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 REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

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The Division of Enforcement ("Division") submits the following Reply Brief in Support of its Motion for Summary Disposition against Respondent Rosedale Asset Management, LLC, f/k/a Princeton Advisory Wealth Management, LLC ("PWM"), and respectfully shows as follows:

A. A Second Tier Penalty is Warranted.

Contrary to PWM's assertion, the Division is not taking the extreme position that PWM should pay the absolute maximum penalty the Division is entitled to seek. Response at 1. Far from it. PWM engaged in a widespread bribery scheme to illegally obtain NCAA athletes as advisory clients in direct violation of the antifraud provisions of the Investment Advisers Act of 1940 ("Advisers Act"). PWM's control person, Munish Sood ("Sood"), was also convicted of multiple scienter-based felonies for the conduct giving rise to the Advisers Act violations. Thus, PWM cannot dispute that its conduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, which, by statute, gives rise to a second tier penalty for each of PWM's violations of the federal securities laws.

The Court could impose a second-tier penalty amount based on a per violation multiplier using, for example, each illegal payment (at least 20), each advisory client who signed an advisory agreement procured through undisclosed bribes (at least 5), or each section of the Advisers Act that PWM violated (at least 3). The Division's request for a one-time maximum second-tier penalty is therefore not extreme and is instead entirely reasonable in light of PWM's intentional and egregious misconduct. *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) (imposing one-time maximum second-tier penalty against individual associated with broker-dealer and investment adviser for antifraud violations relating to prearranged trading scheme).

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B. The Penalty Factors Support the Requested Penalty.

PWM's arguments relating to the penalty factors are without merit and do not support the imposition of a lower penalty.

Factor one: Because PWM cannot contest that its conduct involved fraud and deceit, it addresses this factor by downplaying Sood's role in the criminal scheme and arguing that there is no allegation that PWM made misrepresentations to investors or misappropriated investor funds. These arguments are misplaced.

First, the undisputed record demonstrates that PWM, acting through Sood, made or knowingly funded multiple undisclosed bribes to multiple individuals to obtain NCAA athletes as advisory clients. PWM tries to obfuscate the scope of its misconduct by claiming the criminal complaints only identify two of Sood's illegal payments (Response at 7-8), while ignoring that the findings in the OIP (findings that shall be accepted as, and deemed, true in this proceeding), Sood's own testimony at the criminal trials, and the Department of Justice's ("DOJ") sentencing letter establish Sood's involvement in many more payments involving more athletes. *See* OIP at Section III (finding PWM made at least 20 payments); *see also* Motion at ¶¶ 5-10 & Exs. 2, 8 & 9. Regardless, and irrespective of the conduct of Sood's co-conspirators, it is undisputed that PWM's conduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

Second, PWM spends much of its argument on the first penalty factor by highlighting the fact that the district court in the criminal matter did not sentence Sood to prison time. However, the fact that the district court did not sentence Sood to prison time following his cooperation with the DOJ does not change that Sood was convicted of crimes involving fraud and deceit and that

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PWM's violations of the antifraud provisions of the Advisers Act involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Moreover, there is simply no question that in the securities industry, which is the context here, paying undisclosed criminal bribes to obtain clients constitutes highly egregious conduct. Whether that conduct, in the criminal context, results in a prison sentence under the sentencing guidelines after a credit for cooperation and based on other sentencing factors is a different issue. And the fact that Sood did not receive harsh consequences in the criminal case, if anything, weighs in favor of imposing a significant penalty here to deter PWM and other investment advisers from engaging in similar misconduct.

Third, PWM's argument that it did not make misrepresentations to prospective clients or misappropriate client funds is a red herring. The OIP finds that PWM, among other violations, violated Sections 206(1) and 206(2) of the Advisers Act. By their express terms, these violations involve fraud and deceit, and the Section 206(1) violation requires a finding of scienter. *See Steadman v. SEC,* 603 F.2d 1126, 1134 (5th Cir. 1979), *aff'd,* 450 U.S. 91 (1981). The violations are premised on the OIP's findings, which are deemed true in this proceeding, that at least five of the former NCAA (now professional) basketball players signed advisory agreements with PWM as a result of the bribery scheme, and that PWM did not disclose the illegal payments to the prospective clients before they signed the agreements. OIP at Section III.[1] That the OIP does not also allege other types of misconduct does not diminish that PWM indisputably committed violations involving fraud, deceit, manipulation, or deliberate or reckless disregard of

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a regulatory requirement. PWM has no credible argument, much less authority, to support its proposition that an investment adviser should receive a lesser penalty for engaging in violations of Sections 206(1) and 206(2) simply because the misconduct involved undisclosed bribes to obtain advisory clients and not misrepresentations to investors.

Factor two: PWM claims that no investors were directly harmed by its conduct, and the clients who retained PWM have purportedly benefited from their relationship with Sood. Response at 10. This argument fails when put in context. At the outset, the facts and circumstances of this case – payments of undisclosed bribes – do not lend themselves to focusing on direct financial harm to investors, and such harm is by no means a prerequisite for imposing significant second-tier penalties. *See Robert G. Weeks*, Initial Decision Rel. No. 199, 2002 WL 169185, at *58 (Feb. 4, 2002) ("Not all factors may be relevant in a given case, and the factors need not all carry equal weight."); *Monetta Financial Services, Inc.*, Initial Dec. Rel. No. 162, 2000 WL 320457, at *25, 28 (March 27, 2000) (imposing near maximum second-tier penalty of $200,000 against investment adviser entity in non-disclosure case with no client harm).

