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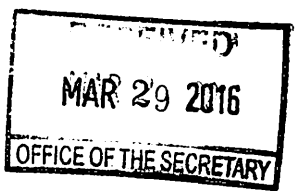
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16989

In the Matter of

VINAY KUMAR NEVATIA,

Respondent.



DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR REMEDIAL RELIEF AGAINST RESPONDENT VINAY KUMAR NEVATIA

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I. INTRODUCTION

Pursuant to the Administrative Law Judge's February 1, 2016 Order Directing Supplemental Briefing, the Division of Enforcement (the "Division") respectfully submits this Supplemental Brief and accompanying Supplemental Declaration of William T. Salzmann in support of its Motion for Remedial Relief Against Respondent Vinay Kumar Nevatia ("Respondent" or "Nevatia")[1] in light of the Securities and Exchange Commission's ("Commission") order in *In the Matter of Gary L. McDuff,* Admin. Proc. Rulings Release No. 74803, 2015 SEC *LEXIS* 1657 (Apr. 23, 2015). The Commission issued an Order Instituting Administrative Proceedings ("OIP") against Nevatia pursuant to Exchange Act Section 15(b) on December 8, 2015, and this administrative proceeding follows a default judgment against Nevatia in the Commission's federal district court action, *SEC v. Nevatia,* No. 14-cv-05273 (N.D. Cal.), which permanently enjoined Nevatia from further securities fraud violations.

II. SUPPLEMENTAL EVIDENCE AND SUPPLEMENTAL STATEMENT OF FACTS

A. Description of Supplemental Evidence

In support of the underlying Motion for Remedial Relief, the Division submits the following supplemental evidence, attached to this Supplemental Brief:

- Declaration of Rajiv Gupta, dated March 20, 2016 (a declaration by one of the defrauded VRSBS Investment LLC ("VRSBS") investors described herein);
- Declaration of Shivkumar Govindaswami, dated March 23, 2016, and five attached exhibits (a declaration by another of the defrauded VRSBS investors described herein);

[1] As indicated by the long list of aliases listed in the caption to the underlying district court action, Respondent has operated under several names. Respondent was consistent in using the name "Vinay Kumar" to conduct business with both the VRSBS and the various "KBR-" entities discussed in this proceeding. Accordingly, the records attached to and cited herein reference "Vinay Kumar," but since his proper name is "Vinay Kumar Nevatia" he is referred to as "Nevatia" in this proceeding.

- Declaration of David Karasik, dated March 14, 2016 (a declaration by an Attorney-Adviser in the Commission's Office of International Affairs); and

- Supplemental Declaration of William T. Salzmann, dated March 25, 2016 ("Supp. Salzmann Decl."), and 44 attached exhibits, consisting primarily of documents produced in the Division's investigation that precipitated this proceeding, filings from the underlying district court action, and materials produced or maintained by the Financial Industry Regulatory Authority ("FINRA").

B. Respondent's Fraudulent Acts

1. In August 2008, Respondent Facilitated the VRSBS Investment, LLC Members' Acquisition of Stock in a Privately-Held Technology Company.

From approximately May 2008 through August 2008, Respondent raised money from eight investors to purchase shares of CSS Corp. Technologies (Mauritius) Limited ("CSS"), a privately-held technology company. (*See* Govindaswami Decl. ¶¶ 4-6, Exh. A (VRSBS Operating Agreement); Gupta Decl. ¶ 2.) Respondent recruited the other investors to join him in the investment by pitching CSS as an exclusive, pre-IPO opportunity available only to persons, like himself, with personal connections to the company. (Govindaswami Decl. ¶¶ 4-5; Gupta Decl. ¶ 7.) In August 2008, Respondent and the eight other investors purchased 179,900 shares of CSS stock from one of CSS's co-founders for $899,500. (Gupta Decl. at ¶ 7; Govindaswami Decl. ¶ 6, Exh. A (VRSBS Operating Agreement) at 1, 2, 21 ("Schedule B" to operating agreement noting 179,900 CSS ordinary shares acquired and held through VRSBS); Supp. Salzmann Decl., Exhs. 11-13 (wire transfers for investments by several of the VRSBS investors).) Respondent handled negotiations with the seller whom he knew through previous business dealings. (Gupta Decl. ¶ 7; Govindaswami Decl. ¶ 6.)

