UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20220

In the Matter of

ROSEDALE ASSET MANAGEMENT, LLC, F/K/A PRINCETON ADVISORY WEALTH MANAGEMENT, LLC,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

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Pursuant to Rule 250 of the Commission's Rules of Practice, the Division of Enforcement ("Division") moves for summary disposition against Respondent Rosedale Asset Management, LLC, f/k/a Princeton Advisory Wealth Management, LLC ("PWM"), and for an order requiring PWM to pay a second-tier civil penalty of $487,616.

I. INTRODUCTION

PWM, acting through its CEO and control person Munish Sood ("Sood"), made multiple illegal payments to bribe NCAA Division I men's college basketball coaches and others in an effort to persuade student-athletes with professional basketball prospects to retain PWM's services as an investment adviser. Sood pleaded guilty to and was convicted of multiple felonies as a result.

This is a cease-and-desist proceeding instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"). PWM submitted an offer of settlement, which the Commission accepted, resulting in an OIP: (a) ordering PWM to cease-and-desist from committing or causing violations of Section 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-3 thereunder; and (b) ordering PWM to pay a civil penalty in an amount to be determined by this Court. In determining the amount of the civil penalty -- the sole issue in this proceeding -- the findings in the OIP must be accepted as true. Those findings and the other uncontested facts establish that a second-tier penalty against PWM is appropriate and in the public interest.

II. STATEMENT OF UNDISPUTED FACTS

A. Respondent.

1. PWM is based in Hamilton, New Jersey. From January 2012 through February 2018, PWM was a Commission-registered investment adviser. *See* OIP at ¶ 1; Answer at ¶ 1. From at least March 2015 through October 23, 2017, Sood owned at least 95% of PWM, and served

as its Chief Executive Officer, Chief Investment Officer, and control person. *See* OIP at ¶ 1; Answer at ¶ 1.

B. Procedural Background.

2. PWM submitted an Offer of Settlement to the Commission. *See* OIP at II. The Commission accepted the offer, and, on February 5, 2021, instituted this proceeding with an Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Advisers Act ("OIP"). *Id*.

3. Pursuant to the Offer of Settlement, and as set forth in the OIP, in connection with this proceeding:

> (a) Respondent agrees that it will be precluded from arguing that it did not violate the federal securities laws described in this Order; (b) Respondent agrees that it may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings made in this Order shall be accepted as, and deemed, true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition testimony, criminal trial testimony, or investigative testimony, documentary evidence, and, if the hearing officer determines it necessary, hearing testimony.

OIP at Section IV.

4. On February 12, 2021, the Division made documents related to this matter available to PWM. *See* Rule 230 Letter (Ex. 1).[1] On February 24, 2021, PWM submitted an Answer to the OIP admitting to the findings in the OIP. Answer at ¶¶ 1-10. On March 4, 2021, and March 8, 2021, the Court issued Orders authorizing the Division to file its motion for summary disposition.

C. The OIP's Uncontested Findings

5. The OIP orders that the findings in the OIP shall accepted as, and deemed, true in this proceeding. OIP at Section IV. The Division therefore incorporates the findings of the OIP by

[1] Exhibits referenced herein are attached to the Declaration of Keefe M. Bernstein submitted herewith.

reference as if set forth in full herein. In particular, the Division refers the Court to Section III of the OIP, which provides the following summary of the findings against PWM that are deemed true:

> Between February 2016 and September 2017, Respondent [PWM] formerly a Commission-registered investment adviser, participated in a widespread bribery scheme that misled a number of prospective clients who were past, present, and prospective NCAA Division I college athletes (the "NCAA Payments Scheme"). PWM, through the actions of its CEO and control person Munish Sood, made at least twenty payments totaling more than $96,000 to individuals and entities who would: (a) influence amateur athletes to retain PWM as an investment adviser after they turned pro and had money to invest, or (b) introduce Sood to others who, in exchange for additional payments, would influence these same prospective clients to retain PWM. As a result of these efforts, at least five former NCAA (now professional) basketball players signed advisory agreements with PWM. PWM failed to disclose to the prospective clients the facilitating referral payments before they signed the advisory agreements. As a result of this conduct, PWM violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-3 thereunder.

