UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21030

In the Matter of

Leon Vaccarelli,

Respondent.

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS

I. SUMMARY

The Division of Enforcement ("Division") replies to the submission by Leon Vaccarelli ("Vaccarelli" or "Respondent") in opposition to the Division's Motion for Summary Disposition and Imposition of Sanctions ("Respondent's Opp.").[1]

Respondent's Opp. does not alter the *Steadman* analysis set forth in the Division's opening brief and supplemental submission. *See* Division's Memorandum of Points and Authorities In Support of Its Motion, filed May 25, 2023, at 7-9; Division's Additional Evidentiary Support and Briefing in Support of Motion, filed November 6, 2023, at 7-11 (discussing factors set out in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). For the reasons set forth in the Division's Motion and supporting papers, and as discussed

[1] The Commission's Boston Regional Office mailroom received Respondent's Opp. by regular mail on April 30, 2024, and a copy was routed to the Division on May 3, 2024. As of the date of this filing, the Division has not received any notice that Respondent's Opp. was filed on the Electronic Filings in Administrative Proceedings (eFAP) system. To ensure that the Commission receives Respondent's Opp., the Division is attaching a copy of it to this reply brief as Supplemental Exhibit 8.

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below, it is appropriate, and in the public interest, to order a bar against Vaccarelli from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

II. ARGUMENT

A. Respondent Does Not Contest The Factual Predicate For Imposing Sanctions.

The Commission may impose remedial sanctions under Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 if a person (i) at the time of the alleged conduct was associated with a broker-dealer or investment adviser; and (ii) was convicted of violating the federal mail or wire fraud statutes, or of a crime involving the purchase or sale of any security, within ten years of the commencement of the proceeding.

Respondent's submission does not contest either of these grounds: that he was found guilty in 2019 by a jury after a criminal trial for mail fraud, wire fraud, and securities fraud; or that, when his crimes were committed, he was a registered representative of a broker-dealer and an adviser representative of an investment adviser. *See* Respondent's Opp., at 2[2] ("I do not disagree with the Division of Enforcement that I was found guilty in my criminal trial and that I violated securities law [sic]"); at 3 (acknowledging that "15 brokerage accounts were involved");[3] at 13 ("During the

[2] All pinpoint citations to Respondent's Opp. refer to pdf page numbering.

[3] Respondent takes issue with the Division's assertion that there were 15 victims: he claims that there were nine victims who had 15 accounts. *See* Respondent's Opp. at 2-3. The court at sentencing, in outlining his scheme, found that Respondent used money for himself from "[f]ifteen victim investor's retirements, trusts or savings…" *See* previously filed Exhibit 6 to the Division's Index of Supplemental Exhibits ("Supp. Ex. __"), at 141. Collateral estoppel prevents Respondent from relitigating the court's findings in the criminal proceeding. *See Albert K. Hu*, Advisers Act Release No. IA-6497, 2023 WL 8469447, at *3 (Dec. 6, 2023). Regardless, characterizing the victim count as nine versus 15 makes scant difference for purposes of assessing whether a bar is in the public interest. *See id.,* 2023 WL 8469447, at *4 (imposing permanent bar where Respondent engaged in a scheme to defraud at least seven investors).

time of my criminal activity I was . . . openly breaking rules and giving false pretenses/ representations to my clients").

Respondent's entire argument rests solely on whether sanctions are in the public interest.

B. Respondent's Arguments Do Not Counter the Division's *Steadman* Analysis.

Respondent does not directly address the *Steadman* factors in arguing against a bar; rather, his contentions can be grouped into three categories: first, that the Commission should take into account that [redacted] were the cause of his criminal activity; second, that he now issues a statement of apology for his conduct; and third, that he has already been sufficiently punished by sanctions in two federal cases (the criminal case, for which he is serving a 7.5 year prison term, and the Commission's civil case). None of his arguments are availing on their own, nor does he submit any precedential support for comparison.

While not stylized as such, the first argument could be deemed as taking aim at *Steadman's* third factor, degree of scienter involved. *See* Respondent's Opp. at 13 ("During the time of my criminal activity I was at the [redacted] [sic]"); *id*. ("I did not intend to hurt anyone"); *id.* at 15 ("if I was not under the [redacted] I would have been able to make tough decisions…"). Respondent's characterization that the "[redacted] was the driving force of his crimes does not alter that fact that, at sentencing, the judge found that he committed a "shocking" and "sophisticated" multi-year scheme in which he used a cover story to steal client money for his own purposes. *See* Supp. Ex. 6, at 141-42, 182; *see also id*. at 143 ("the jury could have found that despite his [redacted] the defendant still acted voluntarily and deliberately, knowingly and purposefully, and with the specific intent to deceive as required by the jury instructions they got").