Respondent and the other eight investors purchased their CSS shares through VRSBS Investment, LLC, an entity formed by Respondent for the limited purpose of buying and holding the shares. (Govindaswami Decl., Exh. A (VRSBS Operating Agreement) at 1 ("sole purpose"

of VRSBS was "to hold [CSS shares] for the benefit of each of its Members in the percentage interest as set forth on Schedule A attached hereto"), and at 19-20 ("Schedule A").) Respondent claimed to the other investors that it was necessary for the shares to be purchased through a single entity in order to simplify the transaction for the seller. (Govindaswami Decl. ¶ 7.) Accordingly, the investors became the sole members of VRSBS and contributed funds to the entity that were used to acquire the CSS shares from the CSS co-founder. (Govindaswami Decl., Exh. A (VRSBS Operating Agreement); Supp. Salzmann Decl., Exh. 14 (CSS share certificates held by the VRSBS members).) While the shares were purchased and held under the name of VRSBS, the newly-anointed members agreed the rights to the shares would be directly proportional to the amount of money that each member contributed to the shares' purchase. (Gupta Decl. ¶9; Govindaswami Decl. ¶ 8, Exh. A at 1 (Operating Agreement stating that VRSBS to hold CSS shares "for the benefit of its Members in the percentage interest as set forth on "Schedule A"), and 19-20 ("Schedule A").) Pursuant to this agreement, Respondent owned less than 3% of the CSS shares held by VRSBS, while the remaining over 97% was owned by the other VRSBS members. (Govindaswami Decl. ¶ 8, Exh. A at 19-20 (Operating Agreement "Schedule A").)

To formalize the arrangement, Respondent and the other VRSBS members agreed to an "Operating Agreement of VRSBS Investment, LLC," dated August 8, 2008. (Govindaswami Decl., Exh. A.) In addition to setting forth the arrangement for the members' rights to the CSS shares, the operating agreement also articulated certain other protections for its members. Under this agreement, the VRSBS members agreed not to co-mingle the entity's funds with any other person's accounts. (*Id.* at 3 (Article 3(b)(vi) describing prohibition against co-mingling).) Further, in the event of the potential sale of CSS shares, Respondent, in his capacity as VRSBS's

managing member, was required to provide the other members with a description of the material terms of the sale. (*Id.* at 12 (Article 13(b) requiring managing member to provide information in connection with a sale of CSS shares).)

To further protect their investments, the other VRSBS members insisted that they receive the original CSS stock certificates corresponding to the number of shares that they each owned. (Govindaswami Decl. ¶ 11). Respondent complied with this request and delivered the stock certificates to each member or his representative. (Govindaswami Decl. ¶¶ 11-12; Gupta Decl. ¶ 10; Supp. Salzmann Decl., Exh. 14 (VRSBS members' stock certificates).)

2. In November 2011, Respondent Secretly Resold Approximately Half of the VRSBS Members' Shares.

In November 2011, Respondent secretly resold approximately half of the CSS shares held by VRSBS to several directors of a venture capital firm based in San Mateo, California and misappropriated all of the $359,800 in proceeds for himself. As part of this transaction, Respondent misrepresented to the venture firm directors that VRSBS's shares in CSS were "his shares" and that there were no restrictions on his sale of the shares. (Supp. Salzmann Decl., Exh. 16 at 17:4-7 (Testimony of Tim Adtiya Guleri, dated June 11, 2014, that Respondent represented that the CSS shares he offered and sold to the venture firm directors "were his shares"), 19:7-13 (confirming that Respondent described the shares he offered and sold to the venture firm directors as "his shares").)

To facilitate the resale, Respondent signed a "Stock Purchase Agreement" with the venture firm directors. (Supp. Salzmann Decl. Exh. 18 ("Stock Purchase Agreement" dated "effective" November 23, 2011).) In this agreement, Respondent represented (i) that the "Seller is not a party to any agreement, written or oral, creating rights in respect to the Stock in any third person"; (ii) that the "Seller is the lawful owner of the Stock, free and clear of all security

interests, liens, encumbrances, equities and other charges"; and (iii) that "[t]here are no existing...restrictions of any nature...relating to the stock[.]" (*Id.* at ¶ 3 ("Representations and Warranties of the Seller").)[2] Respondent knew, however, that the CSS shares were in fact subject to oral and written agreements giving ownership interests and other rights to the original investors. (Gupta Decl. ¶¶ 2, 8, 9; Govindaswami Decl. ¶ 8, Exh. A (Operating Agreement).) He also did not inform any other members of VRSBS about the sale despite the fact that VRSBS's operating agreement required him to do so. (Gupta Decl. ¶¶ 14-16; Govindaswami Decl. ¶ 21, Exh. A (Operating Agreement) at 12 (Article 13(b)).) Respondent then circumvented VRSBS's bank account which had been set up to handle its finances, and caused the directors to wire their payment to another bank account under his control with no connection to VRSBS. (Govindaswami Decl. at ¶¶ 24-25; Supp. Salzmann Decl., Exh. 17 (Declaration of Jason H. Lee filed in the district court action on July 7, 2015) at Exhibit 1 ("Summary of Significant Deposits into Checking Accounts of the 2006 Kumar and Srinivasan Revocable Trust, Kuber International Inc., and VRSBS Investment, LLC") (demonstrating Respondent's ill-gotten gains in the fraud); Exh. 15 at 66:4-25 (Testimony of Martha Anne Clarke-Adamson, dated April 24, 2014 ("Clarke-Adamson Test.") explaining that the director purchasers received and followed wire instructions from Respondent for the payment of the CSS shares he sold them in November 2011); Exh. 20 (e-mail from Respondent to Clarke-Adamson conveying wire instructions); Exh. 21 (bank statement showing transfer of $100,000 to an account with the beneficiary listed as "Vinay Kumar"); Exh. 22 (e-mail confirming wire transfer of $201,288 to "Vinay Kumar"); Exh. 23 (bank statement confirming wire transfer of $10,258.18 to "Kumar and Srivinivas/Bnf=Vinay Kumar"); Exh. 24 (bank statement confirming wire transfer of $10,654.54 to "Kumar and

[2] The venture firm directors later revised the agreement to exclude one of the directors who bowed out of the transaction, but the document retained the same representations and warranties by the seller. Supp. Salzmann Decl. Exhibit 19 is a copy of the revised agreement.

