UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15123

In the Matter of DOMINIC O'DIERNO Respondent.	**RESPONDENT DOMINIC O'DIERNO'S REPLY TO PETITION FOR RECONSIDERATION**

REPLY

In reply to the Division of Enforcement's Brief in Opposition, and in further support of his Petition for Reconsideration, Respondent Dominic O'Dierno ("Respondent" or "Mr. O'Dierno") respectfully submits this final reply. Respondent seeks an order vacating or modifying administrative bars imposed against him back in 2012, more than a decade ago, for associating with brokers or dealers or participating in any offering of a penny stock. As noted in more detail in Respondent's Petition and as further discussed below, Respondent has set forth compelling circumstances warranting the limited relief and in light of limited basis for the imposition of the bars in the first instance.

ARGUMENT

Compelling circumstances exist to vacate the remaining bars imposed upon Mr. O'Dierno.

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Nothing in the Division of Enforcement's ("Division") response counters the numerous compelling circumstances presented by Mr. O'Dierno in his Petition. Rather, Mr. O'Dierno has presented sufficient compelling circumstances to warrant removing the two remaining bars after more than a decade of time has passed their imposition. Specifically, as outlined in his petition, Mr. O'Dierno has demonstrated sufficient equitable reasons for vacatur of the bars because, when viewed "under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry, without the safeguards provided by the bar." *Stephen S. Wien*, Exchange Act Release No. 49000 at *4 (Dec. 29, 2003). These compelling circumstances outlined in his position include those regularly recognized by the Commission including: (i) the nature of the misconduct at issue in the underlying matter; (ii) the time that has passed since issuance of the administrative bar; (iii) the existence of identified and verifiable, unanticipated consequences of the bar. *See e.g.*, *In re Lewis*, Release No. 51817 at *4 (identifying various factors).

First, while the nature of his underlying misconduct involves a "willful" violation of the securities laws, the misconduct is unrelated to the present remaining bars. In its response, the Division focuses on Mr. O'Dierno's underlying settlement with the SEC in which Mr. O'Dierno accepted and admitted various factual findings as set forth in the settlement – which was drafted by the Commission – and that, as admitted, Mr. O'Dierno agreed that his limited conduct with Yusaf Jawed while Mr. Jawed was running a Ponzi scheme warranted the imposition of the bars at issue. The Division then pulls that settlement agreement apart, highlighting statements like Mr. O'Dierno's agreement that his conduct was "willful" or that it violated certain regulatory provisions. However, the existence of a factual basis for the imposition of the bars against Mr. O'Dierno back in 2012 does not negate the compelling circumstances Mr. O'Dierno presented

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in his petition, over a decade after the imposition of the bars and over 15 years from the underlying conduct, and where he is not operating in a manner that warrants ongoing investor protection relating to the two remaining bars. Further, with respect to the nature of his conduct, Mr. O'Dierno did not fabricate false information or provide services that were beyond the provision of information to investors.

Importantly, prior to the issuance of the bars in this matter, Mr. O'Dierno never acted as a dealer under the terms of the Exchange Act, nor has he ever promoted or participated in offering any penny stocks during his professional career. The bars imposed were unrelated to his underlying conduct in helping place some investors with an individual who was defrauding Mr. O'Dierno and the investors and running a Ponzi scheme. There is no correlation to Mr. O'Dierno's bringing some investors together with Mr. Jawed and any penny stock offerings or activities, nor any dealer activities covered by the Exchange Act. Further, at that time, Mr. O'Dierno had not been licensed for over a decade and so the Division's focus on his purported history of knowledge is unavailing. Thus, as the imposition of those Post-Dodd Frank bars for Pre-Dodd Frank activity is unrelated to his underlying conduct, this factor weights in favor of supporting the petition.

Second, substantial time has passed since both the initial misconduct occurring before 2008 and the imposition of the bars in 2012. It is undisputed that over 13 years have passed since the imposition of the bars and during that time Mr. O'Dierno has been engaged in new business ventures and has had no engagement with the Commission or any regulatory or criminal investigations or matters. The response highlights that length of time, alone, is insufficient of a reason to set aside collateral bars. While that concept is true, here, there is more than simply time. Mr. O'Dierno has raised the issue of time along other supportive reasons. As such, the more than

13 years from issuance of the bars weighs in support of relief when coupled against the other issues raised in the petition including the ongoing unexpected adverse effects he is suffering from the bars in his dealings with his new company and inability to be involved in certain financial matters related to the company.

