UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96627 / January 10, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21270

In the Matter of **JUSTIN W. KEENER**, **Respondent.**	**RESPONDENT JUSTIN W. KEENER'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**

RESPONDENT JUSTIN W. KEENER'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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In the Matter of **JUSTIN W. KEENER**, **Respondent.**	**RESPONDENT JUSTIN W. KEENER'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF LAW IN SUPPORT**

RESPONDENT JUSTIN W. KEENER'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

The Division of Enforcement's ("Division") Motion for Summary Disposition ("Motion" or "Mot.") is ill-founded and must be denied. The Division's Motion seeks an associational bar on Respondent Justin W. Keener, purportedly based on the Judgment and injunction issued against Mr. Keener by the Federal District Court for the Southern District of Florida. While the Judgment and injunction certainly exist—although they are currently on appeal to the Eleventh Circuit—the Motion fails to establish the remaining predicates for an associational bar as a matter of fact or law.

For the Commission to issue an associational bar, the Division first must prove that Mr. Keener "is associated," or "at the time of the alleged misconduct [] was associated," with a broker-dealer. 15 U.S.C. § 78o(b)(6)(A). The Division has not proven that required element. Instead, the District Court only found that Mr. Keener *himself* acted as a dealer through his penny stock

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convertible note investment business. Mr. Keener conducted his business—which at all times was for his own account, not others'—under his own name as well as under a personal DBA (doing business as) name, JMJ Financial. JMJ Financial was never a separate legal entity from Mr. Keener; it was merely a registered alternate name for him, personally, in Florida. JMJ Financial has ***never*** been determined to be a separate broker-dealer, let alone one with whom Mr. Keener associated. The mere fact that JMJ Financial sounds like a corporate name does not mean it gets treated any differently from if Mr. Keener had instead registered his DBA as "John Keener." Because Mr. Keener was not, and is not, "associated with" a broker-dealer, the Exchange Act prohibits the Commission from issuing the associational bar sought in the Motion.

15 U.S.C. § 78o(b)(6)(A).

Even beyond that failure of proof, though, the Commission must deny the Motion because an associational bar is unnecessary to prevent any potential future harm. The District Court's injunction ***already prohibits*** Mr. Keener from carrying out every aspect of his prior business that was alleged in the District Court to be illegal. Given the existing injunction, an associational bar would serve no remedial purpose related to Mr. Keener's actual alleged wrongdoing and would punitively bar him from areas of business that were ***not*** alleged to have been illegal.

The Commission also cannot grant the Motion because issuing an associational bar would not be in the public interest, especially given the breadth of the District Court's existing injunction. Among the factors the Commission must consider, Mr. Keener's underlying conduct was not egregious, and he was not alleged to have acted with scienter. He is entitled to appeal the District Court's rulings, and because the Commission has nevertheless decided to conduct this proceeding while his appeal is pending, the Commission cannot then hold an alleged failure to recognize his wrongful conduct against him. Mr. Keener's alleged underlying violation is a failure to register

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over several years, which should not be viewed as a "recurrent violation" absent any indication that registration was considered and repeatedly avoided. And given that the District Court already barred Mr. Keener from every aspect of his underlying business that was alleged to be illegal, and that he stopped investing in convertible notes years ago, there is no likelihood of future violations that the Commission needs to address.

Finally, as explained by the Fifth Circuit in *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), *cert. granted*, 143 S. Ct. 2688 (2023), these proceedings cannot be conducted before an Administrative Law Judge ("ALJ") without violating the U.S. Constitution. Mr. Keener raised this argument in his Answer to the Order Instituting Proceedings ("OIP"); the Division failed to respond in any way to that argument in its Motion and has therefore waived response.

II. FACTUAL BACKGROUND

Mr. Keener is an investor for his own account, not anyone else's. *See* Ex. A at 5 (Omnibus Order on Cross-Mots. for Summ. J. (Jan. 21, 2022)).[1] He has no customers. *See* Ex. B at 225:16-19 (Keener Dep. Tr., *In re JMJ Fin.*, SEC File No. HO-13487-A (June 6, 2019)). He has never taken money from someone else to buy or sell securities for them. *See* Ex. A at 5 (Omnibus Order).

