UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21261

In the Matter of

ADAM MATTESSICH,

Respondent.

REPLY MEMORANDUM OF LAW OF THE DIVISION OF ENFORCEMENT IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

The Division respectfully submits this reply memorandum of law in further support of its motion for summary disposition, pursuant to Rule 250 of the Commission's Rules of Practice, against Respondent Mattessich.[1] For the reasons set forth in its opening brief and herein, the Commission should grant the Division's motion and impose collateral and penny stock bars with rights to re-apply after no less than two years against Mattessich.

PRELIMINARY STATEMENT

In his partial opposition, Mattessich does not oppose summary disposition, does not contravene the relevant facts set forth by the Division, and does not genuinely dispute the Division's analysis of those facts in the context of the *Steadman* factors. Nor does Mattessich oppose a "penny stock bar of two years."[2] (Opp. at 1.) Rather, Mattessich argues that a

[1] This brief uses the same short forms as the Division's moving brief ("Br."). In addition, "Ex." means the exhibits attached to the Division's moving papers; "Opp." means Mattessich's partial opposition; and "Def. Ex." means the exhibits attached to Mattessich's opposition.

[2] The Division assumes Mattessich means a penny stock bar with the right to re-apply after two years.

"supervisory…bar of two years," (*id.*), as opposed to a full collateral bar with the right to reapply after two years, would suffice to protect the public given his misconduct—splitting commissions for securities transactions off the books using personal checks. But a collateral bar (with the right to re-apply after no less than two years) is appropriate under the circumstances. Although Mattessich abused his role as a supervisor by obtaining unrecorded commissions from subordinates via personal checks (*see* Br. at 9), Mattessich also received unrecorded commissions from Cantor employees before he became a supervisor. A supervisory bar would therefore not adequately protect the public from other misconduct Mattessich might engage in as an associated person of a broker-dealer. As for the *Steadman* factors, Mattessich's opposition offers an eleventh-hour recognition of the wrongfulness of his conduct and other information about the events in his life that do not fundamentally alter the Division's analysis of these factors in its opening brief. Accordingly, the Commission should grant the Division's motion for summary disposition and impose both collateral and penny stock bars with rights to re-apply after at least two years.

ARGUMENT

The Division and Mattessich agree on the relevant factual and legal issues, rendering summary disposition appropriate. Mattessich either agrees or does not dispute:

- that Mattessich was found to have willfully aided and abetted a violation of the Compensation Record Rule, a Commission rule promulgated under the Exchange Act, and was also enjoined from future violations of the Compensation Record Rule, in the Commission enforcement action *SEC v. Mattessich*, 18 Civ. 5884 (KPF) (S.D.N.Y.) (Br. at 7–8);
- that Mattessich was associated with a broker or dealer (Cantor) at the time of his misconduct (Br. at 7; Opp. at 3);
- that Mattessich is bound by the district court jury verdict and judge's ruling as to remedies, as a matter of collateral estoppel (Br. at 7);
- that the facts set forth in the Division's motion for summary disposition are accurate (Opp. at 3-6);

- that summary disposition is appropriate (Opp. at 1);
- that weighing the *Steadman* factors guides whether the third element of Exchange Act Section 15(b)(6)—that the bars be in the public interest—is satisfied (Br. at 8); and
- that the Commission should impose a penny stock bar with a right to re-apply after two years (Opp. at 1).[3]

For the reasons discussed in the Division's opening brief, these undisputed facts and law render collateral and penny stock bars with a right to reapply after at least two years appropriate.

Mattessich, however, contends that he should be subject only to a supervisory bar with a right to re-apply after two years by relying on the *vFinance* opinion the Division cited in its opening brief. (Opp. at 9 (citing *vFinance Investments, Inc. & Richard Campanella*, Exch. Act Rel. No. 62448, 2010 WL 2674858, at *15 (July 2, 2010)).) As Mattessich correctly notes, the Division's opening brief mistakenly misstated the sanction imposed by the Commission in *vFinance* against a chief compliance officer of a broker-dealer—the Commission imposed a principal and supervisory bar with a right to re-apply after two years, and not a full collateral bar with a right to re-apply after two years (Br. at 10). *vFinance*, 2010 WL 2674858, at *15–16. Nevertheless, the Commission should reject Mattessich's argument that a supervisory bar, as opposed to a full collateral bar, is adequate to protect against the violative conduct in which he engaged for a decade while at Cantor. In fact, Mattessich himself received unrecorded commissions *even before* he became a supervisor in 2004—he received unrecorded commissions

[3] The Division seeks a penny stock bar with a right to re-apply after at least two years for the same reasons it seeks a collateral bar with the right to re-apply after at least two years under Exchange Act Section 15(b)(6), because both bars have the same statutory predicates. In addition, as Mattessich notes (Opp. at 9), Ludovico was sanctioned by FINRA for conduct related to his brokering of penny stock sales at Cantor. That serves as an additional basis for the penny stock bar as to Mattessich, who received off-the-books commissions from Ludovico's brokerage activities.

from Ludovico beginning in 2003 and from another Cantor broker beginning in approximately 2002. (Ex. 3 at 2–3, 5.) Though Mattessich continued his misconduct for years after he became a supervisor, he did so in part because he claimed he continued to perform trading responsibilities on the desk he supervised at Cantor. (*See id.* at 2–6; Opp. at 2 (Mattessich and Ludovico "were colleagues working in partnership" on the trades on which they split commissions off the books).) Mattessich's proposed supervisory bar would not prevent him from continuing to violate laws and regulations as an associated person of a broker-dealer.