Further, it is undisputed that PWM's actions created a substantial risk of harm to his prospective student-athlete clients, the assistant coaches to whom bribes were paid, and NCAA member universities that were affected by the bribery scandal.[2] The fact that PWM claims its misconduct did not end up causing harm despite the admitted risk, even if true, was merely

[1] PWM suggests in certain parts of its response that it did not secure any clients as a result of the criminal scheme. Response at 7-8. But this directly contradicts the admitted findings in the OIP, the Answer, and Sood's testimony at the criminal trials. *See* OIP at Section III; Answer at ¶¶ 3-4; Gatto Tr. (Ex. 8) at 306:9-22. Exhibits cited herein refer to the exhibits submitted with the Division's Motion for Summary Disposition.

[2] Indeed, PWM's position that the Division has requested an extreme penalty amount ignores that PWM could potentially be subject to third-tier penalties for creating a significant risk of substantial losses to the NCAA athletes, assistant coaches, and NCAA universities.

fortuitous and should not reduce its penalty. Moreover, PWM appears to take the position that because *some* of the athletes do not take issue with the bribes and claim they were not injured, the ends justify the means. However, PWM should suffer consequences for its misconduct and should not receive a lower penalty, especially when the bribery scheme worked.

Factors three and four: PWM claims that it was not unjustly enriched by the scheme, because it always operated at a loss and the professional athletes it signed as clients were only starting their professional careers. Response at 11. Yet, it is undisputed that PWM did obtain executed advisory agreements from at least five of the athletes as a result of the misconduct. The fact that Sood was arrested before PWM could obtain *all* the fruits of the illegal scheme should not be a basis for reducing the penalty amount. In addition, PWM has not paid any prior disgorgement or restitution, so the penalty imposed in this proceeding will likely be its only financial sanction for its misconduct.

Factor five: PWM argues that there is no need for deterrence, because it has no clients and is not currently functioning.[3] Whether PWM is still operating in its prior formulation (or at all), there is a strong public interest in deterring investment advisers from engaging in this type of misconduct. Investors are ill-served if investment advisers obtain clients through undisclosed bribes in direct violation of the Advisers Act.

Finally, the authority that PWM cites at pages 12-13 of its Response does not show that a lower penalty is warranted:

[3] PWM provides no support for these assertions, and it also submitted declarations from several of the clients it obtained through the bribery scheme that indicate that Sood is continuing to provide them with investment or other financial advice.

- *Versus Capital Partners, LLC*, Advisers Act Rel. No. 5748, 2021 WL 2336780, at *1-3 (June 7, 2021), is a settled order awarding a penalty based on an investment adviser's negligent failure to disclose a conflict of interest in a Form ADV. That order is not comparable to this litigated matter seeking a penalty for an investment adviser's active participation in a criminal bribery scheme that involved multiple illegal payments in violation of Advisers Act Section 206(1), among other provisions.
- *Wheat, First Securities, Inc. f/k/a First Union Capital Markets Corp*, Initial Dec. Rel. No. 155, 1999 WL 1210860, at *33-34 (Dec. 17, 1999), awarded a lower second-tier penalty against a municipal securities dealer for failing to disclose payments to a lobbyist. The Court took into account that investors were not defrauded of money, but also that the violation was perpetrated by a short-term employee who had left the firm before the violation was discovered. That case is easily distinguishable from the instant case. Here, PWM's CEO and control person paid multiple, criminal bribes to secure NCAA athletes as advisory clients. Moreover, Sood knew those bribes would jeopardize the college eligibility and futures of the prospective clients.
- *Michael R. Pelosi*, Initial Dec. Rel. No. 448, 2012 WL 681582, at *25 (Jan. 5, 2012), *dismissed by Michael R. Pelosi*, Advisers Act Rel. No. 3805, 2014 WL 1247415 (March 27, 2014), imposed a three-time second-tier penalty of $60,000 against a portfolio manager for misrepresenting account performance returns when the maximum one-time second-tier penalty was $65,000. PWM does not explain how this award is in anyway inconsistent with the Division's comparable request for a maximum one-time second-tier penalty for an entity.
- *Spring Hill Capital Markets, LLC,* Initial Dec. Rel. No. 919, 2015 WL 7730856, at *19 (Nov. 30, 2015), imposed a maximum one-time second-tier penalty for a natural person of $75,000

jointly and severally against an unregistered broker-dealer and its founder for registration and other non-fraud violations that did not involve harm to investors. Again, PWM does not explain how this case supports its position. The Court appears to have used the natural person penalty amount because the penalty was imposed jointly and severally against both the individual and the company, but the approach – a maximum one-time second tier penalty for non-fraudulent and far less egregious conduct –is definitely not inconsistent with the Division's request in this case.

C. Conclusion.

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

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Respectfully submitted,

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Service List

Pursuant to Rule 150 of the Commission's Rules of Practice, I certify that on June 28, 2021, the *Division of Enforcement's Reply Brief in Support of Its Motion for Summary Disposition* 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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