one factor is dispositive." *Id.* at *3. Rather, "[i]n reviewing requests to lift or modify administrative bar orders, the Commission will determine whether, under all the facts and circumstances presented, 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." *Wien,* 2003 WL 2309478, at *4.

Here, the relevant factors strongly weigh against lifting or rescinding the Respondent's bar.

A. Nature of Misconduct

As set forth in the Commission's Order, the District Court complaint alleged that Respondent illegally traded securities based on material nonpublic information, in violation of Exchange Act Section 10(b) and Rule 10b-5 thereunder. "[C]onduct that violates the antifraud

provisions of the securities laws is especially serious and subject to the severest of sanctions." *See, e.g., Peter Siris,* Exch. Act Rel. No. 3736, 2013 WL 6528874, at *6 (Dec. 12, 2013) (cleaned up), *petition denied,* 773 F.3d 89 (D.C. Cir. 2014). Respondent's conduct was not an isolated incident, but rather, as the District Court complaint alleged, he participated in multiple insider trading schemes wherein he traded based on material nonpublic information related to merger and acquisition activity and quarterly earnings announcements. The complaint also alleged that Respondent generated substantial insider trading profits for himself personally and for the portfolios he managed by trading on illegal tips.

B. Time That Has Passed Since Issuance of the Bar

Approximately ten years have passed since the Commission entered the Order. However, "[t]he passage of time is not a sufficient reason in itself to vacate a Commission order." *Donald H. Parsons,* Exch. Act Rel. No. 32948, 1993 WL 380123 at *2 (September 23, 1993); s*ee also Ciro Cozzolino,* Exch. Act Rel. No. 49001, 2003 WL 23094746, at *4 (Dec. 29, 2003) (lifting a bar after twenty-nine years while noting that a "lengthy" amount of time "does not, standing alone, weigh significantly in favor of relief"); *Wien,* 2003 WL 2309478, at *5 (twenty-one years was "a time frame that is not unduly lengthy and does not weigh significantly in favor of relief).

C. Compliance Record of the Petitioner Since Issuance of the Bar

There is no evidence that Respondent has been the subject of any regulatory interest since issuance of the bar. Respondent has not yet established a compliance record since issuance of the bar that would support rescinding the Order. *See Gregory Osborn*, Exch. Act Rel. No. 86001, 2019 WL 2324337 at *3 (May 31, 2019) (cleaned up) ("this factor weighs against relief because [respondent] cannot demonstrate a record of compliance in any capacity") (cleaned up). In support of his purported history of compliance, Respondent posits that he "no longer poses a risk

warranting a bar" due, in part, to his "rehabilitative efforts, …good character, charitable commitments, and dissociation from his brother." *See* Brief at 16-17. However, "such assurances are not an absolute guarantee against misconduct in the future." *Siris,* 2013 WL 6528874, at *6 (Dec. 12, 2013) (cleaned up). Additionally, Respondent's argument that his "decision to settle the Commission's claims was driven by practical and economic considerations" (Memorandum in Support of Motion at 18-19) demonstrates his failure to meaningfully recognize his wrongdoing, thereby rendering hollow his assurances that he "no longer poses a risk warranting a bar."

D. Age and Securities Experience of the Petitioner, and the Extent to Which the Commission Has Granted Prior Relief from the Bar

Respondent is approximately 54 years old and had several years of experience in the securities industry prior to the Order, including as a portfolio manager at Galleon Management LP and by starting and running his own fund, Sedna Capital Management, LLC, which focused on small cap health care and technology stocks. Respondent has not presented any evidence of additional securities experience since the Order, notwithstanding that in 2014 the Commission vacated all his associational bars, except the investment advisor bar, thereby permitting him to work in the securities industry. Accordingly, Respondent's experience is not "substantially different from when the Commission entered the Order barring him." *Gregory Osborn*, 2019 WL 2324337, at *3; *see also Wien,* 2003 WL 2309478, at *5 (record of operating in securities industry after issuance of supervisory bar weighed in favor of vacating the bar). Therefore, this factor weighs against vacating the bar.

The Commission has not granted prior relief. As indicated above, Respondent previously sought relief from the investment adviser and other associational bars—outside the incremental relief offered through the Rule 193 process—in November 2021. Then, like now, Respondent sought to have the associational bars lifted in their entirety. *See* Respondent Decl. at Exhibit 1 at

n. 12 (Respondent's letter stating that Respondent "is not making this request under Rule 193"). Specifically, Respondent requested that Division staff recommend that the Commission vacate the bar due to compelling circumstances. *See* Respondent Decl. at Exhibit 1 (letter from Respondent's then counsel to the Division). That request was denied. *See* Respondent Decl. at Exhibit 11 (letter from Commission staff to Respondent that it will not recommend that that Commission agree to Respondent's requests).

