UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

Admin Proc. File No. 3-20597

IN THE MATTER OF

THOMAS J. POWELL

REPLY BRIEF OF THOMAS J. POWELL IN SUPPORT OF APPLICATION TO VACATE OR FOR CONSENT TO ASSOCIATE

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I. INTRODUCTION

In September 2021, Mr. Powell entered into a settlement with the Commission that included certain bars "with the right to apply for reentry after two (2) years." Having fully complied with his undertakings and having waited more than the requisite two years, Mr. Powell filed his Application on January 19, 2024, asking the Commission to vacate the bars or, in the alternative, grant consent to associate with Resolute Capital Advisors LLC and participate in penny stock offerings. On April 7, 2025, the Commission ordered additional briefing, and the Division of Enforcement filed its Response on May 7, 2025, opposing vacatur and recommending denial without prejudice of the alternative requests. This Response addresses the Division's arguments and demonstrates why granting the requested relief is in the public interest and consistent with investor protection.

Since filing his Application in January 2024, Mr. Powell has continued his exemplary conduct and professional development while awaiting the Commission's decision. In June 2024, he successfully completed his Doctorate of Law and Policy at Northeastern University, building upon the Master of Science in Law he previously earned from Northwestern Pritzker School of Law. In August 2024, Mr. Powell exceeded the highest required threshold on the Multistate Professional Responsibility Examination (MPRE), demonstrating his commitment to understanding and upholding ethical standards required for bar eligibility across all United States jurisdictions. Throughout this period, Mr. Powell has maintained full compliance with the Order's terms and has refrained from engaging in any prohibited activities, further evidencing his dedication to regulatory compliance in the financial industry.

The Division of Enforcement's response fails to acknowledge recent developments at the Commission and the Supreme Court regarding administrative proceedings generally, and, more

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specifically to the potentially "illusory" nature of the reentry process following consensual bars—a concern specifically articulated by former Commissioner Piwowar when he cautioned that "the right to apply for reinstatement can be illusory" due to the lengthy and uncertain process that follows.[1]

II. ARGUMENT

A. The Constitutional Landscape of SEC Administrative Proceedings Has Fundamentally Changed Since Mr. Powell's Settlement

Since Mr. Powell's settlement with the Commission in September 2021, the constitutional underpinnings of SEC administrative proceedings have undergone a seismic shift through a series of landmark Supreme Court decisions. These developments directly impact the Commission's consideration of Mr. Powell's application and support his request for relief. The Enforcement Division's Opposition Brief fails to consider this changed legal landscape.

1. The Initial Challenge: *Lucia* and the Appointments Clause

The erosion of the SEC's administrative enforcement regime began with *Lucia v. SEC*, 138 S. Ct. 2044 (2018), which held that SEC Administrative Law Judges ("ALJs") were "Officers of the United States" who had not been properly appointed under the Constitution's Appointments Clause. While the Commission attempted to remedy this defect through ratification, *Lucia* opened the door to further constitutional challenges by recognizing the significant judicial power exercised by SEC ALJs, who the Supreme Court noted possess "nearly all the tools of federal trial judges."

Although *Lucia* predated Mr. Powell's settlement, the full implications of this decision were still developing when Mr. Powell entered into his agreement with the Commission in September 2021. At that time, the SEC had ostensibly addressed the Appointments Clause issue

[1] *In the Matter of John J. Aesoph, CPA and Darren M. Bennett, CPA*, No. 3-15168 (Aug. 5, 2016), at Dissent p. 2.

through ratification, creating an impression that administrative proceedings would continue largely unchanged. Mr. Powell reasonably relied on this understanding when accepting a settlement that included the right to apply for reentry after two years.

2. The Path to Challenge: *Axon/Cochran* and Pre-Enforcement Review

Just as Mr. Powell was completing his two-year waiting period, the Supreme Court decided *SEC v. Cochran*, 598 U.S. 175 (2023) and its companion case *Axon Enterprise, Inc. v. FTC*, which fundamentally altered a respondent's ability to challenge the constitutionality of administrative proceedings.

Prior to *Cochran*, respondents in SEC administrative proceedings were required to endure the entire administrative process before seeking judicial review of constitutional claims—a process that could take years and impose substantial costs. The Supreme Court's decision in *Cochran* eliminated this barrier, holding that federal district courts have jurisdiction to hear constitutional challenges to the structure of administrative proceedings before those proceedings conclude. As Justice Kagan explained, "forcing respondents to await the conclusion of their administrative proceedings before bringing removal claims would effectively deny them any meaningful judicial review." *Axon Enterprise, Inc. v. FTC*, 598 U.S. at 191.