Moreover, in several other cases, the Commission has imposed full collateral bars for aiding and abetting violations of Exchange Act Section 17(a) and the rules thereunder. *See*, *e.g.*, *Jerard Basmagy*, Exch. Act Rel. No. 83252, 2018 WL 2230238, at *10 (May 16, 2018) (imposing collateral bar with right to re-apply after three years for aiding and abetting violations of Exchange Act Section 17(a) and Rule 17a-8); *John David Telfer*, Exch. Act Rel. No. 80908, 2017 WL 2546616, at *2–3 (imposing collateral bar for aiding and abetting violations of Exchange Act Section 17(a) and Rule 17a-8); *Lu Zhang*, Exch. Act Rel. No. 32623, 2017 WL 1682074, at *1 (May 2, 2017) (imposing collateral bar with right to re-apply after three years for aiding and abetting violations of Exchange Act Section 17(a)(1) and Rules 17a-3(a)(2) and 17a-4(b)(4) thereunder, among other non-fraud violations). And, significantly, the Commission imposed a 12-month collateral suspension against Ludovico (on consent) for the same violation—aiding and abetting violations of the Compensation Record Rule. *Joseph (a/k/a Jay) Ludovico*, Exch. Act Rel. No. 87805, 2019 WL 7020675, at *1–2 (Dec. 19, 2019). Here, the undisputed facts show that Mattessich's conduct merits a more severe sanction than Ludovico's—Mattessich was the recipient of tens of thousands of dollars in unrecorded commissions on an annual basis from Ludovico, despite Mattessich's knowledge of, and responsibility for enforcing, Cantor's applicable policies

OS Received 04/18/2023

and procedures. (Ex. 3 at 2–4.) In fact, had Mattessich not deposited the personal checks he received from Ludovico (*id.* at 30), Cantor would not have violated the Compensation Record Rule at all. Accordingly, both Commission precedent and equity support the imposition of a full collateral bar against Mattessich.

As set forth in the Division's opening brief (Br. at 8–10), the *Steadman* factors also support the imposition of the requested collateral bar. Mattessich's opposition does not meaningfully dispute the Division's analysis of the first three *Steadman* factors—the egregiousness of his conduct, the recurrent nature of his violations, and his degree of scienter. Nor does Mattessich directly rebut the Division's arguments as to the remaining three factors, but to the extent he attempts to do so, each of these arguments should fail.

First, though Mattessich now offers an eleventh-hour recognition of the wrongfulness of this conduct (*see* Opp. at 1–2), he does so only after having professed his innocence through a jury trial (Br. at 5) and "even in his post-trial submission, . . . continue[d] to deflect blame for his conduct by pursuing arguments that failed at trial." (Ex. 3 at 17.)

Second, Mattessich's current occupation provides ample opportunity for future violations. According to Domain Money's Chief Compliance Officer and General Counsel, Mattessich is now the company's Chief Operating Officer. (Def. Ex. B at 1.) Domain Money is a company that, as Mattessich describes it, connects "users to trading platforms for stocks and cryptocurrency" (Def. Ex. A at ¶ 15) and is the parent company of a registered investment advisor (*id.* at ¶ 16). Mattessich was formerly Domain Money's Head of Trading Operations. (Ex. 1 at 1; Ex. 3 at 23.) In imposing an injunction against future violations of the Compensation Record Rule, the district court recognized the danger presented by Mattessich's continued work

in the securities industry (Ex. 3 at 23), and his apparent recent promotion to Chief Operating Officer exacerbates this danger.

Third, despite his protestations (*see* Opp. at 10-11), Mattessich provides little reason to credit his assurances against future violations. While he argues that his financial losses from his books-and-records violations preclude future violations (*see id.* at 5, 10-11), the fact that his scheme proved to be unprofitable only because he got caught does not mitigate the possibility of more profitable future violations. While he claims that he is unlikely to be licensed again "because no registered entity will hire him" (Opp. at 10), he has demonstrated an ability to continue to work in the securities industry in roles that provide opportunities for future violations, as described above.

CONCLUSION

For the foregoing reasons and the reasons set forth in its moving papers, the Commission should grant the Division's motion for summary disposition in its entirety and impose collateral and penny stock bars with rights to re-apply after no less than two years against Mattessich.

Dated: Washington, DC
April 18, 2023

Respectfully submitted,

/s/ Jason Schall
Jason Schall
Lee A. Greenwood
Division of Enforcement
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
(202) 551-6270
SchallJ@sec.gov

Certificate of Service

I hereby certify that copies of the Division's Reply Memorandum of Law was sent by the method indicated:

To the Office of the Secretary:
By eFAP

To the Respondent:
By email (ngreenspan@talkinlaw.com and dkelleher@talkinlaw.com)

/s/ Jason Schall
Jason Schall, Counsel for the Division of Enforcement