In the Motion, the Respondent renews his effort to circumvent Rule 193. Rule 193 provides the process by which a barred individual can apply to the Commission for consent to become associated with certain entities, including investment advisers, and governs applications by barred individuals for consent to associate. 17 C.F.R. § 201.193. To obtain relief under Rule 193, applicants must "make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest." *Id.* § 201.93(d).[4] "[T]he application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar." *Id.* at § 201.193(a)(1).

Respondent's Motion fails to provide the information that would be required in an application to obtain incremental relief under Rule 193, including information regarding: "a proposed employment capacity or position[;]" "the manner and extent of supervision[;]" any relevant courses, examinations, or other actions taken by the Respondent since the imposition of

[4] Rule 193 requires that an applicant submit an affidavit addressing the following eight factors: (1) the time period since the imposition of the bar; (2) any restitution or similar action taken by the applicant to recompense any injured parties; (3) the applicant's compliance with the order imposing the bar; (4) the applicant's employment since the imposition of the bar; (5) the applicant's proposed employment capacity or position; (6) the manner and extent of supervision; (7) any relevant courses, examinations, or other actions taken since the imposition of the bar to prepare for his or her return; and (8) any other material information. *Id.* § 201. (c) and (e). The applicant must also submit a statement from the proposed employer, addressing the conditions of employment, nature of supervision, and qualifications of the supervisor, among other things. *Id.* § 201.193(c)(4).

the bar to prepare for his return; and the conditions of employment and supervision provided in a statement by a proposed employer. Instead of proffering such information in an effort to obtain a partial modification of the investment adviser bar, the Motion seeks to avoid Rule 193 and instead seeks a wholesale vacatur of the bar. Because the Commission "generally first grant[s] incremental relief in our cases vacating bars," Respondent's failure to first seek such relief under Rule 193 further militates against lifting the bar. *Michael H. Johnson*, Exch. Act Rel. No. 75894, 2015 WL 5305993, at *4 (Sept. 10, 2015) (cleaned up) (denying motion to modify bar in part because respondent had not sought prior incremental relief from bar).

To the extent that Respondent argues that he can avoid seeking incremental relief under Rule 193 because that rule is "unfair" and "outdated," those arguments are without merit. For one thing, Respondent has not availed himself of the Rule 193 process, and, as discussed, the Commission analyzes requests to vacate or modify bars under a "public interest/investor protection" inquiry that is separate from the Rule 193 process. *See Haver*, 2006 WL 3421789, at *2; *see also Gregory Osborn*, 2019 WL 2324337, at *2. Thus, while a Rule 193 request may be decided by the Director of the Division of Enforcement pursuant to delegated authority (Memo 10-15), the Commission itself evaluates requests to vacate or modify a bar.

To be sure, in making that determination, the Commission considers whether a party has first sought incremental relief from either FINRA or the Commission—including whether the party has applied under Rule 193 for consent to associate. *See Osborn*, 2019 WL 2324337, at *3. While a party's failure to seek such incremental relief "weighs heavily against" an applicant seeking to vacate or modify a bar, it is but one of a number of factors the Commission considers in assessing whether lifting a bar is in the public interest. *Id.* at *3.

To the extent Respondent argues that he lacked notice that Rule 193 would factor into the

public interest inquiry at all, that argument fails for the simple reason that, in his offer of settlement, Respondent, who was represented by counsel, stated that he "underst[ood] that by settling to a bar with the right to reapply," such an "application … w[ould] be reviewed under the processes specified in Rule 193[.]" Offer of Settlement, Jaroslawicz Decl., Ex. A, at 4. Respondent also admitted that he "ha[d] read and underst[ood] the foregoing Offer, [and] that this Offer [wa]s made voluntarily[.]" *Id.* Given this admitted "understand[ing]," Respondent's insistence that he did not foresee that Rule 193 would factor into his request for relief rings hollow. This is especially so given the Commission's long-standing practice to consider whether an applicant has first sought incremental relief like that offered under Rule 193 when determining a request to vacate or modify a bar. *See, e.g.*, *Salim B. Lewis*, Exch. Act Rel. No. 51817, 2005 WL 1384087, at *4 & n.40 (June 10, 2005) ("We generally first grant incremental relief in our cases vacating bars.").