The practical consequences of this procedural landscape were starkly acknowledged by Justice Gorsuch in his concurrence in *Axon Enterprise, Inc. v. FTC*: "And how many people can afford to carry a case that far anyway? Ms. Cochran's administrative proceedings have already dragged on for *seven years*. Thanks in part to these realities, the bulk of agency cases settle. *See* *Tilton v. SEC*, 824 F.3d 276, 298, n. 5 (CA2 2016) (Droney, J., dissenting) ("vast majority" of SEC cases settle); Tr. of Oral Arg. in No. 21–1239, p. 6 ("more than 90 percent" of such cases settle)." 598 U.S. 177, 216 (2023) (citing P. Hamburger, *Purchasing Submission: Conditions,*

Power, and Freedom 223 (2021) (describing this as "regulatory extortion"); D. Ginsburg & J. Wright, *Antitrust Settlement: The Culture of Consent*, in 1 W. Kovacic: An Antitrust Tribute 177 (N. Charbit et al. eds. 2013) ("Consent decrees create potential for an enforcement agency to extract from parties under investigation commitments well beyond what the agency could obtain in litigation")"). Justice Gorsuch further noted that "aware, too, that few can outlast or outspend the federal government, agencies sometimes use this as leverage to extract settlement terms they could not lawfully obtain any other way." *Id*. (internal citations omitted).

Even more telling was the SEC's unprecedented response to the *Cochran* decision: rather than allow constitutional challenges to proceed in federal court, the Commission dismissed 42 open administrative proceedings and lifted 45 industry bars in a single day—a clear acknowledgment of its own constitutional vulnerability.[2] This extraordinary action illustrates precisely why Mr. Powell's circumstances must be viewed in the context of the dramatically altered constitutional landscape.

The *Cochran* decision, coming after Mr. Powell's settlement, dramatically altered the procedural landscape. Had Mr. Powell been able to challenge his proceedings in federal district court from the outset—rather than facing the prospect of years of litigation before an unconstitutionally structured tribunal—he might well have made different strategic decisions regarding settlement.

[2] Margaret A. Little, "In a Trilogy on Administrative Power, Supreme Court Hands Down Mixed Results," 2022-2023 Cato Sup. Ct. Rev. 63, 64 (2023) ("So... rather than allow Michelle Cochran—or Gibson or Young—to challenge the constitutionality of their SEC administrative enforcement proceedings, on June 2, 2023, the SEC dismissed all 42 open proceedings that could have brought these questions to an Article III Court. Forty-five industry bar orders were also lifted. A 10-year quest by at least 12 intrepid plaintiffs for judicial review of these unconstitutional proceedings was wiped out in the blink of an eye.").

3. The Final Blow: *Jarkesy* and the Seventh Amendment

Most significantly, in June 2024, the Supreme Court issued its decision in *SEC v. Jarkesy*, 603 U.S. ___ (2024), holding that the Seventh Amendment guarantees defendants the right to a jury trial when the SEC seeks civil penalties for securities fraud. The Court rejected the SEC's claim that securities fraud enforcement falls within the "public rights" exception to the Seventh Amendment, finding instead that fraud claims are "legal in nature" and thus require jury trials when penalties are sought.

Jarkesy represents a profound restriction on the Commission's administrative enforcement powers. Justice Gorsuch, concurring in *Jarkesy*, pointedly observed that the SEC's administrative proceedings create "a world where politically appointed commissioners sit in judgment of their own enforcement actions...all without the benefit of a jury of one's peers."

The landscape-altering nature of *Jarkesy* was further underscored by the contemporaneous decisions in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___ (2024), which overturned the longstanding *Chevron* deference doctrine, *Chevron v. Natural Resources Defense Council*, 468 U.S. 837 (1984), and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. ___ (2024), which effectively eliminated the statute of limitations for challenging agency rules. Together, these decisions represent a shifting of power away from administrative agencies to Article III courts.

