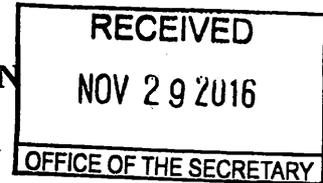


UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION



In the Matter of

SHREYANS DESAI,

Respondent.

**DIVISION OF ENFORCEMENT'S BRIEF IN OPPOSITION TO RESPONDENT
SHREYANS DESAI'S PERSONAL STATEMENT FILED IN SUPPORT OF
DESAI'S PETITION FOR REVIEW**

Counsel for Division:

David Stoelting
Senior Trial Counsel
3 World Financial Center
New York, NY 10285
(212) 336-0174
stoeltingd@sec.gov

Christina McGill
Senior Attorney
100 F Street, NE
Washington, DC 20549
(202) 551-5714
mcgillch@sec.gov

Dated: November 29, 2016

TABLE OF CONTENTS

PRELIMINARY STATEMENT1

STATEMENT OF FACTS1

 I. The Permanent Injunctions Issued In The Civil Action Against Desai1

 II. Desai’s Guilty Plea In The Parallel Criminal Proceeding5

ARGUMENT7

 I. Summary Disposition And The Imposition Of A Collateral Bar Against Desai
 Are Appropriate7

 A. The ALJ Correctly Adjudicated This Matter Through Summary
 Disposition7

 B. The ALJ Properly Relied On Desai’s Criminal Conviction And The
 Injunctions Entered Against Desai In The Civil Action And Properly
 Rejected Collateral Attacks On The Judgments In The Civil Action And
 The Criminal Action7

 C. The Imposition Of Industry And Penny Stock Bars Against Desai Is
 Necessary To Protect The Investing Public8

 II. Desai’s Personal Statement Does Not Set Forth Any Reason To Review the
 Initial Decision10

CONCLUSION15

TABLE OF AUTHORITIES

Cases

<i>Conrad P. Sehgers</i> , S.E.C. Rel. No. 2656, 2007 SEC LEXIS 2238 (Sept. 26, 2007).....	7
<i>David R. Wulf</i> , Exchange Act. Rel. No. 824, 2015 SEC LEXIS 2603 (Jun. 25, 2015).....	7
<i>Eric Butler</i> , S.E.C. Rel. No. 3262, 2011 SEC LEXIS 3002 (Aug. 26, 2011).....	8
<i>Gary L. McDuff</i> , Exchange Act Rel. No 78066, 2016 SEC LEXIS 2121 (Jun. 14, 2016)11	
<i>Gary M. Kornman</i> , Exchange Act Rel. No. 59403, 2009 SEC LEXIS 367 (Feb. 13, 2009)	
.....	7
<i>Harding Advisory LLC</i> , Securities Act Release No 9561, 2014 WL 988532 (Mar. 14, 2014)	15
<i>Joseph P. Galluzzi</i> , Exchange Act Rel. No. 46405, 2002 SEC Lexis 3423, (Aug. 23, 2002)	5
<i>Kornman v. SEC</i> , 592 F.3d 173 (D.C. Cir. 2010).....	7
<i>Marshall E. Melton</i> , Advisers Act Rel. No. 2151, 2003 SEC LEXIS 1767, (Jul. 25, 2003)	8
<i>McClelland v. Andrus</i> , 606 F.2d 1278 (D.C. Cir. 1979).....	15
<i>RAHFCO Management Group, LLC</i> , 2016 SEC LEXIS 2807 (Aug. 16, 2016).....	8
<i>SEC v. Desai</i> , 145 F. Supp. 3d 329 (D.N.J. 2015).....	3
<i>SEC v. Desai, et al.</i> , 2:11-cv-05597-WJM (D.N.J.).....	passim
<i>SEC v. Desai, et al.</i> , No 16-cv-1629 (3d Cir. Mar. 14, 2016).....	4
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5th Cir. 1979), <i>aff'd on other grounds</i> , 450 U.S. 91 (1981).....	9, 10, 12
<i>United States v. Desai</i> , 2:12-cr-0330-WJM (D.N.J).....	passim
<i>United States v. Desai</i> , No. 15-cr-1105 (3d Cir. Jan. 15, 2015), <i>cert. den.</i> , 136 S. Ct. 2457 (2016).....	6
<i>Vermont Yankee Nuclear Power Corp. v. NRDC</i> , 435 U.S. 519 (1978)	15

Regulations

Investment Advisers Act of 1940	passim
Securities Act of 1933.....	passim
Securities Act of 1934.....	passim

The Division of Enforcement respectfully submits this brief in opposition to the “Personal Statement” submitted by Respondent Shreyans Desai (“Desai”) in support of his petition for review of the Initial Decision dated August 5, 2016.

