UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act Of 1934

Admin. Proc. File No. 3-19798

In the Matter of

SERGEY PUSTELNIK a/k/a
SERGE PUSTELNIK,

Respondent.

REPLY TO MOTION FOR SUMMARY DISPOSITION

Dear Secretary Countryman,

The below is a reply to the motion for summary disposition in the Administrative Proceeding File No. 3-19798. I am currently representing myself *pro-se.*

The Division is seeking two permanent collateral bars:

(1) bar from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

(2) bar from participating in the offering of any penny stock.

Without waiving any rights, I am not disputing the verdict and rulings in the district court in this proceeding. Facts and arguments presented in my Answer and in this motion are intended to inform the Commission so that an appropriate and fair ruling is made.

There are two arguments that I respectfully submit to the Commission:

1) **The conduct at issue, specifically the two trading strategies of nationally listed equities and derivatives that were executed in the open market are only related to involvement with a broker-dealer and have no connection to "investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," nor "penny stock offering" and thus a bar for these unrelated activities is not justified and cannot be in the public interest.**

   The Division points out that "Section 15(b) of the Exchange Act, as amended by Section 925(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), provides that the Commission **may** bar a person from being associated with a "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, **or** nationally recognized statistical rating organization, **or** from participating in an offering of penny stock" (emphasis supplied). The Division has not presented an argument that the Commission **must** bar, nor has it presented an argument to interpret "**or**" as "**and**" requiring the Commission to bar every itemized activity in the Act. There are no facts in the record, nor arguments presented that the activity in question

had an impact or connection with any investment advisory, municipal securities dealer or advisory, transfer agency, nationally recognized statistical rating organization or offering in any penny stock. Most of these activities require additional licenses (which I have never possessed) and certain requirements and simply by virtue of being available bar remedies that are itemized by the Act should not be treated as one and the same. Indeed, the Act clearly uses the word "or" twice, instead of "and." The Act with its voluminous provisions does not state nor imply "violate one - be barred from all."

The Division points to *In re Edward Tamimi Sec. Exch. Act Rel. No. 63605 (Dec. 23, 2010*) in support of the argument that "violations of the anti-fraud provisions of the federal securities laws merit the severest of sanctions under the securities laws." In this case the respondent sold unregistered securities and was himself not registered and the result was "IT IS ORDERED, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Edward Tamimi is barred from association with any broker or dealer." (*See p5*). There were no additional itemized bars.

The second case the Division points to is *In re Marshall E. Melton*, 80 SEC Docket 2258, 2003 WL 21729839, *9 (July 25, 2013) who was a registered investment advisor working with a broker dealer. The only bars that were ordered in this case were:

> ORDERED that Marshall E. Melton be, and he hereby is, barred from association with any investment adviser, broker, dealer, member of a national securities exchange and member of a registered securities association; and it is further

> ORDERED that the registration of Asset Management & Research, Inc. as an investment adviser be, and it hereby is, revoked.
> (*Id.*)

Appropriately, there have been no additional unrelated bars ordered as opposed to what the Division is seeking here.

2) The conduct at issue does not warrant a permanent bar without any time limits or a right to reapply and thus is not in the public interest.

The Division has appropriately stated that I was a registered representative through January 2015 and the conduct at issue ceased in 2016. For these almost complete two years, I have not been a registered representative at Lek or any other broker dealer. Thus, for at least this period of time, my involvement with the broker/dealer was not a necessary condition for this conduct to occur.

The Division claims that I am attempting to shift blame to Lek Securities, its Chief Executive Officer and Chief Compliance officer (Samuel Lek). To clarify, my argument is that the primary responsibility must lie at the genuine gatekeeper to the markets with the outlined specific responsibilities to ensure that violations do not happen. This is not to say that my actions have not contributed nor do I deny that I provided (what I then believed to be lawful) assistance to trading conducted by Avalon traders.

In 2015, after my voluntary exit from the FINRA regulated industry and in connection with attempting to truly understand the complex nature of legal nature surrounding markets and

business in general, I have enrolled in law school, which I have successfully completed in 2018. My, and my co-defendant's appeal of the underlying action primarily attempts to persuade the Second Circuit to overturn the law that was created by adjudication in the lower court by adhering to statutory laws and previous precedent. In any case, I fully understand and realize that as it stands today (as opposed to when the conduct was at issue) - the law does prohibit both of these strategies, and my only intent is to have a higher court issue a decision with hopes that the lower court erred. I have not claimed that this current law is inapplicable and treat it with disregard - quite the opposite.

It is also unjust to claim that my exercising of my constitutional rights to a fair trial and an appeal and my honest belief that the trading is not-manipulative is equivalent to my refusing to acknowledge the wrongful nature of my conduct.

Instead, I respectfully request that the Commission also considers the following facts in conjunction with the findings in order to determine the appropriate remedial action that is just and in the public interest.

a) My position was that of a registered representative with no control nor responsibility over the decisions of the broker-dealer and its leadership, who have continued to support the trading at issue for almost two years after my departure. Only after all litigation options were exhausted before actual jury trial, did the broker dealer settle with the Commission and its leader Sameul Lek received a bar with 10 years to reapply.
b) My involvement in the activity was discussed and approved by the broker-dealer, including soliciting outside legal counsel opinions that (falsely) assured me that the

trading was not in violation of law. This reliance on counsel was excluded from the trial by the District Court, however I still bring this to the attention of the Commission.

c) In my Answer, I referenced expert reports that were all excluded from trial. The purpose of bringing those up is to showcase the difference of expert opinion on the trading in question: reasonable minds can disagree.

d) This case, its activity (trading against high-frequency traders), and the findings that real orders can be artificial is novel in the U.S justice system. There were similar cases that were settled before trial, and settled cases cannot be the precedent of law.

Finally, after years of investigation, litigation, and my own education I cannot say that I am blameless for the conduct and indeed serious mistakes were made. And while I still dispute certain factual findings, I do so in exercising my rights and what I truly in the hearts of hearts believe or believed. The current case, as it stands is clear - I understand that the facts that were found by a jury of my peers as true are for all intents and purposes true. Securities laws are extremely important, and investors and the public must be adequately protected. Perhaps, I have misjudged the violativeness and egregiousness of my actions and I respectfully request that the Commission issues a fair and reasoned order corresponding to the activity and my involvement.

Thank you for your consideration.

Sincerely,

Respondent
Sergey Pustelnik

June 4, 2021 /s/ Sergey Pustelnik
Sergey Pustelnik

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Certificate of Service

As per mutual agreement with the Staff to use email as means of service dated June 8, 2020 MR. PUSTELNIK'S REPLY TO MOTION FOR SUMMARY DISPOSITION has been served on

Sarah Nilson
NilsonS@sec.gov

Sincerely,

June 4, 2021

/s/ Sergey Pustelnik
Sergey Pustelnik
[redacted]