Srivinivas/Bnf=Vinay Kumar").)[3] Respondent never subsequently transferred any of the sale proceeds to VRSBS's bank account or shared any portion of the funds with the other VRSBS members. (Gupta Decl. at ¶¶ 2, 4, 16; Govindaswami Decl. at ¶ 24.)

Respondent further misled the venture firm directors when they requested the original stock certificates underlying the shares they purchased. In December 2011, Respondent claimed to the venture firm that he was waiting for CSS to reissue a new stock certificate for each investing director. (Supp. Salzmann Decl. Exh. 15 at 58:2-8 (Clarke-Adamson Test., testifying that Respondent represented that CSS needed to issue new stock certificates for the director purchasers because Respondent only had one certificate in his possession); Exh. 25 (e-mail thread between Clarke-Adamson and Respondent).) As Respondent was aware, however, the real reason he could not provide the requested certificates was that the originals were still in the possession of the other VRSBS members who knew nothing of the stock sales.

3. In February 2012, Respondent Secretly Resold Nearly All of the Remaining Shares.

In February 2012, Respondent sold additional CSS shares held by VRSBS and again misappropriated all the proceeds for his own benefit. Respondent sold an additional set of 25,000 shares to the venture firm directors, and a set of 60,000 shares to a new buyer, a private equity fund managed out of Asia. (Supp. Salzmann Decl. Exh. 26 ("Stock Purchase Agreement," dated "effective" as of February 16, 2012).) ; Exh. 27 ("Form of Transfer of Shares or Debentures") (showing transfer of 60,000 CSS shares to private equity fund).) As with the first fraudulent resale to the venture firm directors, Respondent again executed a "Stock Purchase Agreement" with the directors, making the same false representations and warranties. (Supp.

[3] Each of the payers in the wire transfers described in this parenthetical are the directors who agreed to purchase the CSS stock from Respondent, as listed in Supp. Salzmann Decl. Exh. 19.

Salzmann Decl. Exh. 26.) Once again, Respondent did not let the other VRSBS members know about his sales despite his obligation to do so. (Govindaswami Decl. at ¶ 21; Gupta Decl. at ¶¶ 12, 13, 16.) He also did not share any of the proceeds from the sales with the other VRSBS members. (Gupta Decl. ¶¶ 14-16; Govindaswami Decl. ¶ 24.) In the case of the venture firm directors' investment, Respondent again arranged to have the directors' payment, this time for $100,000, wired to one of his own accounts with no relationship to VRSBS. (Supp. Salzmann Decl. Exh. 28 (e-mail from an office manager at one of Respondent's "KBR-" entities instructing the venture firm's CFO to wire the payment to Kuber International Inc., an entity owned by Respondent); Exh. 29 (bank statement showing $100,000 transfer to "Kuber International Inc.").) While the private equity fund's $195,000 payment was wired to VRSBS's bank account, within a week Respondent had transferred all but $500 of this amount to one of his own accounts. (Supp. Salzmann Decl., Exh. 17 (Declaration of Jason H. Lee filed in the district court action on July 7, 2015) (hereafter, "Lee Disgorgement Decl.").)

4. In Total, Respondent Absconded with $629,800 of the VRSBS Investor Funds.

The Division's calculation of the $629,800 figure is supported by the record of the wire transfers from the subsequent buyers along with a declaration and exhibits prepared in the district court action to support the Division's disgorgement calculation. ("Lee Disgorgement Decl.".) Together, they detail the ill-gotten gains Respondent obtained through the three fraudulent resales described herein: (1) on November 23, 2011 to three directors of a venture capital firm; (2) on February 16, 2012 to two of the same venture firm directors; and (3) on February 22, 2012 to a private equity fund. For the two rounds of sales to the venture firm directors, Respondent stole the proceeds by having the directors wire their payments to his personal trust bank account and the bank account of a non-VRSBS entity under his sole control named Kuber International.