Finally, Respondent's argument that the Commission should reconsider Rule 193 and the rule permitting Rule 193 requests to be resolved by delegated authority,[5] is beyond the scope of this motion. *See* Brief at 13-15. Respondent may instead file a rulemaking petition with the Commission under the Administrative Procedure Act, 5 U.S.C. 553(e). *See* Commission Rule of Practice 192, 17 C.F.R. 201.192 (permitting petitions to issue, amend, or repeal rules of general application).

For these reasons, this factor does not present compelling circumstances to warrant lifting the bar.

E. Whether the Petitioner Had Identified Verifiable, Unanticipated Consequences of the Bar

Respondent has not identified any unanticipated consequences against him as the result of

[5] *See* 17 C.F.R. 200.30-4(a)(5).

the bar. In support of his Motion, Respondent details the financial consequences and employment obstacles he has suffered as a result of the bar. *See, e.g.,* Rajaratnam Decl. at ¶¶ 12, 14-17. However, the fact that it has been difficult for him to find work in the investment adviser business was an entirely foreseeable consequence of settling fraud charges with the Commission based on participation in multiple insider trading schemes. *See Johnson,* 2015 WL 5305993 at *4 n. 20 (diminished employment prospects and financial difficulties "are among a range of natural and foreseeable consequences that flow from a bar on employment in the securities industry"); *see also William H. Pike*, Inv. Comp. Act Rel. No. 20417, 1994 WL 389872, at *2 (July 20, 1994) ("[Respondent's] difficulties in obtaining employment do not render our Order inequitable. They are simply a natural consequence of the action taken against him."). The Commission has previously held that difficulty finding suitable employment "is not a compelling circumstance that would justify wholly vacating a remedial sanction designed to prevent recurrence of misconduct and protect investors and the integrity of markets." *Eric David Wanger*, Exch. Act Rel. No. 81111, 2017 WL 2953369, at *4 (July 10, 2017) (cleaned up); *see also Brett Thomas Graham*, Exch. Act Rel. No. 84526, 2018 WL 5734348, at *3 (Nov. 2, 2018) (difficulty attaining suitable employment does not justify vacating a remedial sanction such as a bar).

F. Whether There Exists Any Other Circumstance That Would Cause the Requested Relief from the Bar to Be Inconsistent with the Public Interest or the Protection of Investors

Respondent's transparent attempt to change the terms of the Order years after it was entered is inconsistent with the public interest.[6] The Commission has "a strong interest in the finality of [its] settlement orders. Public policy considerations favor the expeditious disposition of litigation, and a respondent cannot be permitted to follow one course of action and, upon an unfavorable

[6] Additionally, Respondent waived his opportunity to renegotiate the terms of his settlement when he voluntarily offered to settle with the Commission in 2014. 17 C.F.R. § 201.240(c)(4).

result, to try another course of action." *Johnson*, 2015 WL 5305993, at *4 (cleaned up); *see also Wanger*, 2017 WL 2953369, at *4 ("We have a strong interest in the finality of our orders and we have consistently applied the principle set out in Rule 193 to reject collateral attacks that seek to undo the underlying proceeding, the findings in our order, or the terms of settlement.").

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Commission deny Respondent's Motion.

Dated: February 18, 2025
New York, New York

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Certificate of Service

I certify that on February 18, 2025, the foregoing Division of Enforcement's Memorandum of Law in Opposition to Respondent Rajaratnam's Motion for Relief From Investor Adviser Bar Under Commission Rule of Practice 154 was served on counsel and other persons entitled to notice as follows:

Via Electronic Filing

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OS Received 02/18/2025

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In the Matter of

RAJARENGAN (a/k/a Rengan) RAJARATNAM

DECLARATION OF DEBRA JAROSLAWICZ IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT RAJARATNAM'S MOTION FOR RELIEF FROM INVESTOR ADVISER BAR UNDER COMMISSION RULE OF PRACTICE 154

I, Debra Jaroslawicz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a member of the bar of the State of New York and am employed as Trial Counsel in the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission"), New York Regional Office. I submit this Declaration in support of the Division's Memorandum of Law in Opposition to Respondent Rajarengan (a/k/a Rengan) Rajaratnam's Motion for Relief from Investor Adviser Bar Under Commission Rule Of Practice 154 (the "Application").

2. Attached hereto as Exhibit A is a true and correct copy of the Offer of Settlement of Respondent Rajaratnam (a/k/a Rengan) Rajaratnam, dated October 15, 2014.

3. Attached hereto as Exhibit B is a true and correct copy of the Order Instituting

Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions, dated November 3, 2014.

Executed on February 18, 2025
New York, New York

___/s/_____
Debra Jaroslawicz