OIP at Section III, Summary.

6. The Division further refers the Court to the following additional findings in the OIP that are also uncontested:

> In early 2016, Sood agreed to a business arrangement with an individual who worked at a well-known sports agency ("Agent1"), whereby Sood would pay Agent1 in exchange for (a) recommending that certain basketball players retain PWM for investment advisory services after they made money from playing professional basketball, and (b) introducing Sood to others who could make similar recommendations to retain PWM. Between February 2016 and June 2016, Sood made payments to Agent1 of approximately $17,500. In return, Agent1 referred two amateur basketball players (now NBA players) to PWM through Sood. Both players eventually signed advisory agreements with PWM. OIP at Section III, ¶ 3

> In April 2016, Agent1 introduced Sood to a sports agent ("Agent2") who worked at the same company as Agent1. Sood agreed to pay Agent2 in return for Agent2 referring prospective professional basketball players to PWM for investment advisory services. Between May 2016 and July 2017, Sood made eight payments totaling $24,500 to Agent2. In return, Agent2 referred several amateur basketball players (now NBA players) to PWM. Three of those players eventually signed advisory agreements with PWM. OIP at Section III, ¶ 4

In 2017, Sood invested $22,500 in a new business run by Agent1. Agent1 intended for his business to make payments to individuals who could influence amateur athletes to retain its services when they became professionals. Sood understood that if Agent1's business provided money to individuals with influence over basketball players prior to the NBA draft, the players might retain the services of PWM when they became professional basketball players. OIP at Section III, ¶ 5.

Throughout 2017, Agent1's business made payments to multiple individuals in the hopes of cultivating clients who would retain its—and PWM's—services in the future. For example, in or around June 2017, Agent1's business made two payments totaling $20,000 to an assistant coach at an NCAA Division 1 school, as well as a $2,000 payment to the "handler" of a basketball player at that school. In addition, in or around July 2017, Agent1's business paid $4,100 to an assistant coach at another NCAA Division 1 school. OIP at Section III, ¶ 6.

In total, from February 2016 to September 2017, PWM (through Sood)—directly and indirectly—paid more than $96,000 to influence prospective clients to retain PWM. OIP at Section III, ¶ 7.

PWM never disclosed the payments to the prospective PWM clients. Additionally, PWM never entered into any written agreements concerning the cash solicitations, and PWM's prospective clients were not provided with a written disclosure document that identified the solicitor, the investment adviser, the nature of their relationship, and the terms of the compensation arrangement. OIP at Section III, ¶ 8

D. <u>Criminal Proceedings.</u>

7. The United States, acting through the United States Attorney for the Southern District of New York ("U.S. Atty."), charged ten individuals across three cases, including an athletic-company executive, four NCAA Division I college basketball coaches, an aspiring sports agent, and Sood for fraud and corruption schemes relating to men's college basketball. *See* USA Sentencing Letter at 2 (Ex. 2).

8. On August 27, 2018, the U.S. Atty. filed an Information against Sood charging him with three felony counts: (1) Conspiracy to Commit Bribery, Honest Services Fraud, and Travel Act Offenses (18 U.S.C. § 371); (2) Payments of Bribes to an Agent of a Federally Funded

Organization (18 U.S.C. § 666(a)(2)); and (3) Conspiracy to Commit Wire Fraud (18 U.S.C. § 1349). *See* Information (Ex. 3).[2] The Information charges that Sood paid bribes to NCAA Division I college basketball coaches and, in exchange, the coaches agreed to and did exercise their influence to persuade and pressure student-athletes to retain Sood's services. *Id.* at ¶¶ 2-9.

9. Also on August 27, 2018, Sood pleaded guilty to the three-count Information. *See* Plea Hearing Tr. at 24:23-25:6 (Ex. 4); Order Accepting Plea (Ex. 5); Answer at ¶ 2. On September 12, 2019, the District Court entered judgment against Sood in the Criminal Action and ordered him to pay a fine of $25,000. *See* Judgment in a Criminal Case (Ex. 6); Answer at ¶ 2. On or about November 1, 2019, the Court ordered Sood to pay, jointly and severally, restitution of $28,261 to an NCAA Division I university that was a victim of the Wire Fraud Conspiracy. *See* Order of Restitution (Ex. 7); Answer at ¶ 2.