Exh. 15 at 66:4-15 (CFO discussing wire instructions that Respondent provided for the venture firm directors' use when paying for the CSS shares purchased from Respondent in November 2011), 107:10-109:21 (testifying that payment for the CSS shares purchased by venture firm directors in February 2012 was wired to the bank account of an entity named Kuber International per instructions provided by one of Respondent's employees); Exh. 20 (e-mail containing wire instructions provided by Respondent for the venture firm directors to use to pay for the CSS shares acquired from Respondent in November 2011); Exh. 28 (e-mail containing wire instructions for purchase of CSS shares from Respondent by venture firm directors in February 2012); Exh. 42 (Kuber International Inc. bank record identifying Respondent as the only owner of the account). As bank account records obtained by the Division during the course of its investigation demonstrate, the venture firm director purchasers complied with Respondent's instructions. On November 23, 2011, the directors wired four separate payments totaling $359,800 to Respondent's personal trust account. (Lee Disgorgement Decl. at Exh. 1 at 1(summarizing deposits made into the checking accounts of Respondent's personal trust as well as other entities, with reference to underlying voluminous support).) On February 17, 2012, one of the directors wired another $100,000 to the second bank account identified by Respondent, which belonged to an entity controlled by Respondent named "Kuber International Inc." (*Id.* at ¶ 2, Exh. 1 at 1.) Respondent kept the money for himself and never subsequently gave any portion of these sales proceeds to VRSBS or any of the other VRSBS investors. (*Id*; Govindaswami Decl. at ¶ 24; Gupta Decl. at ¶¶ 2, 4, 14-16.)

For the sale of CSS shares to the private equity fund, the proceeds were initially wired to VRSBS's bank account on February 24, 2012, but then were promptly re-routed by Respondent to the bank account of Kuber International Inc. without the knowledge of the other VRSBS

members. (Lee Disgorgement Decl., Exh. 1 at 1-2.) VRSBS and Kuber International Inc.'s bank account records show that beginning immediately after the private equity fund purchaser wired VRSBS its $195,000 payment on February 24, 2012, and continuing for the next week until March 1, 2012, Respondent transferred all but $500 of the sale proceeds to the bank account of Kuber International. (*Id.*) Again, Respondent never shared any of this money with the other VRSBS members. (*Id.*; Govindaswami Decl. at ¶ 24; Gupta Decl. at ¶¶ 2, 4, 14-16.)

In total, these wire transfers show that Respondent obtained $654,300. By deducting Respondent's 2.724% interest in VRSBS's $899,500 investment, or $24,500, the Division arrived at the $629,800 figure used for disgorgement in the district court action.

5. To Maintain His Fraud, Respondent Misrepresented That the CSS Stock Certificates Were Lost.

By September 2012, Respondent still had not provided the stock certificates requested by the venture firm directors eleven months earlier. Following the February 2012 resales, the venture firm directors and CFO repeatedly contacted Respondent to obtain the stock certificates underlying both their November 2011 and February 2012 stock purchases. (Supp. Salzmann Decl. Exh. 15 at 121:5-123:23 (Clarke-Adamson Test., describing efforts made by director purchasers and CFO to obtain stock certificates and Respondent's repeated failure to deliver the requested certificates), 131:9-132:4 (describing continued efforts to obtain stock certificates from Respondent and testifying that in response to inquiries, Respondent "would not respond or he would tell me he had requested them or they are in the mail or, 'I'll drop them by.' And then ultimately, he didn't have them."); Exh. 25 (e-mail between Clarke-Adamson and Respondent); Exh. 30 (e-mail between a firm director and Respondent); Exh. 31 (e-mail between Clarke-Adamson and Respondent); Exh. 32 (e-mail between a firm director and Respondent).) Around the same time, however, CSS's transfer agent told Respondent that it would not recognize or

finalize those transactions until he returned VRSBS's original stock certificates for cancellation. (Supp. Salzmann Decl. Exh. 33 (e-mail amongst venture firm employees and CSS's transfer agent).) This posed a problem for Respondent because the original certificates were still in the possession of the other VRSBS members who were unaware that he had sold their shares.

Respondent then knowingly or recklessly lied to CSS's transfer agent to induce it to record his fraudulent resales. In September 2012, Respondent twice misrepresented to the transfer agent that he had lost VRSBS's original stock certificates, first on a telephone call with the transfer agent, and then later in a signed document entitled "Indemnity for Lost Share Certificates" that he sent to both the transfer agent and the venture capital firm. (Supp. Salzmann Decl. Exh. 34 (e-mail from Respondent attaching "Indemnity for Lost Share Certificates") at SV000000041 (describing telephone call between Respondent and transfer agent in which the parties discussed that the certificates had been lost), and at SV00000043 ("Indemnity for Lost Share Certificates").) After receiving the false indemnity document, the transfer agent recognized Respondent's sale of shares to the venture firm directors and issued new stock certificates in the directors' names. (Supp. Salzmann Decl. Exh. 35 (e-mail from transfer agent describing and reissuing certificates).)

6. Respondent Continued to Try to Conceal His Fraudulent Sales from the VRSBS Members.

During and after his illicit resales, Respondent engaged in increasingly desperate attempts to conceal his misconduct from the original investors. From approximately March 2012 through July 2013, Respondent evidenced his consciousness of guilt by engaging in further deceptive conduct, including:

- Falsely indicating to the original investors that he would get new certificates issued in the individual investors' names when, in reality, he was in the final stages of the

fraudulent resale of their shares; (Supp. Salzmann Decl. Exh. 36 (September 2012 e-mail between Respondent and a VRSBS investor discussing how to get the certificates reissued in the individual investors' names))

- Falsely telling two investors who wanted to cash out their shares that he would try to find interested buyers, while continuing to conceal the fact that he had already fraudulently sold the shares; (Govindaswami Decl. at ¶ 15, Exh. C) and

- Asking investors to send him wiring information, ostensibly so they could receive a dividend announced by CSS, when he knew that the original investors would never get a dividend for shares that had been fraudulently resold by him. (Govindaswami Decl. ¶ 16, Exh. D.)