4. The Significance of These Changes to Mr. Powell's Application

These constitutional developments create a substantially altered legal environment from when Mr. Powell entered his settlement in September 2021. The coercive power of administrative proceedings to extract settlements was openly acknowledged in June 2014 by then-Enforcement Director Andrew Ceresney, who admitted, "There have been a number of cases in recent months

where we had threatened administrative proceeding ... and they settled."[3] This settlement-forcing dynamic—now constitutionally suspect after *Jarkesy*—directly relates to Mr. Powell's situation. Had these decisions preceded his settlement, Mr. Powell would have had powerful constitutional defenses and procedural protections that were unavailable to him at that time.

More importantly, these Supreme Court decisions directly impact the Commission's consideration of reentry applications following consensual bars. As former Commissioner Piwowar specifically cautioned, "the right to apply for reinstatement can be illusory" due to the lengthy and uncertain process that follows. The constitutional developments since Mr. Powell's settlement provide compelling context for why this Commission should act favorably on his application, both to avoid perpetuating a potentially unconstitutional barrier to his professional activities and to recognize the significantly different legal environment that now exists.

The Commission should exercise its discretion to grant Mr. Powell's application in light of this changed legal landscape, his exemplary conduct and professional development during the bar period, and the significant constitutional questions that would arise from an extended prohibition on his securities industry participation.

B. The SEC's Shifting Approach to Administrative Proceedings and Industry Bars Post-*Jarkesy*

The Supreme Court's decision in *Jarkesy* has significantly impacted the SEC's enforcement strategy, particularly regarding administrative proceedings. As reported by Reuters in September 2024, the SEC took the unprecedented step of seeking dismissal of all active misconduct

[3] Sarah N. Lynch, *SEC to file some insider-trading cases in its in-house court*, Reuters (June 11, 2014).

proceedings against accountants sitting before its in-house judges—a clear indication that the *Jarkesy* ruling is substantially curtailing the agency's enforcement powers.[4]

Between August 2 and August 19, 2024, the SEC's enforcement division filed motions to dismiss eight enforcement actions pending before its administrative law judges, some dating back as far as 2021. This unprecedented action was particularly notable because in some cases, the SEC was poised to win. Legal experts interpreted this as a direct response to *Jarkesy* and the further constitutional challenges it invited.

One case involved Edward Hackert, a New York accountant who counter-sued the SEC in February 2024, arguing his proceeding was unconstitutional. After the *Jarkesy* decision, Hackert updated his suit on July 25, 2024, to cite the Supreme Court ruling. The SEC moved to dismiss Hackert's administrative case on August 8, 2024, less than two weeks after this updated filing, suggesting a direct causal relationship.

Robert Glicksman, a law professor at George Washington University, described this development as "an example of an agency that has decided to voluntarily limit its enforcement activity due to concern that pursuing enforcement under long-standing practices will result in significant judicial incursions on that authority." *Id*. This observation points to the SEC's apparent recognition that the constitutional landscape has fundamentally changed.

Toward the end of 2024, the SEC demonstrated another notable shift in its approach toward existing bars and suspensions: reinstating four suspended accountants to practice in various

[4] Douglas Gillison, *US SEC abandons in-house malpractice suits after Supreme Court ruling*, Reuters (Sept. 5, 2024).

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capacities before the Commission.[5] This marked increase in the pace of reinstatements suggests a reconsideration of the Commission's historically restrictive approach to reentry applications.

C. Recent SEC Orders Demonstrate a Shift in Commission Policy Toward Granting Reentry Applications

The Commission's recent orders in *In re Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on Behalf of Roger T. Denha for Consent to Associate with SkyOak Wealth, LLC* ("*Denha* Order") and *In re Application on behalf of Manish Singh* ("*Singh* Order") signal the most recent significant and noteworthy shift in the Commission's approach to industry bars and reentry applications. Far from supporting the Division's position, these orders directly undermine it and strongly support Mr. Powell's application.

1. The Commission Is Actively Encouraging Barred Individuals to Seek Reentry

In April 2025, mere weeks before the Division filed its response, the Commission issued two orders granting reentry applications that demonstrate a fundamental policy shift toward facilitating reentry for barred individuals. The timing and substance of these orders cannot be dismissed as coincidental.

The *Denha* Order is particularly significant because it expressly abandoned the "extraordinary circumstances" test that the Division repeatedly relies upon in its opposition. The Commission stated:

> In *Teicher* and other cases, the Commission's approach may be perceived to have established an additional consideration in evaluating the Rule 193 factors or even to create an insurmountable hurdle to those applicants who can demonstrate, among other things, that it is otherwise in the public interest that they be able to reenter the industry with robust investor-protection conditions and supervision that addresses the risks presented by their prior conduct. The Commission recognizes that it is in the public interest to allow barred individuals to reenter the industry if their individual circumstances demonstrate rehabilitation and increased risk-controls to

[5] Victor Suthammanont, *Is now the time to seek relief from SEC industry bars and professional suspensions?*, Reuters (May 12, 2025).