Mr. Keener conducted his personal business under his own name as well as under a personal DBA, JMJ Financial, which is what Florida calls a "fictitious name." *Id.* Mr. Keener employed, at most, approximately 25 people to help conduct his business, but it remained his personal business. *Id.*

During the period relevant to the District Court litigation and these proceedings, part of Mr. Keener's business involved investing in convertible notes issued by microcap companies. *Id.*

[1] Exhibits A, D, and H are filings from the District Court litigation, SEC *v. Keener*, Case No. 1:20-cv-21254-Bloom/Louis (S.D. Fla.).

at 6. Much of Mr. Keener's business instead involved other kinds of investments, including long-term investments in real estate, private companies, a mortgage debt fund, and an education website. *See* Ex. B at 22:18-23:9 (June 6, 2019 Keener Dep. Tr.); Ex. C at 39:1-5 (Keener Dep. Tr., *SEC v. Keener*, Case No. 1:20-cv-21254-Bloom/Louis (S.D. Fla. July 16, 2021)). He also invested in many different instruments, including "stocks, bonds, mutual funds, CDs, T-Bills, private placements, public offerings, initial public offerings[,] [t]erm loans, [and] bridge loans." Ex. B at 35:21-36:1 (June 6, 2019 Keener Dep. Tr.).

Mr. Keener did not register with the SEC as a dealer. Ex. A at 5 (Omnibus Order). The Division ***does not assert*** that Mr. Keener knowingly or willfully violated the dealer registration requirement in Exchange Act Section 15(a)(1).

Following an investigation, in 2020, the SEC filed a Complaint against Mr. Keener in the District Court for the Southern District of Florida, alleging that Mr. Keener violated Exchange Act Section 15(a)(1) by failing to register as a dealer. *See* Mot. Ex. 1 at 10-11 (Complaint). Mr. Keener mounted numerous defenses against the SEC's claims, including that the SEC's new interpretation of a dealer did not meet the plain language of the Exchange Act; contradicted how the Commission itself had publicly interpreted the dealer registration requirements for years; and belied judicial precedent and industry customs dating back to the Exchange Act's enactment. Mr. Keener also argued that the SEC's interpretation—which it chose to propagate through enforcement rather than formal rulemaking—violated his due process rights by failing to provide fair notice of the meaning of regulations by which he would be bound. *See* Ex. A at 27-29 (Omnibus Order).

On January 21, 2022, the District Court denied Mr. Keener's Motion for Summary Judgment and granted the SEC's Motion for Summary Judgment. *Id.* at 32. The District Court

ruled that under what it believed to be Eleventh Circuit precedent, Mr. Keener had acted as an unregistered dealer when he personally invested in convertible notes of microcap companies and later sold the converted stock. The District Court then issued a remedies order that included an injunction barring Mr. Keener from participating in any offering of penny stocks for five years, and permanently barring him from actions related to the purchase or sale of securities without registering with the SEC or associating with a registered broker-dealer. Ex. D (Order Adopting in Part Magistrate Judge's R. & Rs. (Dec. 7, 2022)). The District Court also ordered disgorgement of Mr. Keener's profits and further monetary penalties. *Id.* Mr. Keener appealed the District Court decisions to the Eleventh Circuit, and his appeal is currently pending. *See* Ex. E (Gen. Docket, *SEC v. Keener*, Case No. 22-14237 (11th Cir. 2022)).

The Division then filed this OIP against Mr. Keener on January 10, 2023. Mr. Keener filed a Motion to Stay the Proceedings on January 27, 2023, arguing that the proceedings should be stayed pending Mr. Keener's appeal in the Eleventh Circuit and that proceeding against Mr. Keener in the interim would be arbitrary and capricious. *See* Mot. to Stay at 2. The Commission denied Mr. Keener's Motion to Stay on March 23, 2023.

On February 2, 2023, Mr. Keener responded to the OIP. In his Answer, Mr. Keener detailed why the Commission's proceedings were unlawful and unconstitutional, and explained that remedial action against him would not be in the public interest. *See generally* Answer to OIP. The Division filed its Motion for Summary Disposition on August 25, 2023.

III. ARGUMENT

Pursuant to SEC Rule of Practice 250(b), any party who moves for summary disposition must "show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(b). The Commission

must view the facts on summary disposition "in the light most favorable to the non-moving party." *In re BioElectronics Corp.*, 2016 SEC LEXIS 2588 (July 26, 2016). The Division has not met its burden, and its Motion must be denied.

a. Summary Disposition is inappropriate because there are outstanding issues of material fact.

The Commission must deny the Division's Motion because there are outstanding issues of material fact. At the very least, the Division has not offered evidence, nor does any exist, to meet the Exchange Act requirements regarding whether Mr. Keener was associated with a broker-dealer at the time of the alleged misconduct. Accordingly, the Division's Motion must be denied.