In July 2013, Respondent's evasiveness eventually led some of the original investors to reach out directly to CSS. (Govindaswami Decl. at ¶¶ 18-20, Exh. E.) Through that process, they learned that Respondent had fraudulently sold nearly all of their CSS shares without obtaining their approval, distributing the proceeds, or even providing notice of the sales. (*Id.*, Exh. E.) The members, other than Respondent, took the further step of replacing Respondent as managing member of VRSBS in order to try to keep Respondent from further harming them. (Supp. Salzmann Decl. Exh. 37 ("Action by Written Consent of the Members of VRSBS Investment LLC" dated July 18, 2013.) In August 2013, certain of these investors confronted Respondent with evidence obtained from CSS documenting his illicit stock sales. Even then, Respondent tried to keep his scheme going by falsely claiming that he had not actually sold the shares, but only temporarily "transferred" them to safeguard them from Respondent's creditors. (Govindaswami Decl. at ¶ 22, Exh. F; Gupta Decl. at ¶ 14.) Later that month, Respondent

pretended to restore an original investor's shares through a purported stock transfer from two fictitious shareholders. (Gupta Decl. at ¶ 15.) As proof, Respondent sent the investor two forms purporting to record the transfer of 100,000 shares for transfers that never happened. (Supp. Salzmann Decl. Exh. 43 (e-mail and attached form purporting to transfer 50,000 CSS shares from an entity named CKT Corp LLC), Exh. 44 (e-mail and attached form purporting to transfer 50,000 CSS shares from an entity named MRCSS LLC); Gupta Decl. at ¶¶ 15, 16).) After this point, Respondent stopped responding to all attempts by the VRSBS members to contact him. (Gupta Decl. at ¶ 16.)

C. Respondent's Subsequent Conduct

In the Division's investigation into Respondent's fraudulent activities, Respondent was uncooperative. (Exhibit 3 ("Declaration of William T. Salzmann in Support of Plaintiff's Request for Entry of Default and Application for Default Judgment by Court") attached to the Division's Motion for Remedial Relief Against Respondent Vinay Kumar Nevatia, filed on January 29, 2016, at ¶ 4.) Respondent refused to appear for testimony pursuant to an administrative subpoena. (*Id.*) Ultimately, Respondent refused to respond to any inquiries by either the Division staff or the victims to his fraud. (*Id.*; Govindaswami Decl. at ¶ 23; Gupta Decl. at ¶ 16.)

Thereafter, staff for the Division and the Commission's Office of International Affairs ("OIA") investigated Respondent's whereabouts, and found that Respondent had left the United States and was living abroad in the United Arab Emirates ("UAE"). (Declaration of David Karasik ("Karasik Decl."), filed herewith, ¶ 5; Supp. Salzmann Decl., Exh. 38 (Declaration of Jaswinder Singh) ¶ 3.) At the time he was located, Respondent was incarcerated in a UAE facility under accusations of fraud and illegal residency. (Karasik Decl. ¶5; Supp. Salzmann

Decl., Exh. 38 at ¶ 3.) Respondent ultimately received a prison sentence for one or both of these violations, and was given a one-month sentence for further incarceration followed by deportation. (Karasik Decl. ¶ 7.) Consistent with his lack of cooperation with the Division's investigation, Respondent failed to appear for his sentence in the UAE, and was "at large" at the time this information was reported to OIA. (Karasik Decl. ¶¶ 6-8.)

D. Respondent Was Associated with a Registered Broker/Dealer and a Registered Investment Adviser.

From approximately 2006 through 2013, Respondent Vinay Kumar Nevatia solicited various real estate and securities investments as a director at a venture capital firm, and later through numerous, now-defunct, entities conceived of and, in whole or in part, owned by him, including the entity at issue in this proceeding, VRSBS. (Declaration of Rajiv Gupta, filed herewith, ("Gupta Decl.") ¶¶ 1-3; Declaration of Shivkumar Govindaswami, filed herewith, ("Govindaswami Decl.") ¶¶ 1-4; Supp. Salzmann Decl., Exh. 1 at p. 1 (Financial Industry Regulatory Authority "Part 2B of Form ADV" brochure for VII Peaks-KBR BDC Advisor II, LLC, an investment adviser with which Respondent was affiliated showing Respondent's employment history).)

