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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **LONNY S. BERNATH,** **Respondent.**	**Administrative Proceeding** **File No. 03-16943**

REPLY IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST LONNY S. BERNATH

Respectfully submitted,

DIVISION OF ENFORCEMENT
By its Attorney:

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Dated: February 18, 2016

In response to the Division of Enforcement's Motion for Summary Disposition, Respondent Bernath does not contest that he should be barred from the securities industry because of his egregious fraud. (Respondent Lonny Bernath's Response to the Division of Enforcement's Motion for Summary Disposition ("Resp. Br.") at 2, ¶ 1.) His sole argument is that it would be unfair for him to suffer the automatic collateral consequence of that associational bar, namely that he will not be able to participate in private placements under Rule 506 of Regulation D. (Resp. Br. at 2-5); *see* 17 C.F.R. § 230.506(d)(1)(iv). Respondent argues that pursuant to Rule 506(d)(2)(iii), this Court (and ultimately the Commission) has the authority to limit the scope of the collateral disqualification that will inure under Rule 506(d)(1)(iv) in the course of an enforcement proceeding that results in an associational bar. (Resp. Br. at 3, ¶ 5.) He asks the Court to limit his disqualification to 5 years, in essence, asking the Court to rewrite Rule 506 and include a time limitation that the Commission chose not to include.

Assuming, without conceding, that Respondent is correct that this proceeding is an appropriate forum to determine whether or not, and for how long, he should be disqualified from participating in a Rule 506 private placement,

Respondent has not given any good reason why the collateral disqualification is not appropriate in his case. As noted in the Division's opening brief, the appropriateness of any remedial sanction is guided by the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); see *In re Kornman*, Advisers Act Release No. 2840 (Feb. 13, 2009), 95 SEC Docket 14246, 14255. For the same reason that those factors support permanently barring him from associating with securities industry participants, which Respondent necessarily concedes they do, the factors weigh against putting any limitation on the collateral disqualification that Respondent will suffer as a result of the associational bar order.

Respondent points to no facts that make his situation unique. His primary argument (*i.e.*, that other types of disqualifying events have time limitations expressly set forth in the rule) would apply with equal force to every person who receives an associational bar in an SEC administrative proceeding. If the Commission had intended a blanket time limitation on collateral disqualifications that stem from associational bars, it would have put one into the relevant subdivision of the rule, as it did in the other subdivisions in the rule on which Respondent now relies. *See*, 17 C.F.R. §§ 230.506(d)(1)(i) (imposing ten-year time limit), (vii) (imposing five year time limit), (viii) (same). The fact that the

Commission expressly chose to provide a time limitation in some provisions of the Rule but not in 506(d)(1)(iv) shows that the Commission knew exactly what it was doing.

Respondent is not claiming that his misconduct was not egregious or relying on some mitigating factor to show that the disqualification is overly harsh or not in the public interest in his particular case. Indeed, the only facts specific to his situation included in the response brief are that he "is an MIT-educated mathematician and engineer, and believes that he has officer-level employment opportunities in technology fields." (Resp. Br. at 4, ¶ 7.) With all due respect, Respondent's speculative belief that he might someday want to become an officer of a technology company that, in turn, might, at some point, want to raise money pursuant to Rule 506 does nothing to take away from the seriousness of his misconduct. Many persons subject to associational bars might someday want to participate in a Rule 506 private placement. If that were not the case, there would be no need for collateral disqualifications in the first place. The Court should reject the Respondent's invitation to void the automatic consequence of an associational bar, which the Commission specifically prescribed in Rule 506. To the extent that in the future Respondent believes the disqualification has a concrete impact on him, the Commission has set up a waiver process that Respondent (like

any other person subject to an associational bar) can use to argue that the disqualification should be waived. *See* 17 C.F.R. §§ 200.30-1, 230.506(d)(2)(ii). Under this avenue, the Respondent must show "good cause" for a waiver.

In sum, Bernath's misconduct was egregious and extended over a period of several years. Bernath repeatedly lied to his clients about what he was doing with their money. He then "loaned" their money to his real estate partnerships and chrome plating business, in which several of his investors had expressly declined to invest. He did that, in part, because he had personally invested in those entities and stood to make money if the ventures succeeded. He also covered it up, moving money and assets among the funds under his control in order to meet liquidity needs and to keep his self-interested transactions a secret. That he hopes to someday be an officer of a technology startup is not a reason to relieve him of the collateral consequence that flows, by express Commission Rule, from his egregious misconduct.

IV. CONCLUSION

For the foregoing reasons and for the reasons set forth in its opening brief, the Division respectfully requests that its motion for summary disposition be granted against Bernath pursuant to Rule 250 of the Commission's Rules of Practice, that an order be issued barring him from associating with any investment

adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and that no limitations be placed on the collateral disqualification that will flow therefrom under Rule 506(d)(1)(iv).

Respectfully submitted,

DIVISION OF ENFORCEMENT

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Dated: February 18, 2016.

CERTIFICATE OF SERVICE

On February 18, 2016, I sent via facsimile and via UPS overnight service the original and three copies of the foregoing to:

Brent J. Fields, Secretary
U.S. Securities & Exchange Commission
100 F. Street, NE
Washington, DC 20549

On February 18, 2016, I sent via UPS overnight service a copy of the foregoing to:

Hon. Jason Patil
Administrative Law Judge
Securities & Exchange Commission
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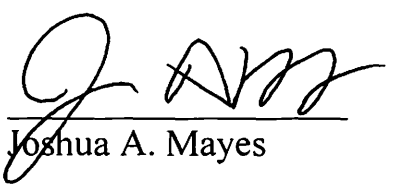

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