Section 15(b)(6)(A) of the Exchange Act specifies that the Commission may only impose an associational bar on a "person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer." 15 U.S.C. § 78o(b)(6)(A). There is no evidence that Mr. Keener is currently associated with a dealer, nor that he was associated with a dealer during the period relevant to these proceedings.

The District Court in this matter only found that *Mr. Keener* acted as an unregistered dealer, not that Mr. Keener was associated with a dealer, nor that JMJ Financial was an entity acting as an unregistered dealer. *See* Ex. A at 31-32 (Omnibus Order) ("[T]he record establishes that Defendant operated as a 'dealer' under the Exchange Act without registering as such."). Indeed, the Division itself concedes this point as the basis of its own Motion: "After the District Court found that ***Keener acted as an unregistered dealer***, it entered an injunction against him, prohibiting him from engaging in continued misconduct in violation of the dealer registration provision in Exchange Act Section 15(a)(1). ***As an unregistered dealer***, Keener is subject to the Commission's follow-on proceeding authority." Mot. at 6 (emphases added).

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The District Court could not have found otherwise, and neither can the Commission. While the Division implies without coming out and directly stating that JMJ Financial is the separate dealer with whom Mr. Keener is alleged to have associated,[2] that belies the actual facts in this case. As the District Court found, JMJ Financial is just a DBA to allow Mr. Keener to conduct business through another name, which the state of Florida calls a "fictitious name." Ex. A at 5 (Omnibus Order) ("[Mr. Keener] does business under the fictitious name JMJ Financial . . . which he registered in Florida in 2008. . . .Some of [Mr. Keener's] bank and brokerage accounts are held under the name Justin W. Keener d/b/a/ JMJ Financial, and some are held under the name Justin W. Keener. . . . Both types of accounts are operated with [Mr. Keener's] social security number."); Ex. F (JMJ Fin. Fictitious Name Detail, Fla. Dep't of State Div. of Corps.). JMJ Financial was not a separate legal entity, let alone a separate dealer with whom Mr. Keener has been or could be associated.

SEC v. Martino, 255 F. Supp. 2d 268, (S.D.N.Y. 2003), cited by the Division (Mot. at 7), is inapposite. Martino's company, CMA Noel Ltd., was a registered corporation in New York, Ex. G (CMA Noel Ltd. Corp. Registration, N.Y. Dep't of State Div. of Corps.), and was sued as a separate defendant by the SEC. *See Martino* at 270 (referring to SEC's Motion for Summary Judgment against "***defendants*** Carol Martino [and] CMA Noel Ltd." and noting that "Defendant CMA was Martino's closely-held brokerage firm" (emphasis added)). By contrast, JMJ Financial is not a registered corporate entity; JMJ Financial is just a registered fictitious name for Mr. Keener

[2] *See, e.g.*, Mot. at 7 ("Keener plainly was associated with a dealer. . . .The District Court specifically found that Keener—who did business as JMJ Financial, a registered fictitious name in Florida—operated as a securities dealer at all relevant times and was responsible for every aspect of JMJ Financial's convertible notes business."). Of course, even here, it is clear that Mr. Keener, not a separate entity, was the one determined to be acting as a dealer.

himself. *See* Ex. A at 5 (Omnibus Order); Ex. F (JMJ Fin. Fictitious Name Detail).[3] The SEC did not sue JMJ Financial in the Southern District of Florida litigation. *See* Mot. Ex. 1 (Complaint). Mr. Keener and JMJ Financial are one and the same. The Division therefore has not proven, and cannot prove, that Mr. Keener is or was associated with a dealer at the time of the alleged misconduct, as the Exchange Act requires for an associational bar to be imposed. But even beyond the failure of proof, without any indication that Mr. Keener associated with a broker-dealer in the course of the alleged misconduct, there is simply no need for a bar preventing him from such association in the future.

Additionally, while Mr. Keener does not dispute the current existence of the District Court's Judgment and injunction, the merits of those decisions are pending appeal in the Eleventh Circuit. *See* Ex. E (Gen. Docket, *SEC v. Keener*, Case No. 22-14237 (11th Cir. 2022)). Mr. Keener reserves his rights to seek the vacatur of these proceedings if and when the Eleventh Circuit overturns the District Court Judgment.

b. An associational bar is unnecessary.