10. At his plea hearing, Sood testified that from "2016 to September 2017, he agreed with others to make payments to coaches at NCAA member universities and to families of then current and prospective NCAA student-athletes in exchange for the current and prospective student athletes retaining him as a financial adviser." Plea Hearing Tr. at 25:11-16. To illustrate, "on one occasion I made a . . . two thousand dollars payment by check to a coach at the NCAA member university in exchange for the coach's recommending that players hire me as a financial adviser." *Id.* at 25:16-24. Sood testified that he knew what he was doing was wrong at the time, and he believed it was prohibited by the NCAA and "could make the players ineligible." *Id.* at 26:1-15.

[2] The criminal case is *United States v. Munish Sood*, No. 1:18-cr-00620-KMW (S.D.N.Y.). The Division requests that the Court take official notice of the docket and orders in the criminal case. *See Rosalind Herman*, Initial Dec. Rel. No. 1371, 2019 WL 1529572, at *2 n.16 (Apr. 5, 2019) (taking official notice of criminal case docket and orders issued in criminal case).

11. At the criminal trials of his co-conspirators, Sood further testified that, among other acts, he: (a) made numerous, multi-thousand dollar payments on multiple occasions to or for the coaches, family members, and/or handlers of multiple student-athletes with strong professional basketball prospects in an attempt to secure them as advisory clients once they became professionals; and (b) on one occasion handed a $19,400 cash payment to the father of a student-athlete in a parking lot – a payment that had been promised to ensure his son would attend a specific NCAA Division I college. *See* Gatto Tr. (Ex. 8) at 209:20-210:12; 216:12-217:9; 219:11-226:21; 233:22-234:2; 319:12-15; Dawkins Tr. (Ex. 9) at 703:1-24; 711:20-719:4; 731:17-23; 733:8-20; 775:10-16; 785:14-23; 794:19-796:21; 798:2-5. And, in fact, several of the student-athletes signed advisory agreements with PWM. *See* Gatto Tr. at 306:9-22; Answer at ¶¶ 3-4.

III. ARGUMENT AND AUTHORITIES

A. Summary Disposition is Appropriate.

Rule 250(b) of the Commission's Rules of Practice provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). Summary disposition is appropriate here, because the factual findings in the OIP are binding, and the OIP expressly authorizes the hearing officer to decide this proceeding based on the existing record. *See* OIP at Section IV.

Thus, there is no genuine issue of material fact, and the uncontested record establishes the predicate for determining the amount of the civil penalty as a matter of law. *See William J. Sears*, Initial Decision Rel. No. 1405, 2020 WL 6742778, at *5 (Nov. 9, 2020) (granting summary disposition in remedies proceeding following bifurcated settlement); *see also Jeffery L. Gibson*,

Exchange Act Rel. No. 57266, 2008 WL 294717, at *5 (Feb. 4, 2008) (collecting cases upholding summary disposition where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction), *pet. denied,* 561 F. 3d 548 (6th Cir. 2009).

B. A Second-Tier Penalty is Warranted.

1. A penalty is in the public interest.

Advisers Act Section 203(i) authorizes the Commission to impose civil money penalties in the public interest. 15 U.S.C. § 80b-3(i). In determining whether a civil penalty is in the public interest, the Commission may consider whether: (1) the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm, directly or indirectly, to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need for deterrence; and (6) such other matters as justice may require. *See Thomas C. Gonnella*, Exchange Act Rel. No. 78532, 2016 WL 4233837, at *14 (Aug. 10, 2016), *pet. denied*, 954 F.3d 536 (2d Cir. 2020). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." *Robert G. Weeks*, Initial Decision Rel. No. 199, 2002 WL 169185, at *58 (Feb. 4, 2002).

