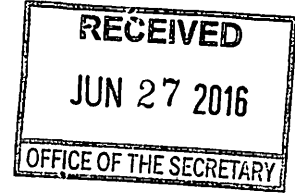


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17035**



**In the Matter of**

**SHREYANS DESAI,**

**Respondent.**

**REPLY MEMORANDUM OF LAW OF THE DIVISION OF ENFORCEMENT**

The Division of Enforcement respectfully submits this reply memorandum of law in further support of its motion for summary disposition.

**Preliminary Statement**

Respondent Shreyans Desai's opposition brief does not dispute that Desai was permanently enjoined from violations of the antifraud provisions of the federal securities laws and that he entered a guilty plea in the parallel criminal action. Desai also fails to set forth any credible argument as to why a permanent bar is not in the public interest. Instead, Desai argues that his pending federal court appeal should delay the resolution of this proceeding, and that the factual issues in the federal district court case should be relitigated. Desai, however, is wrong on both points. As the Commission has repeatedly held, a pending appeal does not affect this follow-on proceeding, and Desai cannot use this proceeding to relitigate the facts leading to the district court injunction. As a result, summary disposition is appropriate and full industry and collateral bars should be imposed.

The civil and criminal judgments entered against Desai are based on his egregious conduct in which he made misrepresentations and omissions to investors, misappropriated investor funds, and created fictitious account statements. Based on this record, permanent industry and penny stock bars are in the public interest.

### **Argument**

#### **I. The Pending Appeal Is No Basis to Delay this Proceeding**

Desai argues that this court should defer its decision until the Third Circuit completes its review of Desai's pending appeal.<sup>1</sup> As noted in the Division's opening brief, the pendency of an appeal is not grounds to defer a decision in an administrative proceeding. Div. Br. at 4-5, n.2. *See also Daniel Imperato*, Rel. No. 628, 2014 SEC LEXIS 2409, \*17 (Init. Dec. Jul. 7, 2014) (“[t]he Commission has repeatedly held that the pendency of an appeal is not grounds to defer decision in an administrative proceeding.”) In the unlikely event that Desai's civil and criminal judgments were vacated and the statutory basis for Desai's bar was no longer present, the appropriate remedy would be to petition the Commission for reconsideration of this action. *Id.* at \*18.

#### **II. The Federal Court Action Cannot Be Relitigated**

Desai makes a series of arguments relating to the district court action, including that his fraud involved “only six investors, and less than \$300,000” and qualified for certain unspecified “exemptions”; that a third party should have also been held responsible for Desai's fraud; that Desai should have been able to send “a simple 15

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<sup>1</sup> On March 14, 2016, Desai filed a Notice of Appeal with the Third Circuit appealing the District Court's decision to deny Desai's Motion for Reconsideration of the Civil Judgment. *SEC v. Desai*, 16-CV-1629 (3d Cir. 2016). That appeal is currently pending before the Third Circuit.

Questions Interrogatory” to this third party; that the investors were “Accredited investors” who were knowledgeable about the securities markets; and that the Commission did not have jurisdiction over his conduct.

None of these arguments are relevant. This proceeding is not the appropriate forum for Desai to relitigate issues in the district court action or to collaterally attack the underlying judgment. *See id.* at \*16; *Joseph P. Galuzzi*, Rel. No. 46405, 55 SEC 1110, \*10 (Comm’n Aug. 23, 2002) (“a party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding”).

In any event, these arguments were already properly rejected by the District Court, and significant sanctions were imposed in both the civil and criminal actions. Div. Br. at 2, 4-6. In addition, as the District Court found, regardless of Desai’s attempts to blame others, Desai was responsible for his fraudulent conduct.<sup>2</sup> McGill Decl. Ex. D at 5-10 (Summary Judgment Opinion). The District Court also rejected Desai’s argument that he should have been able to serve interrogatories to non-parties and noted that “[t]hough Desai wished to send interrogatories to non-parties, Rule 33 of the FRCP clearly prohibits this.” *Id.* at 5. Third, the District Court found that – far from the sophisticated and “accredited” investors Desai refers to in his Opposition – the investors whom Desai defrauded were “unsophisticated and vulnerable investors who trusted [Desai].” McGill Decl. Ex. M at 27-28 (Sentencing Transcript). Finally, the District Court found that jurisdiction was proper and that the Commission had the authority to regulate Desai’s conduct. McGill Decl. Ex. D. at 10.

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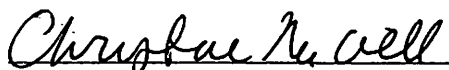
<sup>2</sup> A copy of the District Court’s Summary Judgment Opinion is attached as Exhibit D to the Declaration of Christina M. McGill in Support of the Division of Enforcement’s Motion for Summary Disposition Against Shreyans Desai (“McGill Decl.”) filed on May 6, 2016.

**Conclusion**

For the reasons set forth above, and for the reasons set forth in the Division's initial papers, the Division requests that the Court grant Summary Disposition in favor of the Division and permanently bar Desai from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

Dated: June 27, 2016

DIVISION OF ENFORCEMENT

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**CERTIFICATE OF SERVICE**

I, Christina M. McGill, certify that on June 27, 2016, I caused true and correct copies of the Division of Enforcement's Reply Memorandum of Law in Further Support of Its Motion for Summary Disposition Against Shreyans Desai dated June 27, 2016, to be filed and served on the following parties as indicated:

The Honorable Brenda P. Murray (By Hand)  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Brent J. Fields, Secretary (By Hand)  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

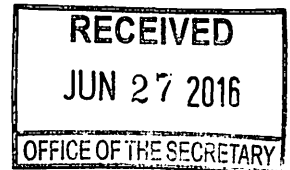
Shreyans Desai (By Certified Mail and By UPS Overnight Delivery)

██████████  
Edison, NJ ██████████  
Respondent, *pro se*

  
Christina M. McGill  
Division of Enforcement



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
100 F STREET, NE  
WASHINGTON, DC 20549



June 27, 2016

**By Hand Delivery**

Mr. Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: In the Matter of Shreyans Desai  
A.P. File No. 3-17035

Dear Mr. Fields:

Enclosed please find the original and three copies of the Reply Memorandum of Law of the Division of Enforcement, filed in connection with the above-referenced proceeding, along with a Certificate of Service.

Respectfully submitted,

*Christina M. McGill*  
Christina M. McGill

cc: Chief ALJ Brenda P. Murray, by hand delivery and by e-mail (ALJ@sec.gov)  
Shreyans Desai, *pro se*, US Mail and UPS overnight delivery (Edison, NJ)