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.

REPLY TO DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S MOTION FOR RELIEF FROM INVESTMENT ADVISER BAR

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I. PRELIMINARY STATEMENT

Respondent Rajarengan Rajaratnam ("Respondent" or "Rengan") respectfully submits this Reply to the Division of Enforcement's Opposition ("Opposition") to Respondent's Motion for Relief from Investment Adviser Bar (the "Motion") in which he requested that the Securities and Exchange Commission ("Commission") lift the investment adviser bar imposed against him.

In 2014, the Commission's staff negotiated and approved a settlement agreement with Rengan, imposing a bar but explicitly granting him the right to apply for reentry after five years. At that time, the staff—who were closest to the facts—determined that a five-year pathway to reentry was appropriate. Rengan relied on this commitment, stretching his already limited financial resources to pay a significant settlement amount that he could scarcely afford, believing he would have a genuine opportunity to return after five years. Now, more than a decade later, with no evidence of any misconduct since, the Division's attempt to deny him the very right it agreed to in 2014 is not only unjustified but directly at odds with its prior position.

Since 2014, Rengan has maintained a perfect record of compliance, fulfilling every obligation imposed by the Commission. Yet due to circumstances beyond his control—most notably, his last name he has been effectively barred not just from investment advising but from the financial sector as a whole. His brother, Rajakumaran Rajaratnam ("Raj"), is one of the most infamous white-collar criminals in U.S. history.[1] This unavoidable association has made it functionally impossible for Rengan to secure a sponsoring employer, a requirement under Rule

[1] *See* Decl. ¶ 17; *see also Timeline: A History of Insider Trading*, New York Times (Dec. 6, 2016), 2016, https://www.nytimes.com/interactive/2016/12/06/business/dealbook/insider-trading-timeline.html (noting Raj's 11-year sentence and the "powerful wiretap evidence" as well as his connection with the charges against Rajat Gupta).

193, a rule that was never intended to serve as a permanent barrier to reentry.[2] The Division's argument that Rengan has failed to demonstrate compliance in an industry he is barred from is not only illogical but highlights the fundamental unfairness of his situation.

The Commission never intended to impose a lifetime ban on Rengan. Yet absent relief, that is precisely what the current framework has created. Justice demands that the Commission honor its original agreement and lift the bar.

II. ARGUMENT

A. Compelling Circumstances

The Commission's own framework for evaluating requests to vacate a bar recognizes that exceptional cases warrant relief. The Division does not dispute that the "compelling circumstances" standard governs such requests. Rather, it attempts to apply this standard in a rigid, outdated manner that fails to account for both the equities of this case and the practical realities of the industry today.

The Division states that, in evaluating whether compelling circumstances exist, the Commission considers:

> 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 is inconsistent with the public interest and investor protection.[3]

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[2] 17 C.F.R. § 201.193; *see generally* Applications by Barred Individuals for Consent to Assoc. with a Registered Broker, Dealer, Mun. Sec. Dealer, Inv. Adviser or Inv. Co., Exchange Act Release No. 20783, 1984 WL 547096 (Mar. 16, 1984).

[3] Division of Enforcement's Memorandum of Law in Opposition to Respondent's Motion for Relief from Investment Adviser Bar*, Admin*. Proc. File No. 3-16245, at 1 (Feb. 18, 2025) ("Opposition").

Yet the Division relies on adjudicatory opinions that are consistently over fifteen years old—a flawed approach that disregards the evolution of the Commission's own decision-making.[4] While the Commission at times operates as a quasi-judicial body, its Senate-confirmed Commissioners are not lifetime-appointed judges. As a result, prior opinions do not carry the binding weight of federal precedent, nor do they necessarily reflect the policy perspectives of today's Commission.

Even under the outdated framework the Division invokes, the factors it cites weigh in favor of vacating Rengan's bar.

1. Nature of the Misconduct at Issue

The Division asserts that Rengan "participated in multiple insider trading schemes," "generated substantial insider trading profits," and engaged in conduct "subject to the severest of sanctions."[5] It further alleges that Rengan's conduct was "not an isolated incident," that he fails "to meaningfully recognize his wrongdoing," and that his reassurances that he does not pose a risk are "hollow."[6] It also presents Rengan as conniving and aiming to "circumvent" Rule 193.[7]

Through these repeated mischaracterizations of both Rengan and the underlying misconduct, the Division attempts to depict him as a menace to society. In reality, however, Rengan was acquitted of insider trading charges against him, and he has never been convicted of any crime, let alone fraud.[8] He acknowledges that he agreed to settle with the Commission in

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4 *See, e.g.*, Opposition at 4 (citing *Kenneth W. Haver, CPA*, Exch. Act Rel. No. 54824, 2006 WL 3421789 (Nov. 28, 2006); *Stephen S. Wien*, Exch. Act Rel. No. 49000, 2003 WL 23094748 (Dec. 29, 2003)).