PRELIMINARY STATEMENT

Based on the entry of injunctions and a criminal conviction, the Initial Decision imposed permanent industry and penny stock bars against Desai pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”). Desai’s “Personal Statement” does not dispute the fact of the injunctions and the conviction, which followed Desai’s guilty plea; instead, Desai presents a series of baseless accusations against the SEC staff as well as other irrelevant and unsupported arguments. The ALJ properly entered the industry and penny stock bars, and the Initial Decision should be affirmed.

STATEMENT OF FACTS

I. The Permanent Injunctions Issued in the Civil Action Against Desai

The Commission filed its Complaint against Desai and Shreysiddh Capital, LLC (“SSC”), a company that Desai founded and controlled, on September 27, 2011.

Securities and Exchange Commission v. Shreyans Desai, et al., 2:11-cv-05597-WJM-MF (D.N.J.) (“Civil Action”). Div. Mot. Sum. Disp., Ex. A.¹ The District Court entered a Default Judgment against SSC on October 2, 2012, ordering SSC to be liable for

¹ In the Initial Decision, the ALJ admitted into evidence the exhibits attached to the Division’s motion for summary disposition and to Desai’s opposition to the Division’s motion and took official notice of the record in the underlying civil and criminal actions. Initial Decision (“Init. Dec.”) at 2-3. Citations to exhibits attached to the Division’s summary disposition motion are cited to herein as “Div. Mot. Sum. Disp., Ex. ___.”

disgorgement of \$116,858.29, plus prejudgment interest of \$13,865.33, and enjoining SSC from future violations of the federal securities laws. Div. Mot. Sum. Disp., Ex. B.

The Commission filed an Amended Complaint against Desai on July 24, 2013, Div. Mot. Sum. Disp., Ex. C, which alleged that Desai made material misrepresentations to five investors and one advisory client to induce those individuals to entrust him with their money. *Id.* at ¶¶ 1-2, 8-12, 18. Desai's misrepresentations included falsely guaranteeing that individuals would not lose money; guaranteeing high rates of return; and stating that SSC was a broker registered with the Commission and that Desai was a licensed financial adviser. *Id.* The Amended Complaint also charged that Desai misappropriated investor and client money for personal use, was purposefully misleading regarding the returns earned in investor and client accounts, and misled investors about SSC's registration status. *Id.* at ¶¶ 12-18. The Amended Complaint charged Desai with violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5], Section 15(a) of the Exchange Act [15 U.S.C. 78(o)(a)], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. 80b-6(1) and 80b-6(2)]. *Id.* at ¶¶ 20-33.

The Commission filed a motion for summary judgment on February 21, 2015. Desai did not file a responsive statement of material facts; as a result the District Court found "that there are no genuine issues of material fact" because "Desai does not put forth any dispute of a material fact that contradicts evidence presented by the SEC." Div. Mot. Sum. Disp., Ex. D at 1-2 n.2, 6. On November 5, 2015, the District Court entered an Opinion and Order granting summary judgment against Desai on all claims and ruled

that the Commission was entitled to all of the relief that it sought against Desai, including injunctions, disgorgement plus prejudgment interest, and a civil penalty. *SEC v. Desai*, 145 F. Supp. 3d 329 (D.N.J. 2015); Div. Mot. Sum. Disp., Exs. D and E (Opinion and Order).

The District Court found that Desai misappropriated investor money by failing to transfer a portion of the money he received to any investment account and by otherwise using investor money for expenses unrelated to the investor's investments. Div. Mot. Sum. Disp., Ex. D. at 2-3. According to the District Court's findings, to conceal his misconduct, Desai provided some investors with false account statements showing extremely high profits in the investor's account. *Id.* Desai also convinced an advisory client to pay Desai \$68,021 in commissions by misleading the client regarding the value of the client's investment account and the profits that Desai purported to earn in the account. *Id.* at 3 (145 F. Supp. 3d at 331-333). In total, Desai received \$247,558.29 from the investors and the advisory client; subtracting from this sum funds Desai returned, the District Court ordered Desai to disgorge \$167,229.39, plus prejudgment interest. *Id.* at 9-10 (145 F. Supp. 3d at 338).