The OIP in this case orders that PWM shall pay a civil penalty; the only question before the Court is the *amount* of the penalty in the public interest. Application of the most relevant factors -- factors one (violation involving fraud) and five (deterrence) -- establish that a significant penalty is in the public interest. PWM engaged in a widespread bribery scheme in direct violation of the antifraud provisions of the Advisers Act and in deliberate or reckless disregard of a regulatory requirement. The same conduct resulted in its CEO and control person being convicted of multiple felonies, including bribery and wire fraud conspiracy. This was a highly egregious fraud in which

PWM, acting through Sood, knowingly jeopardized the futures of multiple student-athletes for Sood's personal benefit and aggrandizement. These stunning violations are antithetical to the trusted role of an investment adviser, and the Commission has a strong interest in deterring PWM and other firms from engaging in similar conduct in the future. *See Laurie Bebo and John Buono, CPA,* Initial Decision Rel. No. 1401, 2020 WL 4784633, at *105 (Aug. 13, 2020) ("One important rationale for imposing civil penalties is to deter both the violator and others similarly situated from future violations).

Because this case involves undisclosed bribes to obtain business and not, for example, excessive fees or other direct financial loss to clients, the remaining factors appear less relevant, but still largely supportive of a significant penalty. PWM's actions caused harm (factor two) to several universities by depriving them of the honest services of their coaches, and at least potential harm to the student-athletes and universities by PWM knowingly putting their scholarships and athletic programs, respectively, at risk. At least five of the student-athletes, now professionals, signed advisory agreements with PWM as a result of the misconduct, and PWM has not paid any prior restitution (factor three).[3] PWM does not have a prior disciplinary history (factor four).

2. PWM's misconduct warrants a second-tier penalty.

The Advisers Act sets out a three-tiered system for determining the maximum civil penalty for each act or omission:

- A maximum third-tier penalty is permitted if: (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

[3]Sood was ordered to pay $28,261 in restitution, on a joint and several basis with other criminal defendants, to one of the universities he harmed. *See* Order of Restitution.

- Second-tier penalties may be imposed if the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.
- First-tier penalties may be imposed simply for each violation.

15 U.S.C. § 80b-3(i).

For the time period at issue (February 2016 and September 2017), the maximum first, second, and third-tier penalty for each violation for an entity is $97,523, $487,616, and 975,230. *Id.; see also* C.F.R. § 201.1004 (adjusting the statutory amounts for inflation). Although the tier determines the maximum penalty per violation, "each case 'has its own particular facts and circumstances which determine the appropriate penalty to be imposed"' within the tier. *SEC v. Opulentica,* 479 F.Supp. 2d. 319, 331 (S.D.N.Y. 2007) (internal quotation omitted).

At least a second-tier penalty is warranted here. There is no question that PWM's violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. As discussed above, PWM engaged in a widespread bribery scheme in direct violation of the antifraud provisions of the Advisers Act, and the conduct resulted in its CEO and control person being convicted of multiple scienter-based felonies, including, among other things, bribery and conspiracy to commit wire fraud.

In this situation, the Court should impose a second-tier penalty for each violation, and it could determine the number of violations different ways, including by counting each of the at least (a) 20 illegal payments PWM made, or (b) each of the at least five advisory agreements PWM entered into with the former NCAA (now professional) basketball players, as separate violations. *See J. W. Barclay*, SEC Rel. No. 239, 2003 WL 22415736, at *40 (Oct. 23, 2003) (each unauthorized trade and each unsuitable transaction constituted a separate act or omission). The Division believes that a fair approach under the circumstances of this case would be to assess a

one-time maximum second-tier penalty of $487,616 against PWM. *See Gonnella*, 2016 WL 4233837, at *14 (imposing one-time maximum second-tier penalty against an individual associated with broker-dealer and investment adviser for antifraud violations relating to prearranged trading scheme).

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Commission grant this Motion for Summary Disposition and order PWM to pay a second-tier civil penalty of $487,616.

May 19, 2021

Respectfully submitted,

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Service List

Pursuant to Rule 150 of the Commission's Rules of Practice, I certify that on May 19, 2021, the *Division of Enforcement's Motion for Summary Disposition and Memorandum of Points and Authorities in Support* was filed using the eFAP system and that a true and correct copy was served electronically upon each person previously agreeing to accept document by electronic means. A copy of the foregoing document has also been provided to the APFilings@sec.gov mailbox.

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