During the timeframe of Respondent's fraudulent resales and misappropriation of investor funds, Respondent owned KBR Capital Markets, LLC ("KBR CM"), a registered broker/dealer. (Salzmann Decl. Exh. 2 at pp. 8-9 (ownership record reflected on KBR CM's "Form BD" filed with FINRA showing that Respondent was an owner of KBR CM from at least September 2012 through at least the date of the report, September 10, 2013).) KBR CM's application for registration with FINRA also lists Respondent as a "CCO" starting in August 2013. *Id.* Moreover, Respondent also co-owned, and was responsible for the sale of shares in a fund run by, a registered investment adviser. FINRA records show that Respondent was, in part,

responsible for "controll[ing]" the parent company of a registered investment adviser, VII Peaks-KBR BDC Advisor II, LLC. ("VII Peaks-KBR"), starting in 2012. (Salzmann Decl., Exh. 3 at p. 4 (VII Peaks-KBR Form ADV brochure, dated December 21, 2012); Exh. 2 (KBR CM BD Application stating that VII-Peaks-KBR and KBR CM were under "common control".)[4] Respondent also co-owned VII-Peaks-KBR in this same period. (Supp. Salzmann Decl., Exh. 4 at p. 2 (1/24/12 Form ADV for VII-Peaks-KBR).)

Respondent was deeply involved in the functioning of both KBR CM and VII Peaks-KBR. KBR CM's top officer reported to Respondent, whom she testified had, with his partner, "created" the entity that was "the sponsor of the products that eventually the [KBR CM] broker dealer would distribute." (Supp. Salzmann Decl., Exh. 5 at 19:1-12 (FINRA Testimony of KBR CM President and Chief Compliance Officer Suzanne Bond, dated April 25, 2014, ("Bond Test.").) KBR CM LLC was the broker-dealer primarily responsible for selling interests in the VII Peaks-KBR fund. (Supp. Salzmann Decl., Exh. 3 at p. 13 (stating that VII-Peaks-KBR is "affiliated with" KBR CM, and that KBR CM "acts as the dealer-manager for the distribution of shares" in its fund).) As sole common owner in both entities, Respondent was in a position of significant control and influence at both entities. Respondent was also personally responsible for obtaining certain investments. (Supp. Salzmann Decl., Exh. 5 at 97:8-99:17 (describing $11 million of funds raised by Respondent in connection with the hotel development project, and anticipated resulting restructuring of the private placement investments).)[5]

[4] Specifically, the form states that VII-Peaks-KBR is directly owned by an LLC which was "controlled" by two entities, including "KBR Capital Advisors, LLC," which was controlled by another entity in turn controlled by Respondent. *Id.*

[5] Moreover, Respondent was also the manager and part owner of one of the firm's two other investment products, a hotel development project in Sag Harbor, New York. (Supp. Salzmann Decl., Exh. 5 at 28:14-29:21 (Bond Test., describing that the firm only had a few products—two different interests in VII-Peaks-KBR, private placement offers into the hotel development, and a legacy REIT that predated the President/CCO's tenure), at 38:2-39:11 (Respondent was an owner of the property and the manager of the Sag Harbor private placement offering).)

Respondent was responsible for core operations at KBR CM. For one thing, he was responsible for financing the firm, and had sole authority to make payments from the firm's accounts. (Supp. Salzmann Decl., Exh. 5 at 51:17-52:9 (KBR CM could not "stand on its own two legs financially" and needed financial "support from the parent company and/or Mr. Kumar individually"); Exh. 6 at 73:7-12, 74:10-15 (FINRA Testimony Transcript of Cecilia Shea, dated March 14, 2014, ("Shea Test.") wherein Respondent is the only person the CFO named as having access to funds in the primary account supposedly used to meet the firm's obligations) and at 206:6-209:17 (Respondent was the only person at the firm who could approve payments from the firm's funds).)

As admitted by KBR CM's President/CCO, even though Respondent was not a registered person, he "owned the broker dealer, so, therefore, naturally he controlled the company and the employees within the company to an extent" including "the finances" and "the money" of the entity. (Supp. Salzmann Decl. Exh. 5 at 53: 1-12.) From at least August 31, 2011, Respondent held the position of Director of Business Development. (Supp. Salzmann Decl. Exh. 41 (bank record for KBR CM's bank account, indicating that Respondent, the account's sole "Owner/Key Individual," was the firm's director of business development).) Respondent's reach extended to responsibilities that would normally go to a registered person, like controlling the firm's bank accounts necessary to maintain a minimum net capital and, later, even compliance functions. (Supp. Salzmann Decl., Exh. 5 at 48:23-49:2 (Bond Test. regarding net capital), 60:3-10 (same); Exh. 6. at 73:7-12, 74:10-15; Supp. Salzmann Decl., Exh. 2 at p. 9 (KBR CM's Form BD) (description under section titled "List below all changes to Schedule A: (Direct Owners and Executive Officers)" shows that Respondent was the CCO from August 2013). *See* FINRA Rule

1022(b) (requiring FinOp of a registered entity to ensure accuracy of the entity's financial reports, and requiring the FinOp to be registered with FINRA).)