The District Court found that injunctions were warranted because Desai's fraud spanned a period of more than two years, and because Desai misappropriated investor funds. *Id.* at 8-9. In addition, when confronted by investors, Desai "attempted to conceal the actual value of the accounts and sought to maintain control of the funds. This effort to mask his violations of federal securities law demonstrates a high degree of scienter." *Id.* at 9. The District Court also found that "Desai's appeal of his previously agreed upon guilty plea [in the parallel criminal action] evidences a failure to recognize the

wrongfulness of his conduct, and leads the Court to conclude that there is a substantial likelihood that Desai will engage in future violations of the federal securities laws if not enjoined.” *Id.*

The District Court rejected Desai’s discovery-related arguments, including that Desai was somehow prohibited from deposing or contacting individuals with information relevant to the Civil Action and held that Desai’s numerous requests to serve interrogatories on non-parties were clearly prohibited by Rule 33 of the Federal Rules of Civil Procedure. *Id.* at 5 (145 F. Supp. 3d at 334). The District Court did find, however, that Desai had failed to comply with his own discovery obligations. *Id.* (145 F. Supp. 3d at 334-35).

On November 30, 2015, the District Court issued a Final Judgment against Desai, ordering Desai to pay a civil penalty of \$167,229.39, ordering Desai to pay disgorgement of \$167,229.39 plus prejudgment interest, and permanently enjoining Desai from violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, Section 15(a) of the Exchange Act, and Sections 206(1) and 206(2) of the Advisers Act. Div. Mot. Sum. Disp., Ex. F.

Desai filed a motion to reconsider on December 14, 2015. Div. Mot. Sum. Disp., Ex. G. The District Court denied Desai’s motion on February 29, 2016. Div. Mot. Sum. Disp., Ex. H. Desai filed a Notice of Appeal with the U.S. Court of Appeals for the Third Circuit on March 14, 2016. *SEC v. Desai, et al.*, No 16-cv-1629 (3d Cir. Mar. 14, 2016).²

² In a letter dated November 4, 2016, the Third Circuit advised that Desai’s appeal would be submitted on the briefs without oral argument. *SEC v. Desai, et al.*, No 16-cv-1629 (Letter) (Nov. 4, 2016). As set forth in the Initial Decision, Desai’s appeal in the Civil

II. Desai's Guilty Plea in the Parallel Criminal Proceeding

On May 5, 2014, Desai pleaded guilty to two counts of wire fraud in violation of Title 18 of the United States Code Section 1343. *United States v. Shreyans Desai*, 2:12-cr-0330-WJM (D.N.J.) ("Criminal Action").³ Div. Mot. Sum. Disp., Ex. L. The counts of the Superseding Indictment to which Desai pleaded guilty alleged that, over a more than two year period, Desai obtained and maintained control over investor funds by making numerous misrepresentations to investors, including that Desai held a license to trade securities and had previously worked for TD Ameritrade, that SSC was a member of the Financial Industry Regulatory Authority ("FINRA"), that funds invested with SSC were insured by the Securities Investor Protection Corporation ("SIPC") with zero risk of loss of principal, that Desai had earned high rates of return for a past investor, and that investors would enjoy high rates of return as a result of Desai's execution of securities transactions on behalf of the investors. Div. Mot. Sum. Disp., Ex. K at ¶¶ 2, 6, 11, 12. The counts to the Superseding Indictment to which Desai pleaded guilty further alleged that Desai misappropriated money from investors, which he then attempted to conceal by making numerous misrepresentations to investors regarding the value of their accounts. *Id.* at ¶¶ 9-10, 16-18. During his plea allocution, Desai admitted that, among other

Action was not a basis on which to delay resolution of the follow-on administrative proceeding against Desai. Init. Dec. at 5-6. The pendency of an appeal also does not preclude the Commission from ruling in a follow-on proceeding that arises from an injunction. *See Joseph P. Galluzzi*. Exchange Act Rel. No. 46405, 2002 SEC Lexis 3423, at *10 n. 21 (Aug. 23, 2002).