Even if the Commission finds that the other prerequisites have been proven for an associational bar under Section 15(b)(6)(A), it still must decline to issue such a bar because the associational bar the Division seeks is unnecessary. Mr. Keener is *already* prevented from carrying out the conduct the Division alleges was problematic. An associational bar would not plug any holes related to that alleged misconduct.

[3] The Florida Division of Corporations explains: "What is a fictitious name? A fictitious name (also known as a 'doing business as' or 'dba') is: Different from your personal name, if doing business as a sole proprietor." *Florida Fictitious Name Registration*, Fla. Dep't of State Div. of Corps., https://dos.myflorida.com/sunbiz/start-business/efile/fl-fictitious-name-registration.

The District Court already barred Mr. Keener from participating in any offering of penny stocks for the next five years, and permanently barred him from actions related to the purchase or sale of securities himself without SEC registration, or without associating with a registered broker-dealer. *See* Ex. D at 22-23 (Order Adopting in Part Magistrate Judge's R. & Rs.). The Division itself points out to the Commission that Mr. Keener would not be able to register with the SEC as a dealer to satisfy the injunction's condition because of a prior bar imposed by the Financial Industry Regulatory Authority ("FINRA"). *See* Mot. at 11. To the extent the Division argues on Reply that the District Court's order would theoretically permit Mr. Keener to still associate with a registered broker-dealer in the future, that ignores that the Division's complaints are about Mr. Keener's business related to penny stocks. *See* Mot. at 2. Mr. Keener ***is already completely barred*** from participating in any offering of penny stocks for five years, whether or not involving an association with a registered broker-dealer.

This follow-on action is unnecessary. The Division has not shown, and cannot show, that additional sanctions are warranted where those sanctions would accomplish nothing additionally related to the alleged misconduct.

c. An associational bar is against the public interest.

Moreover, the factors the Commission use to determine whether remedial sanctions against Mr. Keener are in the public interest do not support an associational bar. In evaluating the proprietary of remedial sanctions, the Commission considers the six factors laid out in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979): (1) "the egregiousness of the [respondent's] actions"; (2) "the isolated or recurrent nature of the infraction"; (3) "the degree of scienter involved"; (4) "the sincerity of the [respondent's] assurances against future violations"; (5) "the [respondent's] recognition of the wrongful nature of his conduct"; and (6) "the likelihood that the defendant's

occupation will present opportunities for future violations." *Id.* (internal citations omitted).[4] As the Division itself acknowledges, "no one factor is dispositive." Mot. at 9.

(1) Egregiousness. Mr. Keener's conduct was not egregious. The District Court agreed, ruling that Mr. Keener's conduct—simply failing to register as a dealer as the SEC later argued he was required to do—was not "'outstandingly bad' or 'shocking.'" Ex. H at 7 (Magistrate Judge's R. & Rs. (Aug. 8, 2022)); *see also* Ex. D at 6 (Order Adopting in Part Magistrate Judge's R. & Rs.) (finding the magistrate judge "properly rejected the SEC's assertion that violating Section 15(a)(1) is inherently 'egregious'"). The Division presents no evidence beyond what the District Court had before it in urging the Commission to make a contrary finding. According to the Division, ***any*** violation of the registration requirements would be, by definition, egregious, a proposition for which it has no authority. *See* Mot. at 10 ("Because of the significance of the dealer registration requirements, Keener's conduct in disregarding these requirements while running a convertible notes business was sufficiently egregious to warrant an associational bar."). Mr. Keener did not defraud anyone or engage in any egregious conduct—he simply did not register as a dealer because he did not think he was required to do so. This factor weighs in Mr. Keener's favor.

[4] While the Division suggests that the Commission must take and use the District Court's determination that the *Steadman* factors support an injunction (Mot. at 9) the Division ignores that the District Court was assessing whether to impose a ***different*** injunction than at issue in this proceeding. The Commission must instead assess a situation where the District Court's injunction is already in place, which affects whether further remedial measures are needed in the public interest. The Division cites no authority that the Commission is bound to automatically conclude that any injunction whatsoever the Division seeks is warranted under the *Steadman* factors. In any event, the Division went on to extensively argue the *Steadman* factors (Mot. at 9-12), including to argue that the District Court erred in certain findings under the factors (Mot. at 10, regarding egregiousness), and cannot fairly assert that Mr. Keener is prevented from doing the same.