5 Opposition at 2, 5.

6 Opposition at 5, 6.

7 Opposition at 7.

8 *See* Decl. ¶6; Decl. Exs. 2, 3. As for the charges brought against Rengan, prosecutors withdrew four following judicial questioning, the judge dismissed two others, and the jury acquitted him of the final charge. Further, Rengan's acquittal came after prosecutors had secured convictions and guilty pleas against twenty-four

response to its civil case without admitting or denying liability and sincerely regrets his involvement in Galleon Group.

Notably, the Commission deemed it appropriate and consistent with the public interest to enter a settlement agreement with Rengan that did not impose a permanent bar from associating with an investment adviser. The Commission did not regard Rengan as a perpetual threat to investors or the public interest. Had the misconduct been as severe as the Division now suggests, the Commission would have imposed a permanent ban, as it routinely does in settled follow-on proceedings. The Commission's willingness to enter the settlement agreement makes clear that they did not find it necessary to exclude Rengan from the industry indefinitely.

2. Time Passed and Respondent's Compliance Record Since Issuance of the Bar

So much time has elapsed since the conduct at issue that the Division sought an extension to oppose Rengan's Motion, citing "the age of the underlying conduct" and the unavailability of "staff most familiar with the matter."[9] More than a decade has passed since the bar was issued and in those years, Rengan has maintained a spotless record of compliance. The Division itself acknowledges this, stating that there is "no evidence that [Rengan] has been the subject of any regulatory interest" since 2014.[10]

Strangely, the Division uses that statement to suggest that Rengan has *not* established a compliance record. Common sense, however, dictates that an absence of infractions constitutes a record of compliance. Rengan has not been able to demonstrate compliance within the

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people associated with Raj and his scheme. *E.g.*, Larry Neumeister, Jury in NY acquits ex-hedge fund founder's brother, AP News, 2014, https://apnews.com/general-news-domestic-news-d5c0bf0df4e24b4d978651866ea24d4e.

[9] *Rajarengan (a/k/a Rengan) Rajaratnam,* Advisers Act Release No. 6839, 2025 WL 401437, https://www.sec.gov/files/litigation/opinions/2025/ia-6839.pdf (Jan. 31, 2025).

[10] Opposition at 5.

investment advisory space due to the bar, but insider trading is not limited to industry professionals, and Rengan has not engaged in it. It is curious that the Division expects Rengan to demonstrate compliance within the industry when he has—until last summer—been barred from participating in the entire securities industry. Moreover, the investment adviser part of the bar continues today.

The Commission has acknowledged that establishing a track record of compliance is fundamentally inconsistent with a bar.[11] In one opinion, when the Division opposed the respondent's request to vacate the bar suggesting instead that the respondent should first seek relief from special supervisory procedures before establishing a record of compliance for full relief—the Commission sided with the respondent.[12] It specifically rejected the Division's position as "unduly restrictive," reasoning that "if Cozzolino cannot obtain new employment, he will not be in a position to establish the 'track record'" the Division demands before vacating the bar.[13]

The Division argues that Rengan "demonstrates his failure to meaningfully recognize his wrongdoing, thereby rendering hollow his assurances that he 'no longer poses a risk warranting a bar.'"[14] This assertion is erroneous. Rengan's declaration submitted in support of the Motion clearly acknowledges the gravity of the situation while appropriately contextualizing his unique circumstances—specifically, that a criminal trial found him innocent of wrongdoing.

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11 *Ciro Cozzolino*, Exch. Act Rel. No. 49001, 2003 WL 23094746 at *4 (Dec. 29, 2003).