³ The United States Attorney's Office for the District of New Jersey filed a Criminal Complaint against Desai on September 26, 2011. *U.S. v. Shreyans Desai*, 2:12-cr-00330 (WJM). (Div. Mot. Sum. Disp., Ex. I). An Indictment was returned against Desai on May 8, 2012 (Div. Mot. Sum. Disp., Ex. J) and a Superseding Indictment was returned on January 8, 2013 (Div. Mot. Sum. Disp., Ex. K).

things, he made misrepresentations to induce investors to invest with him, that he made misrepresentations to investors about the value of their accounts, and that he took money to which he was not entitled from investors. Div. Mot. Sum. Disp., Ex. L at ¶ 18.

At Desai's sentencing, Judge Martini expressed concern that Desai's conduct "went on for so long. . . . It wasn't one or two instances in which [Desai] puffed something, or made some puffery. He repeatedly misled people that appeared to be unsophisticated and vulnerable investors who trusted him. . . . His conduct was repeated and excessive." Div. Mot. Sum. Disp., Ex. M at 27-28. Judge Martini stated that Desai "appears to be somewhat manipulative. And while he says he's remorseful, I don't get a genuine sense of his full remorsefulness here." *Id.* at 28-29.

On December 5, 2014, a judgment in the Criminal Action was entered against Desai. Desai was sentenced to a prison term of 15 months followed by three years of supervised release and ordered to pay restitution in the total amount of \$121,260. Div. Mot. Sum. Disp., Ex. N.

Although Desai waived his right to appeal as part of his plea agreement, Desai filed unsuccessful appeals with the U.S. Court of Appeals for the Third Circuit and the Supreme Court. *United States v. Desai*, No. 15-cr-1105 (3d Cir. May 28, 2015) (granting USAO's motion to enforce appellate waiver and dismissing appeal), *cert. den.*, 136 S. Ct. 2457 (2016).

ARGUMENT

I. **Summary Disposition and the Imposition of a Collateral Bar Against Desai are Appropriate.**

A. The ALJ Correctly Adjudicated this Matter Through Summary Disposition.

Rule 250(b) of the Commission's Rules of Practice provides that summary disposition should be granted when there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." *See also Conrad P. Sehgers*, S.E.C. Rel. No. 2656, 2007 SEC LEXIS 2238 at *14 (Sept. 26, 2007). The Commission has frequently upheld the use of summary disposition in follow-on proceedings arising from a respondent's criminal conviction or following the entry of an injunction in a civil proceeding, particularly where the underlying case, as is the case here, involves fraud. *See Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 SEC LEXIS 367 at **39-41 (Feb. 13, 2009), *pet. denied Kornman v. SEC*, 592 F.3d 173 (D.C. Cir. 2010); *see also David R. Wulf*, Exchange Act. Rel. No. 824, 2015 SEC LEXIS 2603, at **17-18 (Jun. 25, 2015) ("[s]ummary disposition is generally appropriate in 'follow-on' proceedings — administrative proceedings instituted following a conviction or entry of an injunction — where the only real issue involves the determination of the appropriate sanction").

B. **The ALJ Properly Relied on Desai's Criminal Conviction and the Injunctions Entered Against Desai in the Civil Action and Properly Rejected Collateral Attacks on the Judgments in the Civil Action and the Criminal Action.**

Desai's "Personal Statement" seeks to relitigate or launch collateral attacks on the findings underlying the judgment in the Civil Action, including issues concerning discovery and the joinder of third parties. The ALJ, however, correctly held that "the

doctrine of collateral estoppel precludes Desai from attacking his injunctions and conviction in this proceeding.” Init. Dec. at 5.

“It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil or criminal proceeding.” *RAHFCO Management Group, LLC*, 2016 SEC LEXIS 2807, at **4-5 (Aug. 16, 2016); *see also Eric Butler*, S.E.C. Rel. No. 3262, 2011 SEC LEXIS 3002 at *21 (Aug. 26, 2011) (“follow-on proceedings based on a criminal conviction are not an appropriate forum to ‘revisit the factual basis for,’ or legal defenses to, the conviction”); *Marshall E. Melton*, Advisers Act Rel. No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (Jul. 25, 2003) (same regarding civil proceedings). As such, the ALJ correctly determined that it would not consider Desai’s attempts to relitigate the factual findings or legal conclusions underlying the Civil Action. Init. Dec. at 5.