> prevent recidivism, which will increase investor protection. In turn, readmissions will encourage other barred individuals who wish to reenter the securities industry to take similar steps toward rehabilitation, compliance, and remediation, and to seek enhanced supervision to reduce the risk of recidivism on reentry. As a result, we no longer intend to use the 'extraordinary circumstances' test in evaluating applications for consent to associate under Rule 193.

Denha Order at 5. This new approach explicitly recognizes that there is a public interest in encouraging barred individuals to reenter the industry with appropriate safeguards.

The Division's opposition brief fails to acknowledge this fundamental policy shift, instead relying on outdated precedent that the Commission has now expressly disavowed. The Division's argument is built upon the very "extraordinary circumstances" test that the Commission has now abandoned.

2. The Commission's Recent Orders Support Vacating Mr. Powell's Bars

The Division attempts to distinguish the *Denha* and *Singh* Orders by suggesting they are merely limited grants of permission to associate, not vacatur of bars. This is an artificial distinction that misunderstands the Commission's current approach.

The *Denha* Order demonstrates that the Commission is now focused on a "fact-intensive, individualized inquiry" based on the Rule 193 factors, considering "the egregiousness and scope of the applicant's underlying violation." *Denha* Order at 6. Mr. Powell's case is compelling under this revised standard:

- **Nature of the Misconduct**: Unlike Denha's "cherry picking" violations, which demonstrated intentional misallocation of profitable trades to favor himself and family members at clients' expense, the alleged violations in Mr. Powell's settlement did not involve scienter-based fraud. The allegations against Mr. Powell—which were neither admitted nor denied as part of the settlement—were significantly less egregious than the established violations in Denha's case, yet the Commission determined Denha could reenter

the industry. The Division's emphasis on the alleged "seriousness" of the matters at issue in Mr. Powell's settlement ignores this comparative context.

A particularly concerning aspect of the Division's Opposition is its claim that "For years, Powell and his co-Respondents ***relied*** on material misrepresentations to raise more than $250M in unregistered debt and equity offerings." (Division Opposition at page 6, emphasis added). This statement fundamentally mischaracterizes the 2021 Order, which contains no such finding. The Commission's Order states that the total amount raised was $250 million, but nowhere does it state or find that respondents relied on misrepresentations to raise this amount of money, or that the investors would not have invested but for the alleged misrepresentations (improperly suggesting causation and materiality that far exceed the Order's findings). This is a critical distinction. The Order specifically found violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, which, as explicitly noted in footnote 3 of the Order, do "not require scienter and may rest on a finding of negligence." The Division now attempts to recharacterize the settlement as involving *intentional* misconduct by suggesting that the entire $250 million was raised through reliance on misrepresentations. The Division's willingness to misstate the findings of the Commission's own Order raises serious questions about the fairness and objectivity of its opposition to Mr. Powell's application.

- **Professional Development and Compliance**: The *Singh* Order demonstrates that the Commission values professional development through education, compliance with the terms of prior orders, and ongoing learning. Singh, like Powell, 'completed additional legal education and received certifications' and complied with all terms of his bar. *Singh* Order at 2-3. Mr. Powell's doctorate in law and policy and master's degree in law represent

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significant professional development efforts that exceed even those in the *Singh* case.

- **Time Period**: The Division emphasizes that "less than three years" have passed since Mr. Powell's settlement, suggesting this is insufficient. However, the Commission granted Singh permission to participate in penny stock offerings exactly at the five-year mark specified in his original bar order—not significantly longer. More importantly, Mr. Powell's original order provided "the right to apply for reentry after two (2) years"—a period was satisfied more than one year ago. The Commission's two recent orders confirm that meeting the specified time period in the original order is sufficient.
- **Supervision and Safeguards**: The *Denha* Order emphasizes the importance of "supervisory controls... reasonably designed to prevent a recurrence of the conduct." *Denha* Order at 6. The Order required Mr. Powell to engage an Independent Compliance Consultant (ICC) for a period of three years to review and make recommendations regarding compliance policies and procedures. This robust oversight mechanism—which Mr. Powell has fully complied with—provided significant investor protection without the need for continuing industry bars. As acknowledged in the Commission's *Denha* Order, 'it is in the public interest to allow barred individuals to reenter the industry if their individual circumstances demonstrate enhanced knowledge and increased risk-controls to prevent future issues, which will increase investor protection.' The Order further recognized that reentry can 'encourage other barred individuals who wish to reenter the securities industry to take similar steps toward professional development, compliance, and remediation.' These principles apply with particular force to Mr. Powell, who complied with all terms of the Order while under supervision by the ICC for a full three years—one year beyond the originally contemplated two-year period.