Respondent's behavior at registered entities KBR CM and VII Peaks-KBR became increasingly problematic in the same time period—the summer of 2013—when his scheme against the VRSBS investors unraveled, as described below. KBR CM had financial difficulties and therefore could not demonstrate it could meet its minimum "net capital" requirement. In the wake of this, FINRA later brought a disciplinary action against the broker/dealer's CFO for this failing. (Supp. Salzmann Decl. Exh. 8 (FINRA "Form U6" against Cecilia Shea).) By that point, Respondent was no longer available for the FINRA action, but as part of the disciplinary proceeding, FINRA, reasoning that the CFO's designation as the firm's Financial and Operations Principal (referred to as the "FinOp") made her responsible for maintaining accurate financial records necessary to ensure the firm met its net capital requirements, found that she failed to meet this responsibility. (Supp. Salzmann Decl. Exh. 8 ¶ 7).

In testimony, the CFO described the difficulties in verifying KBR CM's finances that resulted from the fact that Respondent had closed the firm's primary account, and was then trying to meet the firm's obligations through an account over which he was the only person at the firm to have control. (Supp. Salzmann Decl., Exh. 6 at 67:15-70:17, 73:7-12, 74:10-15.) The firm's supposed new account was actually one of Respondent's personal "family" accounts he had unilaterally decided to designate as the firm's primary account. (Supp. Salzmann Decl., Exh. 5 at 48:19-49:2, 50:8-20, 60:3-10 (Bond Test. describing Respondent's account he designated for the purpose of meeting net capital requirements); Exh. 6 at 64:1-65:21 (Shea Test. regarding same).) Respondent tightly controlled access to the account, and gave neither the firm's CFO nor its President/CCO direct access to the account's bank records. (Supp. Salzmann

Decl., Exh. 5 at 49:18-50:2; Exh. 6 at 64:1-65:1, 67:15-69:14, 73:7-12, 74:10-15.) The CCO further described that Respondent bullied and intimidated her when she asked for documents or information necessary for her to perform her responsibilities at the firm. (Supp. Salzmann Decl., Exh. 5 (Bond Testimony), at 34:7-36:5 (describing Respondent's hostility and "bullying tactics" in response to her attempts to obtain information regarding a transaction.) KBR CM eventually formally acknowledged Respondent's responsibility by disclosing that, as of August 2013, Respondent was the new CCO. (Supp. Salzmann Decl., Exh. 2 at p. 9., Exh. 39 (former CCO's "Form U5" showing she was no longer associated with KBR CM as of August 30, 2013).) Around this same time, KBR CM revised its FINRA records to show that the firm's address was now Respondent's residential address. (Supp. Salzmann Decl., Exh. 2 at p.1 (listing a Palo Alto, California address); Supp. Salzmann Decl., Exh. 40 (Respondent's FINRA "Composite Information" form listing the same Palo Alto, California address as Respondent's residential address.) The fact that, at that point, only one of the firm's two principals, the CFO, was registered with FINRA led FINRA to cancel the firm's registration for failing to meet the "two-principal" registration requirement. (Supp. Salzmann Decl. Exh. 7 at ¶ 7 (FINRA "Form U6" against KBR CM).)

Similarly, the investment adviser "business development company," VII Peaks-KBR, dropped its affiliation with Respondent and his broker-dealer when his money troubles came to light. In late August 2013, the adviser filed a Form 8-K with the Commission, disclosing its board's decision to terminate Respondent's firm as its distributor, and dropping "KBR" from its name. (Supp. Salzmann Decl., Exh. 9 at "Item 1.02") (VII Peaks-KBR's Form 8-K), Exh. 10 (press article, "BDC dumps distributor over financial issues," *Investment News*, August 27, 2013).)

III. ARGUMENT

A. Legal Standard for Imposition of a Securities Industry Bar.

As stated in the Division's opening brief, Exchange Act Section 15(b)(6)(A)(iii) authorizes the Commission to bar a person from further association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization (collectively referred to as an "industry bar" or a "collateral bar") where, at the time of the misconduct, he was associated with or seeking association with a broker or dealer, if the person was enjoined in connection with the purchase or sale of a security, and the bar is in the public interest. 15 U.S.C. § 78(o)(b)(6)(A)(iii); *In the Matter of Christopher A. Seeley*, AP File No. 3-15240, 2013 WL 5561106, at *13 (Oct. 9, 2013). Likewise, the Investment Advisers Act of 1940 ("Advisers Act') has a parallel provision, authorizing the Commission to issue a collateral bar when, at the time of securities-related misconduct for which an individual was later enjoined, the individual was associated with an investment adviser and the bar is in the public interest. Advisers Act Section 203(f), 15 U.S.C. § 80-3(f). The Commission became authorized to issue collateral bars pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank"), which added collateral bars as remedies under Exchange Act Section 15(b)(6) and Advisers Act Section 203(f). All of the misconduct at issue here occurred after the enactment of Dodd-Frank.

Having already established the district court record demonstrating that Nevatia was enjoined against securities fraud, consistent with the Administrative Law Judge's order directing this Supplemental Brief, the evidence presented in this Supplemental Brief is directed at establishing facts showing that Nevatia was associated with a broker/dealer and/or with an investment adviser at the time of his misconduct and that it is in the public interest to bar him.