C. The Imposition of Industry and Penny Stock Bars Against Desai Is Necessary to Protect the Investing Public.

The Commission has the authority to sanction Desai under Section 203(f) of the Advisers Act and Section 15(b) of the Exchange Act because Desai: (i) was permanently enjoined from violations of the anti-fraud and broker registration provisions of the federal securities laws; (ii) was convicted of two counts of wire fraud in violation of 18 U.S.C. § 1343; (iii) was associated with an investment adviser and broker dealer during the period of his misconduct; and (iv) the sanctions were clearly within the public interest.

The record unequivocally supports – and Desai does not contest – that Desai pled guilty to and was convicted of two counts of wire fraud in the parallel Criminal Action and was enjoined from violations of the anti-fraud and broker registration provisions of the federal securities laws in the Civil Action. Determinations regarding Desai’s

associational status were also clear and supported by overwhelming evidence. Init. Dec. at 6; Div. Mot. Sum. Disp., Ex. D at 7, 8. In determining that the associational statutory predicates for a bar were met, the ALJ relied on the District Court's well-supported finding that "there was no question that Desai acted as a broker by actively soliciting potential investors, possessing investor funds and receiving compensation for the transactions" and that Desai's guilty plea in the Criminal Action "confirmed that he was acting as an investment adviser." Init. Dec. at 6. As noted by the ALJ, "[i]t is irrelevant that Desai was unregistered in any capacity." *Id.*

The only remaining issue is whether the sanctions imposed against Desai were appropriate and within the public interest. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (laying out the factors used to guide determination whether bars are in the public interest); *see also* Init. Dec. at 6-7 (applying the *Steadman* factors). Barring Desai from the securities industry is necessary to protect the investing public. The ALJ found that Desai engaged in "egregious and recurrent" misconduct over a period of more than a year when he made numerous material misrepresentations to vulnerable, unsophisticated investors which he then attempted to cover up by comingling investor funds and mailing investors false account statements that inflated the value of investors' accounts. *Id.* at 7. The ALJ held that "[t]here is a great deal of evidence that shows that Desai acted with a high degree of scienter" and that Desai's fraud while acting as an investment adviser was "particularly egregious" because Desai "violated the fiduciary duty he owed to his clients." *Id.* The ALJ further noted that "none of the many filings Desai has made in this administrative proceeding acknowledge wrongful conduct or offer assurance that he will not commit

similar acts in the future.” *Id.* at 8. As such, the ALJ properly found that each public interest factor laid out in *Steadman* supported the imposition of a permanent industry bar and that it was “in the public interest to bar Desai from participation in the securities industry to the broadest extent possible.” *Id.* at 8, 9.

II. Desai’s Personal Statement Does not Set Forth Any Reason to Reverse the Initial Decision.

Desai does not deny that injunctions were entered against him in the Civil Action barring him from violations of the anti-fraud and broker registration provisions of the federal securities laws, nor does Desai deny that he pled guilty to two counts of wire fraud in the parallel Criminal Action. Desai also does not directly contest the numerous findings of the administrative law judge discussed *infra* as to why industry and penny stock bars against Desai are in the public interest. Instead, Desai raises various points in his Personal Statement that primarily attempt to relitigate issues in the Civil Action or seek to evade responsibility. Desai’s arguments are addressed below.

First, Desai argues that Initial Decision and imposition of a collateral bar should be reversed because the Commission failed to depose in the Civil Action an individual who Respondent describes as his business partner. Personal Statement at 1-2. Scheduled depositions in the Civil Action, however, were postponed only after Desai submitted a request asking for a stay of proceedings in light of the then ongoing parallel Criminal Action. *SEC v. Desai, et al.*, 2:11-cv-05597, Order, ECF No. 81 (Oct. 28, 2013); *see also* Div. Mot. Sum. Disp., Ex. D. In addition, as noted by the District Court, nothing prohibited Desai from conducting his own discovery in the Civil Action, including deposing his business partner had Desai wished to do so. Div. Mot. Sum. Disp., Ex. D at 5. Further, Desai complains that he was not permitted to join his partner as a party in the

Civil Action, or, alternatively, that the Commission did not sue Desai's partner. These arguments are irrelevant. *See infra* at 8; *see also Gary L. McDuff*, Exchange Act Rel. No 78066, 2016 SEC LEXIS 2121, at *9 (Jun. 14, 2016) (rejecting respondents request in follow-on administrative. proceeding to relitigate issues underlying the civil action and call additional witnesses outside of the scope of the follow-on proceeding).