12 *Id.*

13 *Id.*

14 Opposition at 6.

The Division's suggestion that Rengan takes insider trading lightly is both inaccurate and unsupported by the evidentiary record. Rengan has explicitly expressed regret regarding the crimes committed by his brother and the Galleon Group, as well as his profound remorse for his association with both parties.[15] Furthermore, he has taken concrete steps to distance himself from his brother, with whom he has maintained no communication for over a decade.[16]

The Motion and Rengan's supporting declaration demonstrate that he is a serious, law-abiding individual who respects the enforcement actions brought against him more than a decade ago. His efforts to secure a sponsor have been unfruitful, in part because he prioritizes ethical standards and seeks to associate only with reputable firms. Yet, the very firms that meet those high ethical standards are also the least likely to take the risk of hiring someone with the Rajaratnam name. Although Rengan regrets his past association with his brother, he is committed to surrounding himself with colleagues who uphold the rule of law. However, this has proved difficult, if not impossible, because potential sponsors associate Rengan with Raj.

3. Respondent's Age and Securities Industry Experience

With respect to his age, Rengan has been unable to engage with the financial industry during the prime of his career. This factor supports vacating the bar to give him a chance to help his wife meaningfully support and educate their young son. The Division, however, contends that his lack of additional securities experience since the 2014 bar order ("Order") weighs against him, arguing that he "has not presented any evidence of additional securities experience since the Order."[17] Yet the Order expressly barred Rengan from working in any securities capacity,

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15 *See* Decl. ¶37(b).

16 *See* Decl. ¶37(e).

17 Opposition at 6.

prohibiting his "association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent."[18] Given these restrictions, the suggestion that Rengan could have obtained post-Order securities experience without violating its terms is both unreasonable and illogical.

4. Unanticipated Consequences of the Bar

Rengan has provided several "verifiable, unanticipated consequences of the bar."[19] The only anticipated consequences of a bar are the inability to work in the space to which the bar applies and any financial consequences that flow from not having that specific employment opportunity. That is the Commission's purpose for instituting the bar, that is the individual's understanding of the bar, and that is how the bar plainly reads. The Division admits this, focusing on the foreseeability of "diminished employment prospects and financial difficulties."[20]

It is callous of the Division to suggest that Rengan has not faced any unanticipated consequences of the bar. The difficulties he has experienced go well beyond the diminished employment prospects from the barred industries and the resulting financial difficulty. Rengan has experienced a litany of obstacles extending into every facet of he, his wife, and his child's lives. He has been stopped from employment anywhere in the securities industry, by the Order's

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[18] *Rajarengan (a/k/a Rengan) Rajaratnam*, Advisers Act Release No. 3964, 2014 WL 5513904, https://www.sec.gov/files/litigation/admin/2014/ia-3964.pdf (Nov. 3, 2014).

[19] Opposition at 9.

[20] Opposition at 10 *(*citing *Michael H. Johnson*, Exch. Act. Rel. No. 75894, 2015 WL 5305993 at fn 20 (Sept. 10, 2015) (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"); *William H. Pike*, Inv. Comp. Act Rel. No. 20417, 1994 WL 389872 at *2 (July 20, 1994) ("[Pike's] difficulties in obtaining employment do not render our Order inequitable. They are simply a natural consequence of the action taken against him.")).

terms, and practically beyond that—anywhere in the financial industry or in entrepreneurial activities.

Rengan has been diagnosed with Crohn's Disease, a chronic autoimmune disorder with no cure, as a result of the stress caused by his brother's case and the enforcement actions then brought against him.[21] Rengan and his wife have been debanked and denied credit, despite his wife's stellar credit score.[22] Rengan and his wife have even been denied surrogacy options—an unanticipated and unjust consequence that extends far beyond the scope of the settled bar.[23] He has also been unable to raise capital for entrepreneurial ventures unrelated to the Order and has been unable to secure meaningful employment, [24] leaving him unable to provide for his wife and child.[25] His prolonged inability to find work has forced him to expand his job search to Sri Lanka, despite the fact that his wife works in the United States and his son has known no other home. Rengan should not be forced to uproot his family simply to contribute meaningfully to society and provide for them.

Ultimately, Rengan has been punished enough, and the consequences Rengan and his family have faced go far beyond those anticipated by both Rengan and the Commission when each party entered the settlement agreement.

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21 *See* Decl. ¶29.

22 *See* Decl. ¶16.

23 *See* Decl. ¶30.

24 *See* Decl. ¶18.

25 *See generally* Decl.