The Commission's abandonment of the "extraordinary circumstances" test is not merely a procedural adjustment but a substantive shift that recognizes the value of allowing professionals who have demonstrated professional development to contribute to the securities industry with appropriate safeguards. The Commission explicitly acknowledged in the *Denha* Order that "vacating the bars and allowing the applicant to participate in the securities industry without the safeguards provided by the bars would be in the public interest and sufficiently protect investors." *Id*. at 7-8.

3. The Division's Procedural Arguments About Incremental Relief Are Contrary to Current Commission Policy

The Division argues that Mr. Powell should have sought "incremental relief" rather than vacatur of his bars. This argument contradicts the Commission's recent actions:

First, the *Denha* Order was granted despite the fact that Denha jumped directly to seeking consent to associate under Rule 193 without first obtaining more limited relief. The Commission had no issue with this approach.

Second, the *Singh* Order granted relief from penny stock bars without requiring Singh to first obtain more limited relief. Singh, like Powell, sought relief at precisely the time period contemplated in his original order, and an additional 20 months have elapsed since Mr. Powell's two-year period expired.

Third, and most significantly, the Commission specifically recognized in the *Denha* Order that requiring a series of incremental steps can make the "right to apply for reinstatement... illusory." *Denha* Order at 3. This addresses precisely the concern raised by former Commissioner Piwowar that Mr. Powell cited in his application.

The Commission's recent orders reflect a conscious policy shift toward facilitating reentry rather than enforcing procedural hurdles. The Division's emphasis on procedural formalities over substantive evaluation contradicts this new approach.

4. The Commission's Recent Orders Acknowledge Changed Legal Landscape

While the Division dismisses the significance of recent Supreme Court decisions affecting SEC administrative proceedings, the Commission's orders tacitly acknowledge their impact. The *Denha* Order specifically notes that evaluating reentry applications involves considering "all of the factors under Rule 193(e), taking into account the egregiousness and scope of the applicant's underlying violation." *Denha* Order at 6.

This holistic approach necessarily includes consideration of relevant legal developments since the original bar was imposed. The Division's assertion that no "significant change in law" warrants modifying the order is directly contradicted by the Commission's own recognition of the changed legal landscape in these recent orders.

In conclusion, the Commission's recent orders in *Denha* and *Singh* represent far more than routine grants of limited relief. They signal a fundamental policy shift away from the restrictive approach the Division advocates and toward a more balanced assessment focused on professional development, investor protection through supervision, and the public interest in allowing qualified professionals to reenter the industry. Far from undermining Mr. Powell's application, these orders provide compelling support for granting the relief he seeks.

D. The Commission Should Vacate the Bar Order *Nunc Pro Tunc* to Address the Ongoing "Bad Actor" Disqualifications

The Commission should vacate, *nunc pro tunc*, the portions of the 2021 Order that bar Mr. Powell from association with specified entities. This relief is necessary to address the severe collateral consequences of the "bad actor" provisions that continue to affect Mr. Powell and his

business interests despite his full compliance with all undertakings and the passage of the two-year waiting period (plus an additional 20 months) specified in the Order.

Mr. Powell is currently subject to continuing disqualifications under the SEC's "bad actor" rules until the later of (1) five years after the cease-and-desist provisions related to Section 5 of the Securities Act (September 23, 2026), or (2) until such time as the penny stock bar and associational bars are lifted. These disqualifications effectively prevent Mr. Powell and his affiliated companies from relying on Rule 506 of Regulation D (17 C.F.R. § 230.506 (2024)) for exempt securities offerings, which is essential to his business operations. While the Commission's Order contemplated a two-year bar "with the right to apply for reentry," the practical effect of the bar under the "bad actor" provisions is effectively permanent unless the Commission grants relief.

