UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16245

In the Matter of **Rajarengan (a/k/a/ Rengan) Rajaratnam,** **Respondent.**

BRIEF OF AMICUS CURIAE INVESTOR CHOICE ADVOCATES NETWORK IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST[1]

Investor Choice Advocates Network ("ICAN") is a nonprofit organization that advocates for expanding access to markets for underrepresented investors and entrepreneurs who do not share the same access and market power as those with more assets and resources. ICAN has no personal interest in the outcome of the case but has a significant interest in ensuring that the Securities and Exchange Commission efficiently resolve requests for relief from agency sanctions.

[1] Counsel for Respondent has consented to the filing of ICAN's amicus brief. Counsel for the Division of Enforcement has advised that the Division takes no position on the filing of this amicus brief. No party or party's counsel, and no person other than ICAN and its counsel, authored this brief in whole or in part or contributed money intended to fund preparing or submitting the brief.

I. INTRODUCTION

Pursuant to Rules 210(d) and (e) of the SEC's Rules of Practice, Investor Choice Advocates Network ("ICAN"), through the undersigned counsel, respectfully submits this Amicus Brief (alternatively, its Statement of Views).

Respondent Rajarengan (a/k/a Rengan) Rajaratnam (referred to herein as "Rengan") has submitted compelling support for his motion for relief from the Securities and Exchange Commission's (referred to herein as the "SEC" or the "Commission") investment adviser bar. In particular, Rengan has demonstrated that his reentry into the securities industry is in the public interest due to his history of compliance with the five-year bar, his willingness to work under heightened supervision, and his rehabilitative efforts, including his charitable endeavors and disassociation from his brother. The Division, however, has ignored this evidence and dismissively asserts that such indicators are "not an absolute guarantee" against future misconduct.

The Division's dismissive approach to Rengan's motion for relief is at odds with the trajectory of recent legal precedent, which has recognized the disadvantages often faced by respondents in SEC administrative proceedings and has expanded their constitutional protections accordingly. Just within the past several years, the U.S. Supreme Court has issued opinions acknowledging the significant impact of SEC ALJ orders on respondents in proceedings before the Commission, expanded the ability of respondents to seek judicial review of constitutional claims in those proceedings, and confirmed that respondents in certain proceedings before the Commission are entitled to a jury trial.

Furthermore, an order that similarly disregards Rengan's history of compliance would mark a departure from the Commission's recent actions that have demonstrated a shift in its policy towards granting reentry applications. Within the past year, the Commission has taken the

unprecedented step of seeking dismissal of all active misconduct proceedings against accountants sitting before its in-house judges, and issued four orders granting reentry applications. The Commission granted two more reentry applications earlier this year, one of which expressly abandoned the relatively exacting "extraordinary circumstances" test typically used to evaluate the readmission of individuals with unqualified bars, and recognized "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 prevent recidivism, which will increase investor protection." *See In re Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on Behalf of Roger T. Denha,* Release No. 40-6872.

The legal and administrative landscape surrounding reentry applications has shifted substantially just over the past several years and evidences a clear policy favoring the granting of such applications where, as is the case here, the individual seeking relief can demonstrate efforts to prevent recidivism. The Commission should consider the trajectory of these developments in granting Rengan's request for relief.

II. ARGUMENT

A. The Rise in Constitutional Protections for Respondents in SEC Administrative Proceedings

Over the past several years, the constitutional underpinnings of SEC administrative proceedings have undergone a seismic shift through a series of landmark Supreme Court decisions. Each of these decisions demonstrates a recognition of the disadvantages facing respondents in administrative proceedings before the Commission, as well as the need for increased protections therein. The Division's opposition brief fails to consider this changed legal landscape.

1. *Lucia* and the Appointments Clause

In 2018, *Lucia v. SEC* opened the door to constitutional challenges to the Commission's findings by recognizing the significant judicial power exercised by SEC administrative law judges ("ALJs"), who possess, as the Supreme Court noted, "nearly all the tools of federal trial judges." *Lucia v. SEC*, 585 U.S. 237, 248 (2018). There, petitioner Raymond Lucia argued that the administrative proceedings instituted against him, in which the ALJ issued civil penalties and a lifetime bar from the investment industry, were invalid because the ALJ had not been constitutionally appointed. *Id.* at 243. The Supreme Court agreed, noting that SEC ALJs exercise "significant discretion" when carrying out "important functions," as they issue decisions containing factual findings, legal conclusions, and appropriate remedies, which become final and are "deemed the action of the Commission" if the SEC declines review. *Id.* at 248-49. The Supreme Court therefore acknowledged the wide-ranging consequences of ALJ orders in proceedings before the Commission and found that the petitioner was entitled to a new hearing before an official who was properly appointed under the Appointments Clause. *Id.* at 251.

2. *Axon/Cochran* and Pre-Enforcement Review

The Supreme Court expanded constitutional protections for respondents in proceedings before the Commission again in *SEC v. Cochran*, 598 U.S. 175 (2023) and its companion case, *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175 (2023). 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*, 598 U.S. at 191.