5. Extent to Which Commission Has Granted Prior Relief

The Division incorrectly claims that the Commission vacated all associational bars other than the investment adviser bar in *2014*.[26] In reality, the Commission did not do so until 2024—and only after Rengan actively sought the relief to which he was entitled.[27]

In *Bartko v. SEC*, the United States Court of Appeals for the D.C. Circuit held that the Commission lacked authority to impose collateral bars for conduct occurring before the passage of the Dodd-Frank Act, as the Act is the source of the Commission's authority to impose such bars. The Dodd-Frank Act took effect on July 22, 2010.[28]

The conduct at issue in the Commission's complaint against Rengan occurred entirely before Dodd-Frank's passage. In light of the *Bartko* decision, the Commission chose only to reconsider and vacate bars it had no legal authority to enforce when a respondent submitted an application.[29] Rengan did so in 2024—six years after a federal court ruling deemed much of the Order beyond the Commission's authority.

Even if the Commission generally favors incremental relief prior to fully vacating a bar, the relief that Rengan was entitled in 2017 following *Bartko* was withheld until 2024.[30] Had the Commission in 2017 vacated Rengan's collateral bar when it was no longer legally entitled to enforce it, Rengan would have had the opportunity to demonstrate securities industry compliance

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[26] Opposition at 6 (" . . . in 2014 the Commission vacated all his associational bars, except the investment advisor bar, thereby permitting him to work in the securities industry.").

[27] *Rajarengan (a/k/a Rengan) Rajaratnam,* Advisers Act Release No. 6638, 2024 WL 3470184, https://www.sec.gov/files/litigation/opinions/2024/ia-6638.pdf (July 18, 2024).

[28] *Bartko v. SEC*, 845 F. 3d 1217 (D.C. Cir. 2017).

[29] *See Commission Statement Regarding Decision in* Bartko v. SEC (Feb. 23, 2017) https://www.sec.gov/newsroom/speeches-statements/commission-statement-regarding-bartko-v-sec.

[30] Opposition at 8-9 (citing *Salim B. Lewis*, Exch. Act Rel. No. 51817, 2005 WL 1384087 (June 10,2005); *Michael H. Johnson*, Exch. Act Rel. No. 75894, 2015 WL 5305993, at *4 (Sept. 10, 2015)).

before bringing this motion. Now requiring Rengan to demonstrate that compliance further delaying his ability to return to investment advising—is neither fair nor just. For the past eleven years, Rengan reasonably believed he was fully barred, only to discover that the Commission had no authority to enforce the collateral bars for the prior six years.

6. Public Interest and Investor Protection

Rengan does not pose a threat to investors or the public interest. Despite the Division repeatedly characterizes Rengan as a hardened criminal, Rengan has never been convicted of a crime—including in connection with his work in the securities industry.

Furthermore, Rengan has fully complied with the terms of his settlement agreement. He is willing to submit to heightened supervision, complete additional compliance courses, or take any other reasonable measures the Commission deems necessary to ensure he does not pose a risk to investors or the public interest. He is also willing to comply with any other reasonable guidelines the Commission imposes—aside from securing a sponsor, which has proved impossible for him to obtain.

Rengan has used the hardships he has endured to help others who are similarly situated. Following his Crohn's Disease diagnosis, Rengan volunteers with an organization offering online wellness help to those in need.[31] Rengan has also dedicated his time to serving others through the Mid-Atlantic Innocence Project.[32] This endeavor, like the online wellness platform, is personally meaningful to Rengan, given his acquittal. Rengan has also volunteered his time to Sri Lankan relief efforts, grants for healthcare workers in the wake of COVID-19, and providing healthy

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

[32] *See* Decl. ¶5.

snacks to underprivileged students.[33] The Commission indeed once said, "charitable good works *militate* in favor of relief."[34]

The Division claims that relief is inconsistent with the public interest and investor protection, but never elaborates. In cases where the Commission fails to identify outstanding public interest and investor concerns with the bar's safeguards, relief should be granted.[35]

7. Other Considerations

a. Nature of the Settlement Agreement

The Division incorrectly characterizes Rengan's motion to the Commission as an effort to "circumvent" Rule 193.[36] He is not seeking to have his bar vacated on the grounds that "finding a sponsoring employer is 'simply not possible in the real world while such a restrictive Order is in place.'"[37] Put differently, he has not attempted to bypass Rule 193 due to an unwillingness to make the necessary effort to secure a sponsor. Rengan has persistently made efforts to engage with and apply to firms for years, without success. His inability to secure a sponsor is not due to lack of effort but rather an external, insurmountable obstacle beyond his control. He faces the added and significant challenge of a notorious family name that works against him.