(2) Isolated or recurrent nature. Mr. Keener acknowledges that the District Court found that Mr. Keener's underlying actions were recurrent (Ex. D at 6 (Order Adopting in Part Magistrate Judge's R. & Rs.))—as they would be, by definition, for someone involved with penny stocks with tiny values—but respectfully disagrees with the further conclusion that that the ***violation*** was recurrent. The specific infraction was the failure to register as a dealer. The Division has not presented evidence that Mr. Keener, for example, repeatedly considered whether he needed to register before each convertible note deal and decided not to do so. Moreover, even if found against him, this factor should have less weight because Mr. Keener's violation was merely technical—again, he did not defraud anyone or perpetrate a fraud on the market. *See* Ex. H at 7-8 (Magistrate Judge's R. & Rs.) (finding that Mr. Keener's violation was "merely technical" unlike violations requiring scienter such as insider trading) (citing *SEC v. Megalli*, Civil Action No. 1:13-cv-3783-AT, 2015 U.S. Dist. LEXIS 197881, at *9 (N.D. Ga. Dec. 15, 2015)).

(3) Scienter. The Division does not dispute that Mr. Keener has never been found to have acted with scienter and does not make that argument here. Mot. at 10. This factor weighs in Mr. Keener's favor.

(4) Sincerity of assurances against future violations. The Division presents no evidence suggesting that Mr. Keener will violate the Exchange Act's registration requirements in the future. In that absence, for the Commission to rule against Mr. Keener due to this factor requires a hearing at which Mr. Keener can be questioned on that issue. Mr. Keener is sincere in his assurances that he will not violate the Exchange Act in the future.

Now that the District Court has issued its own injunctions, the Commission's assessment of this factor must be based on the state of play taking those injunctions into account. The District Court has already barred Mr. Keener from participating in any penny stock offerings for five years,

and permanently barred him from "the regular business of buying and selling securities . . . for his own account through a broker or otherwise unless Keener is registered as a dealer with the Securities and Exchange Commission, or unless he is associated with a broker-dealer that was so registered." Mot. Ex. 2 at 1-2 (Judgment). The question the Commission therefore should be answering at this stage is whether Mr. Keener is sincere in assuring that he will not violate the District Court's injunctions; this is a different question than the District Court faced.

The Division cites the District Court as having concluded that "the circumstances surrounding Keener's sales of Blink Charging Co. ('Blink') stock" was evidence that he will reoffend. Mot. at 11-12. But the Division mixes up two concepts. The District Court actually ruled that "the fact that Keener sold his Blink stock while his Motion to Dismiss was pending is ***not, in itself, conclusive evidence that he will continue to engage in illegal activity***. . . . At the time he sold the stock, it had not yet been determined that his convertible note business constituted unregistered dealing." Ex. D at 7 (Order Adopting in Part Magistrate Judge's R. & Rs.) (emphasis added).[5]

Regardless, conduct entered into ***before*** the District Court ruled that Mr. Keener should not have taken these activities without registering as a dealer cannot form the basis for a ruling by the Commission that Mr. Keener will now go on to violate that ruling. Nor should the Commission place any weight on the preexisting FINRA bar, which the Division does not allege Mr. Keener has ever violated. This *Steadman* factor is not an open license to examine an individual's entire financial and business history unrelated to the underlying violation that led to the proceeding.

[5] What the Division cited instead was the District Court's concern about how the Blink stock was addressed in the litigation, not anything related to Mr. Keener's underlying conduct in selling the stock. Mot. at 11. While Mr. Keener disagrees with the District Court's concern, regardless, it does not support the Division's suggestion that the fact that Mr. Keener sold stock after the SEC filed its Complaint shows he will commit future violations.

(5) Recognition of wrongdoing. As the Division acknowledges, Mr. Keener is entitled to a defense. Mot. at 12. Mr. Keener appealed the District Court Judgment and contests the findings against him, and it is his right to do so. It would be a fundamental injustice for the Commission to have refused to stay this proceeding during the pendency of the Eleventh Circuit appeal, if the Commission then holds that appeal against Mr. Keener. This factor should not bear any weight in this proceeding, and certainly does not tip any scales in the direction of an injunction.

(6) Likelihood of future violations. The Division has presented no evidence to support its assertion that Mr. Keener "is unquestionably poised to instantly return to the same unregistered dealer conduct underlying this matter." Mot. at 12. As with other factors, the Commission must assess the situation differently now that the District Court already barred Mr. Keener for the next five years from participating in any penny stock offerings, and permanently barred him from being involved in the purchase or sale of other securities without registering or associating with a registered broker-dealer. The Division itself says that Mr. Keener ***cannot*** register due to his FINRA bar. And, of course, the violation at issue was not a violation committed through association with a registered broker-dealer, as explained above.