Third, and most importantly, Mr. O'Dierno has identified and verifiable, unanticipated consequences he is experiencing resulting from these collateral bars. As his petition notes, Mr. O'Dierno has been put in the position to potentially have to step down from companies he has managed and co-founded once the companies have started to become more successful and the companies engage with investors and financial institutions. This has become an increasing issue for Mr. O'Dierno as he currently serves as the Vice President of artius.iD, a company which is expanding and seeks to obtain further business with government entities and larger corporations which then identifies Mr. O'Dierno and his current bars as issues that have to be addressed. This has put unintended limitations on his abilities to be involved in those companies as they develop and work towards potential public offerings.

Further, Mr. O'Dierno received notice from his financial institution that they were shutting down all his accounts and that he would need to remove them and transfer them elsewhere. The entire process was extremely embarrassing for Mr. O'Dierno and created a difficult situation for Mr. O'Dierno as he searched for a new institution for his assets while working to continue his business. Mr. O'Dierno was also the subject of a news article by The Oregonian, a well-known and widely circulated newspaper in Oregon regarding the allegations against him and the administrative bars imposed by the Commission.

As to the Division's argument that Mr. O'Dierno does not have a track record that would support vacating the bars, that argument is irrelevant. Mr. O'Dierno no longer works for a broker

(and does not intend to), has never worked as a dealer under the provisions of the Exchange Act, and has no intention to ever participate in the promotion of any penny stock in his current role. Thus, rather than be a negative factor against him, these facts support the conclusion that any application by Mr. O'Dierno to re-enter the securities industry pursuant to SEC Rule of Practice 193 would be futile and unnecessary as establishing a track record with the Commission would not serve the public in this instance. *See Brett Thomas Graham*, Release No. 5060 at *7 (Nov. 2, 2018).

Finally, it is no longer in the public interest to maintain these bars against Mr. O'Dierno. Generally, the Commission considers whether it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar. *See In re Hibler*, Release No. 70140 at *2. Here, Mr. O'Dierno is not seeking to function in the securities industry and thus investors do not need protection from his activities. Moreover, the SEC always retains the ability to pursue claims against Mr. O'Dierno, as against all others, should he violate the U.S. securities laws. *See SEC v. Lewis*, 423 F. Supp. 2d 337, 341 (S.D.N.Y 2006).

Accordingly, a lifting of the bars in this matter best serves the public interest in allowing Mr. O'Dierno to continue his participation in the growth and development of a cybersecurity company he co-founded, as well as his ability to maintain stable financial relationships with financial institutions and pursue involvement in additional business development opportunities, for which the bars place an undue burden.

In the alternative, the Commission should at least temporarily suspend or lift the bars to allow Mr. O'Dierno to build a track record. While Mr. O'Dierno does not intend to associate with any of the barred classes or entities, nor does he intend to promote or participate in the offering

of any penny stock, and as such, has no basis upon which to make a formal application for consent to associate pursuant to SEC Rule of Practice 193, the Commission has discretion to lift or modify a bar order when it comports with the public interest and investor protection. *In Re Cozzolino*, Release No. 49001 (Dec. 29, 2003) (vacating bar order where, if petitioner could not obtain new employment in the industry, he "[would] not be in a position to establish the 'track record' of association without restrictions that the Division indicates it would wish to see before supporting relief from the bar"). Here, Mr. O'Dierno's companies have no current intention of issuing penny stock in connection with any future public offerings. However, because it is in the realm of theoretical possibility that, in the future, some of his companies stocks could fall into the SEC's definition of a "penny stock" pursuant to 17 C.F.R. § 240.3a51-1, the Commission should grant incremental relief to Mr. O'Dierno so that at a minimum he could establish a track record to support a full vacatur of the bars in the event this may happen in the future.

For the forgoing reasons, we respectfully request that the Commission remove the Administrative Order's broker and dealer bars and penny stock bar in their entirety.

DATED this 19th day of May 2025.

/s/ Justin Rusk

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Certificate of Service

I hereby certify that on May 19, 2025, the foregoing document was filed via eFAP and served on the following by the following means:

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DATED this 19th day of May 2025.

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