The practical consequences of this development 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, "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 the dramatically altered constitutional landscape.[2]

[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. *Jarkesy* and the Seventh Amendment

Most significantly, in June 2024, the Supreme Court issued its decision in *SEC v. Jarkesy*, 603 U.S. 109 (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. *Id*. at 126-27.

Jarkesy represents a profound recognition of the need for proper protections for respondents in administrative proceedings before the Commission. Justice Gorsuch, concurring in *Jarkesy*, pointedly observed that in such proceedings, the Constitution seeks to "ensure even the least popular among us has an independent judge and a jury of his peers resolve his case under procedures designed to ensure a fair trial in a fair forum." *Id.* at 167. These increased protections for respondents in securities fraud proceedings are particularly pertinent here, as the insider trading charges that the SEC was pursuing against Rengan at the time of his settlement derive from the same anti-fraud provisions under the Securities Exchange Act. *See* 15 U.S.C. § 78j.

4. The Significance of These Changes for Rengan's Request for Relief

These constitutional developments create a substantially altered legal environment from when Rengan entered his settlement in 2014. The coercive power of administrative proceedings to extract settlements was openly acknowledged that same year 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 Rengan's situation. Had these decisions preceded his settlement, Rengan 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 SEC Commissioner Michael Piwowar once warned about the process following entry of a bar: "Based on my experience as Commissioner, the reinstatement process, even if successful, can take years to complete after the requisite time period has expired. *In the Matter of John J. Aesoph, CPA and Darren M. Bennett, CPA*, No. 3-15168 (Aug. 5, 2016), Dissent at 2. These recent constitutional developments provide compelling context for why this Commission should act favorably on Rengan's request for relief, both to avoid perpetuating a potentially unconstitutional barrier to his professional activities and to recognize the significantly different legal environment that now exists.

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

[3] Sarah N. Lynch, *SEC to File Some Insider-Trading Cases in Its In-House Court*, Reuters (June 11, 2014), https://www.reuters.com/article/world/sec-to-file-some-insider-trading-cases-in-its-in-house-court-idUSKBN0EM2DH/.

misconduct proceedings against accountants sitting before its in-house judges—a clear indication of the impact of the *Jarkesy* ruling the agency's exercise on its 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."[5] 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

[4] Douglas Gillison, *US SEC Abandons In-House Malpractice Suits After Supreme Court Ruling*, Reuters (Sept. 5, 2024), https://www.reuters.com/legal/us-sec-abandons-in-house-malpractice-suits-after-supreme-court-ruling-2024-09-05/.

[5] *Id.*

various capacities before the Commission.[6] 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

In April 2025, the Commission issued two further orders granting reentry applications that demonstrated a fundamental policy shift toward rehabilitating reentry for barred individuals. *See In re Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on Behalf of Roger T. Denha*, Release No. 40-6872, *In re Application on Behalf of Manish Singh*, Release No. 33-11372. The timing and substance of these orders cannot be dismissed as coincidental.

The Order in the *Denha* proceedings is particularly significant because it expressly abandoned the "extraordinary circumstances" test that the Commission has historically relied on in considering the readmission of individuals with unqualified bars. 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 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.

[6] Victor Suthammanont, *Is Now The Time to Seek Relief from SEC Industry Bars and Professional Suspensions?*, Reuters (May 12, 2025), https://www.reuters.com/legal/legalindustry/is-now-time-seek-relief-sec-industry-bars-professional-suspensions-2025-05-12/.

Denha Order at 5 (emphasis added). 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. Indeed, the Division ignores Rengan's attestations regarding his rehabilitation and proactive commitment to ethical conduct, including his willingness to submit to heightened supervision, complete additional compliance courses, or take any other reasonable measures the Commission deems necessary to ensure he does not pose a risk to investors or the public interest. *See* Respondent's Reply in Support of Motion for Relief from Investment Adviser Bar at 14-15. The Division simply states that "such assurances are not an absolute guarantee against misconduct in the future." *See* Division of Enforcement's Opposition to Respondent's Motion for Relief from Investment Adviser Bar at 6 (quoting *Peter Siris*, Exch. Act Rel. No. 3736, 2013 WL 6528874, at *6 (Dec. 12, 2013) (cleaned up)). This miserly response flatly contradicts the guidance in *Denha* that reentry is in the public interest if the respondent's "individual circumstances demonstrate rehabilitation and increased risk-controls to prevent recidivism[.]" *Denha* Order at 5.

III. CONCLUSION

A decision that embraces the Division's overly narrow approach to Rengan's motion for relief would contravene the Commission's goals as set forth in *Denha* and ignore the trajectory of Supreme Court opinions increasing protections for respondents in SEC proceedings and recent SEC orders that favor the granting of reentry applications. The Commission should grant Rengan's request for relief, explicitly rejecting the Staff's proposed "absolute guarantee" against

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future misconduct standard and affirming abandonment of the "extraordinary circumstances" standard.

/s/ *Nicolas Morgan*

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