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33 *See* Decl. Ex. 1 at 4-5.

34 *Salim B. Lewis*, Exch. Act Rel. No. 51817, 2005 WL 1384087, at *11 (June 10, 2005) (emphasis added).

35 *See Cozzolino*, 2003 WL 23094746, at *3-4 (granting vacatur where staff failed to identify potential public interest concerns regarding respondent's continued participation in the industry).

36 Opposition at 7.

37 *Brett Thomas Graham*, Exch. Act Rel. No. 84526, 2018 WL 5734348, at *3 (Nov. 2, 2018) (cited at Opposition at 10).

When Rengan entered the settlement agreement, he did so with the understanding that after demonstrating good behavior for five years, he could reapply and be reinstated.[38] The Division has provided no evidence that the Commission or its staff engaged in any colloquy or procedural safeguards to ensure that Rengan fully understood the long-term consequences of the settlement agreement. He was not only unaware that securing a sponsor would be required but could not have anticipated that his name would make fulfilling that requirement effectively impossible.[39]

In criminal proceedings, plea agreements include safeguards to ensure that a defendant fully understands the terms before acceptance.[40] No comparable procedural protections exist in the Commission's process for administrative proceedings settled at the institution stage. The Division has failed to establish that Rengan entered the settlement agreement with a full understanding of its implications—including the risk that, if a sponsor could not be obtained, the bar would effectively be permanent.

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[38] *See* Decl. ¶10.

[39] The Division relies on *Wien*, 2003 WL 23094748, as the framework for deciding motions to vacate. Before the Commission ultimately vacated Wien's bar in 2003, it initially denied relief on the grounds that he had not demonstrated that the bar imposed a "grievous wrong" (*United States v. Swift*, 286 U.S. 106, 119 (1932)) or that there had been a "significant change in circumstances" (*Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 383 (1992)). Here, Rengan's unavoidable association with his infamous brother has made it impossible for him to obtain a willing sponsor—an unanticipated consequence that neither Rengan nor the Commission foresaw when entering into the agreement. This substantial and unforeseeable barrier constitutes a significant change in circumstances warranting relief. Moreover, given the Commission's original intent to permit reentry after five years, the continued enforcement of Rengan's bar under these conditions amounts to a grievous wrong that must be remedied.

[40] Fed. R. Crim. P. 11(b)(1).

Finally, the Division's assertion that Rengan "was represented by counsel" is not dispositive.[41] The Division has offered no evidence contradicting Rengan's statement that he did not fully comprehend the agreement's terms at the time he entered into it.

b. Additional Measures and Rule 193

The Commission prioritizes "prevent[ing] a recurrence of the conduct that led to the imposition of the bar."[42] To support the Commission's efforts to protect the public interest and maintain market integrity, Rengan is willing to comply with any reasonable and practicable conditions for his reentry. As alternatives to securing a sponsor, he proposes a probationary period with heightened safeguards, enhanced compliance reporting, additional compliance education and ethics training, and/or a review after twelve or eighteen months to ensure continued adherence.

While the Division asserts that this is not an appropriate forum for Rengan to challenge the fairness of Rule 193, it simultaneously withdrew its own argument that he must proceed under that rule.[43] Given that Rengan seeks to have his investment adviser bar vacated—and this is the designated forum for such a request —it follows that this is also the appropriate forum to assess the fairness of the process governing that request. Rengan is entitled to due process.[44] The Division has rejected Rengan's argument that he should be subjected to Rule 154, but it has not explained how Rule 193 is fair as applied to Rengan.

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41 Opposition at 9.

42 *Eric David Wanger*, Exch. Act Rel. No. 81111, 2017 WL 2953369, at *5 (July 10, 2017).

43 *See* Opposition at 2 n.1.

44 *See* U.S. Const. amend. V. ("nor shall any person . . . be deprived of life, liberty, or property, without due process of law"); *see also* 5 U.S.C. § 554 (granting those appearing before agencies the right to notice, the "opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment").

III. CONCLUSION

For the foregoing reasons, and the reasons stated in his motion and supporting opening brief, Rengan asks the Commission to enter an order that vacates the investment adviser bar against him.

Dated: March 4, 2025

[redacted]

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2025, a true and correct copy of Respondent's REPLY was served on the U.S. Securities and Exchange Commission's Division of Enforcement via email to the counsel named below. *See* 17 C.F.R. § 201.150 (requiring electronic service as specified by the Office of the Secretary).

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