B. Respondent Was Formally Associated with Two Registered Entities.

As mentioned, the Exchange Act and the Advisers Act allow for bars against individuals who were "associated with," respectively, a broker/dealer or an investment adviser at the time of the misconduct. 15 U.S.C. § 78(o)(b)(6)(A)(iii); 15 U.S.C. § 80-3(f). The two Acts have parallel provisions, defining an associated person to include "any partner, officer, director...of such" broker/dealer or investment adviser, including "any person occupying similar status or performing similar functions" as well as "any person directly or indirectly controlling...such" broker/dealer or investment adviser. 15 U.S.C. § 78c(a)(18); 15 U.S.C. § 80b-2.

In the opening brief, the Division argued, based on the allegations in the OIP, that the fact that Respondent owned KBR CM and solicited investments through that entity at the time of the fraud established his role as a person "controlling" a broker/dealer. (Mot. for Remedial Relief at 5.) The supplemental evidence establishes both his ownership of KBR CM, and the fact that he solicited investments through it. Moreover, the facts supported by the supplemental evidence further establish that Respondent essentially used KBR CM as his alter ego, tightly controlling its finances, and using the entity to sell products that he also owned.

In addition, the supplemental evidence also shows that, Respondent was a director or officer of a broker/dealer during the misconduct. As discussed, Respondent's fraudulent statements underlying the Commission's district court case against Respondent occurred in late 2011 and throughout 2012, and he continued to facilitate the fraud through lulling statements in and after August 2013. The evidence also shows that, from August 2011, Respondent was KBR CM's "director" of business development and, starting in August 2013, Respondent was also the firm's CCO.

Moreover, the supplemental evidence further shows that, from at least 2012 through summer 2013, Respondent was an owner, and controlled the distribution for, an investment

adviser registered with the Commission, thus allowing for an industry bar under either the Exchange Act or the Advisers Act.

C. The Additional Evidence Submitted Herewith Establishes that a Bar Against Respondent Is in the Public Interest.

As discussed in the opening brief, when determining whether a bar is in the public interest, the Commission considers the factors outlined in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979): (1) the egregiousness of a respondent's actions; (2) the isolated or recurrent nature of the violations; (3) the degree of scienter involved; (4) the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood the respondent's occupation will present opportunities for future violations. *See also In the Matter of KPMG Peat Marwick, LLP*, AP File No. 3-9500, 2001 WL 47245, at *23-26 (Jan. 19, 2001), aff'd sub nom *KPMG v. SEC*, 289 F.3d 109 (D.C. Cir. 2002); *In the Matter of Peak Wealth Opportunities, LLC*, AP File No. 3-14979, 2013 WL 812635, at *9-10 (Mar. 5, 2013); *Christopher Seeley*, 2013 WL 5561106, at *14. No one factor controls. *See SEC v. Fehn*, 97 F.3d 1276, 1295-96 (9th Cir. 1996).

In its opening brief, the Division presented its argument as to why the facts supported by the allegations in the OIP and the complaint in the district court action support the bar. Since the supplemental evidence set forth herein support each of the facts discussed in the opening brief, the Division therefore relies on the argument set forth in the opening brief.[6]

[6] The Division notes that, relying on substantially same facts, the district court found that these facts supported granting an injunction against Nevatia. *See* Report and Recommendation Regarding SEC's Application for Default Judgment, dated October 19, 2015, at 15. (The Report is attached to the Division's Motion for Remedial Relief as Exhibit 5.) To come to this conclusion, the court applied the five-factor test set forth in *SEC v. Fehn*, 97 F.3d 1276, 1295 (9th Cir. 1996), which substantially tracks the *Steadman* factors. While *In the Matter of Gary L. McDuff*, Admin. Proc. Rulings Release No. 74803, 2015 SEC LEXIS 1657 (Apr. 23, 2015), limits the Administrative Law Judge's ability to rely on the allegations from the complaint, the Administrative Law Judge may consider the legal conclusions made by the district court on a matter substantially similar to the one presently before it, when, as here, the same facts are supported by the evidentiary record.

However, the evidence also shows certain additional facts that further establish that a bar is in the public interest under the last *Steadman* factor, which considers the Respondent's line of work. As described herein, Respondent's conduct at KBR CM shows that he acted with disregard for the controls necessary to ensure the broker dealer was in compliance with FINRA regulations. Moreover, the fact that the VRSBS investors were also investors in securities related to KBR CM further show that he presents a high risk to the securities industry were he allowed to continue without a bar. *See* Gupta Decl. ¶ 3 (invested in funds connected with KBR CM); Govindaswami Decl. ¶ 3 (invested in the Sag Harbor hotel development project, which was sold through KBR CM as described in Suzanne Bond's testimony at 97:8-99:17).

IV. CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the Division's initial moving papers, the Division respectfully requests that the Administrative Law Judge issue an initial decision barring Respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Note regarding SEC Rule of Practice 154: According to the "word count" function on the word processing program used to prepare this Supplement Brief, the brief consists of approximately 6652 words, exclusive of the tables of contents and authorities.

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Respectfully submitted,

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