Thus, Respondent's contention that his medical condition and stress of family issues diminished an intent to defraud is negated by the fact that a jury heard from numerous witnesses and examined relevant documentary evidence in being instructed in, and subsequently finding that, he had the requisite state of mind. *See* Supp. Ex. 3 (jury instructions), at 17 (defining "knowingly," "willfully," and "intent to defraud," for purposes of mail fraud); at 23 (same for wire fraud); at 33 (same for securities fraud); at 39 (same for money laundering); at 40 (defining "willfully"). Moreover, while acknowledging Respondent's [redacted], the court in sentencing stated that it "does not substantively bear on the nature of the offense and the impact on its victims…." Supp. Ex. 6, at 181. As a result, nothing in Respondent's submission alters the analysis of the third *Steadman* factor, which weighs heavily toward the imposition of an industry bar.

Respondent's "Statement of Apology" addresses the fourth and fifth *Steadman* factors, namely the sincerity of his assurances against future violations, and recognition by him of the wrongful nature of his conduct. Respondent's Opp. at 12-17. Respondent states the following:

- he "took the easy way out and broke rules," *id*. at 15;
- he has "entered treatment and ever since [he has] dedicated [his] life to getting better and making amends," *id*. at 16;
- he is "serving [his] prison sentence without any discipline or rule breaking behavior [and is] making plans to pay back the restitution that [he has] been ordered to pay," *id*., and
- he "will never again break rules that will lead to criminal behavior," *id*. at 17.

While Respondent offers some mitigating facts—for example, his completion of a drug abuse treatment program, *id*. at 9—he nonetheless recognizes that his self-serving apology at this late stage "may just seem like a bunch of words," *id*. at 16; s*ee Kornman v. SEC*, 592 F.3d 173,

187 (D.C. Cir. 2010) (upholding industry bar imposed against respondent who expressed regrets about misconduct and vowed not to repeat); *Sean R. Stewart*, Rel. No. 34-99613, 2024 WL 835280, at *6 (Feb. 27, 2024) (imposing industry bar on respondent where the "egregious, repeated, and intentional nature of [respondent's] securities fraud violations also cause us to seriously doubt that he would fulfill his promise not to commit further violations if he reentered the securities industry"). Notably, the judge at Respondent's sentencing "found it significant that he didn't really express actual remorse or even a real understanding of the deep hurt, betrayal and distress he caused his victims having taken so much from them: their money, their security and their trust." *See* Supp. Ex. 6, at 183-84.

Ultimately, Respondent's lack of awareness of the egregious harm he caused further weighs in favor of a bar to protect the public.

Respondent's final argument is that adequate sanctions were imposed by the civil judgment and criminal sentence, and that further prophylactic measures to protect the public would be redundant. *See* Respondent's Opp. at 5. This argument comes closest to addressing the sixth *Steadman* factor, the likelihood that the Respondent's occupation will present opportunities for future violation.

He initially states that in the Commission's civil case, he "stipulated that [he] would not work in the industry any longer and the court so ordered the stipulation." Respondent's Opp. at 5. This is not so. The Final Judgment ordered in *SEC v. Vaccarelli et al*., Case No. 3:17-cv-01471-CSH (D. Conn.) (Dkt. No. 76-1) imposed only disgorgement and injunctions from violating the securities laws, it did not order any manner of industry bar. *See* accompanying Supplemental Exhibit 9. Without a bar, there is nothing to prevent Respondent from entering the securities industry again. *See Donald J. Fowler*, Release No. 34-99084, 2023 WL 8469512, at *3 (Dec. 5,

2023) (noting that "if [respondent] is sincere in his intent not work [sic] in the securities industry, then a bar will impose no substantial burden on him while at the same time protecting the investing public should he change his mind"); *see also Hu*, 2023 WL 8469447, at *5-6 (permanent bar appropriate because respondent's assurances are not "an absolute guarantee against misconduct in the future" and "the securities industry presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence") (internal quotations omitted); *Stewart*, 2024 WL 835280, at *5 (same).

He similarly argues that sufficient sanctions were imposed by his 90-month prison sentence and restitution order. *See* Respondent's Opp. at 6. But an industry bar is not meant to be an extension of the criminal sentence he is serving. Rather, the purpose for such remedial measures is to protect the public. *See Kornman,* 592 F.3d at 188 (distinguishing punitive sanctions imposed in a criminal prosecution from a bar which is remedial in nature and is designed to protect the public); *Hu*, 2023 WL 8469447, at *6 ("prison sentence is not 'mitigative of the appropriate sanction to be imposed in the public interest in [a follow-on] administrative proceeding'").

III. CONCLUSION

For the reasons set forth in the Division's Motion for Summary Disposition and Imposition of Sanctions and supporting materials, and in the arguments above, the Division's Motion should be granted, and Respondent should be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

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Dated: May 14, 2024

Respectfully submitted,

/s David H. London
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CERTIFICATE OF SERVICE

Pursuant to Commission Rule of Practice 150(c)(1) and 150(d)(2), I certify that on May 14, 2024, I filed this document using the eFAP system, and I mailed a copy to the following person at the address listed below by Certified Mail:

Mr. Leon Vaccarelli
[redacted]

/s/ *David H. London*

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DIVISION OF ENFORCEMENTS INDEX OF ATTACHMENTS

Attachment	**Description**
Supp. Ex. 8	Respondent's Opposition
Supp. Ex. 9	Final Judgment in *SEC v. Vaccarelli et al.*

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