The Division also fails to acknowledge to the Commission the undisputed fact that Mr. Keener ***stopped investing in convertible notes*** by 2018. *See* Ex. C at 29:8-31:20 (July 16, 2021 Keener Dep. Tr.). Mr. Keener's current occupation does not support a conclusion that he is likely to commit future violations. On the existing record, this factor either weighs in Mr. Keener's favor, or is neutral due to lack of evidence.

d. This proceeding itself is unconstitutional if conducted before an ALJ as a hearing officer.

The Commission cannot issue the relief sought by the Division because if these proceedings are conducted in the first instance before an ALJ, the proceedings are unconstitutional

under *Jarkesy v. SEC*, 34 F.4th 446, 464 (5th Cir. 2022), *cert. granted*, 143 S. Ct. 2688 (2023). Unless and until the Supreme Court overturns the Fifth Circuit's ruling, that ruling should be taken into account before the Commission issues any relief based on a proceeding conducted before an ALJ.

Notably, the Division did not even bother to address the removal arguments brought up by Mr. Keener in his Answer to the OIP. *Compare* Mot. *with* Answer to OIP at 2-4. The Division should be deemed to have waived response to those arguments.

As the *Jarkesy* court explained, proceeding before an ALJ here would be unconstitutional because SEC ALJs are impermissibly insulated from removal by the President. Article II of the Constitution requires that the President "take care" that the laws are faithfully executed, which includes the President's ability to appoint and remove executive officers. *Jarkesy*, 34 F.4th at 463-65. If executive agencies are comprised of inferior officers who cannot be removed by the President, then those officers' positions and authority are unconstitutional. *Id.* at 465.

The SEC's ALJs are such officers. SEC ALJs are inferior officers who wield "considerable power over administrative case records . . . and [whose] decisions are [often] final and binding" but they are insulated by two layers of for-cause protections from removal. *Id.* at 464; *see also Lucia v. SEC*, 138 S. Ct. 2044, 2055 (2018) ("[T]he Commission's ALJs are 'Officers of the United States,' subject to the Appointments Clause."). ALJs can only be removed by Commissioners for good cause as determined by the Merits Systems Protection Board, whose members, as well as SEC Commissioners, can only be removed by the President for cause. *See Jarkesy*, 34 F.4th at 464. The President therefore "lacks the control necessary to ensure that the laws are faithfully executed" as the Constitution requires. *Id.* Therefore, proceedings such as the present one, if

adjudicated by a SEC ALJ, are unconstitutional, and the Commission cannot issue remedial sanctions based on them.

IV. CONCLUSION

The Division's Motion must be denied.

Dated: September 22, 2023

By: */s/Christopher F. Regan*

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2023, the foregoing Opposition to the Division of Enforcement's Motion for Summary Disposition has been filed electronically via the SEC's eFAP system, and was served by email to the following:

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/s/ Christopher F. Regan

Christopher F. Regan

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96627 / January 10, 2023

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File No. 3-21270

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RESPONDENT JUSTIN W. KEENER'S INDEX OF EXHIBITS TO OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

Exhibit	**Description**
A	Omnibus Order on Cross-Mots. for Summ. J., *SEC v. Keener*, Case No. 1:20-cv-21254-Bloom/Louis (S.D. Fla. Jan. 21, 2022)
B	Keener Dep. Tr., *In re JMJ Fin.*, SEC File No. HO-13487-A (June 6, 2019)
C	Keener Dep. Tr., *SEC v. Keener*, Case No. 1:20-cv-21254-Bloom/Louis (S.D. Fla. July 16, 2021)
D	Order Adopting in Part Magistrate Judge's R. & Rs., *SEC v. Keener*, Case No. 1:20-cv-21254-Bloom/Louis (S.D. Fla. Dec. 7, 2022)
E	Gen. Docket, *SEC v. Keener*, Case No. 22-14237 (11th Cir. 2022)
F	JMJ Fin. Fictitious Name Detail, Fla. Dep't of State Div. of Corps.
G	CMA Noel Ltd. Corp. Registration, N.Y. Dep't of State Div. of Corps.
H	Magistrate Judge's R. & Rs., *SEC v. Keener*, Case No. 1:20-cv-21254-Bloom/Louis (S.D. Fla. Aug. 8, 2022)

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