In July 2021, Resolute Capital Partners submitted a comprehensive waiver request to the Division of Corporation Finance, seeking relief from the disqualifications that would arise under Rule 506(d) of Regulation D as a result of the Commission's Order. This 18-page request detailed why good cause existed to show that disqualification was not necessary under the circumstances, highlighting the non-scienter based nature of the violations; substantial remedial measures implemented, including engagement of an Independent Compliance Consultant; the severe adverse impact on funds unrelated to the offerings at issue in the Order if a waiver was not granted; and the commitment to enhanced disclosure regarding the Order to all potential investors. Despite these good faith efforts and the detailed showing of why a waiver would be in the public interest, the Staff never acted on this request, leaving Mr. Powell in regulatory limbo—he has fulfilled all requirements for reentry but remains subject to disqualifications that effectively prevent him from conducting business.

This prolonged disqualification effectively transforms what was negotiated as a two-year bar with right to reapply into an indefinite prohibition—a clear instance of the Division seeking to obtain restrictions far beyond what was agreed to in the original settlement. The Division's position represents an attempt to secure a "second bite at the apple" by characterizing the underlying allegations as more severe after the fact, despite having voluntarily agreed to a modest $75,000 civil penalty and two-year bar in the original settlement. If the Commission genuinely believed the alleged conduct warranted an extended or permanent bar, it and the Division should have negotiated different terms initially rather than attempting to retroactively extend the agreed-upon limitations, as the Division is attempting to do here. This approach raises serious questions about good faith in the settlement process and reinforces former Commissioner Piwowar's concern that the "right to apply for reinstatement" is often "illusory" in practice.

The Commission's recent order in *In the Matter of Nano Magic Inc.* (Exchange Act Release No. 101298, October 10, 2024) demonstrates the Commission's willingness to grant *nunc pro tunc* relief when appropriate. This approach is particularly fitting here, where Mr. Powell has fully complied with all terms of the Order, the specified suspension period of two years has expired (plus an additional 20 months), he has demonstrated professional development through his educational achievements (completing a Doctorate of Law and Policy and passing the MPRE with high marks), and the continued effect of the bar on his “bad actor” status serves no investor protection purpose but imposes severe business limitations not contemplated in the original settlement.

The Commission has broad discretion to fashion appropriate remedies tailored to specific circumstances, including the power to set retroactive effective dates for industry bars. Exercising this discretion here would serve the public interest by providing clarity to Mr. Powell and market

participants while maintaining appropriate investor protections through the safeguards already undertaken, including three years of independent oversight by the Independent Compliance Consultant.

III. CONCLUSION

For the foregoing reasons, Mr. Powell respectfully urges the Commission to vacate the bars imposed in the September 2021 Order or, in the alternative, to grant consent for Mr. Powell to associate with Resolute Capital Advisors LLC and participate in penny stock offerings. The Commission should recognize that:

- The constitutional landscape governing SEC administrative proceedings has fundamentally changed since Mr. Powell's settlement, with landmark Supreme Court decisions in *Cochran* and *Jarkesy* significantly curtailing the Commission's administrative enforcement powers and reducing the Commission's ability to use those administrative powers to coerce settlements;
- The Commission has recently abandoned the "extraordinary circumstances" test for reentry applications, as demonstrated in the *Denha* and *Singh* Orders, adopting instead a more balanced approach focused on professional development and appropriate safeguards;
- Mr. Powell has fully satisfied the two-year waiting period specified in his settlement agreement, plus an additional 20 months, while demonstrating exemplary **professional development** through his educational achievements and compliance with all undertakings including three years of supervision by the ICC;
- The ongoing "bad actor" disqualifications continue to impose severe collateral consequences that extend far beyond the contemplated two-year bar period, supporting the request for *nunc pro tunc* relief;

- The Division's current position attempts to recharacterize the severity of the alleged violations after the fact, despite having previously recommended that the Commission accept Mr. Powell's voluntarily agreement to a limited two-year bar and modest $75,000 penalty in the original settlement—an approach that suggests the Division may have negotiated the initial agreement without genuine intent to have the Commission honor the Order's "right to reapply" provision.

Granting Mr. Powell's application would be consistent with the Commission's recent policy shift toward encouraging professional development and reentry under appropriate conditions, would recognize the changed constitutional environment, and would properly balance investor protection with the public interest in allowing qualified professionals to contribute productively to the securities industry.

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Respectfully submitted,

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