Second, Desai argues that Commission attorneys and "District Court Judge Martini teamed up to file illegal and untimely Summary Judgment, WHILE I was in a prison; so that I would not be able to Defend." Personal Statement at 2 (emphasis in the original). Desai, however, was not incarcerated when the Commission filed its motion on February 21, 2015. *See United States v. Shreyans Desai*, 2:12-cr-0330-WJM, ECF No. 86 (Order granting Desai's request to extend self-surrender date until March 30, 2015). Contrary to Desai's assertion that he was unable to respond to the Commission's motion or to defend himself, Desai made numerous filings with the District Court in response to the Commission's summary judgment motion, as well as filing an interlocutory appeal around that same time. *See e.g., SEC v. Desai, et al.*, 2:11-cv-05597, ECF Nos. 104 (Notice of Appeal), 112-13 (Desai Opp. to SJ), 115 (same), 118-120 (miscellaneous requests by Desai). Even had Desai been incarcerated, this would not be a basis to find error with the summary judgment decision, nor would it be a basis to reverse the ALJ's decision to impose bars on Desai. *See Steadman*, 603 F.2d at 1140 (5th Cir. 1979) (laying out the factors used to guide determination whether bars are in the public interest after other statutory criteria met); *see also* Init. Dec. at 6-7 (applying the *Steadman* factors).

Third, Desai argues that he was "forced" to close investment accounts involved in trading in the foreign exchange market ("Forex") and argues that had he been allowed

to keep these accounts open he would have recovered losses that investors suffered. Personal Statement at 2. Desai does not cite to any evidence to support his assertion that he was “forced” to close any of his investment accounts, nor is there any evidence to support the assertion that Desai would have recouped the losses of investors whom he defrauded by continuing to execute trades on their behalf. In any event, neither assertion has any bearing on the appropriateness of the bars imposed against Desai. *See Steadman*, 603 F.2d at 1140 (5th Cir. 1979) (laying out the factors used to guide determination whether bars are in the public interest after other statutory criteria met); *see also* Init. Dec. at 6-7 (applying the *Steadman* factors).

Fourth, Desai states that he was able to repay certain of the investors who invested with him following the closure of SSC’s Forex accounts and that he was somehow exempt from complying with the federal securities laws because SSC was a start-up company. Personal Statement at 2-3. While the calculation of disgorgement is not at issue in this petition, the District Court’s disgorgement calculation laid out in detail the funds that Desai received from investors and one client, less the funds that Desai returned, and accurately reflected the total amount of Desai’s unlawful gains. Div. Mot. Sum. Disp., Ex. D at 9-10. Further, Desai’s vague claim that he was exempt from complying for the federal securities laws is wrong. To the extent Desai is arguing that he was not acting as an investment adviser while engaging in fraud, the District Court’s and the ALJ’s determinations regarding Desai’s associational status is clear and supported by overwhelming evidence. Init. Dec. at 6; Div. Mot. Sum. Disp., Ex. D at 7, 8.

Fifth, Desai argues that there was error because the Division informed Desai that it was not in possession of any complaints or affidavits by Nirav Patel (“Patel”), a client

whom Desai defrauded. Personal Statement at 3. The Division provided all non-privileged documents, even documents which had not been requested by Desai, to which Desai was entitled pursuant to Rule of Practice 230. Most of these materials had been provided to Desai by the Commission during the Civil Action; these materials and others again were reproduced to Desai in this proceeding. As such, the ALJ correctly found that the Division satisfied its discovery-related obligations. Tr. Prehearing Conf., at *26 (Feb. 18, 2016). As noted in the materials submitted by Desai in support of his Personal Statement, in response to Desai's request for written complaints or affidavits by Patel, the Division accurately responded that it did not possess written complaints or affidavits by Patel. Personal Statement, Ex. G. The Division informed Desai that it did have notes concerning interviews of Patel but that such notes were being withheld on the grounds of attorney work-product, the law enforcement privilege, the common interest privilege, the investigative files privilege, and the deliberative process privilege. *Id.* As noted *infra*, the District Court's judgment against Desai was based on a substantial amount of evidence showing that Desai engaged in a repeated and egregious fraud on numerous individuals, including this client, and Desai admitted to defrauding this client when he pled guilty in the Criminal Action.

Sixth, Desai argues that the Division did not "allow" Desai to serve interrogatories on the investors, including an investor named Urjo Dhyan ("Dhyan") in the Civil Action and states that Dhyan was an accredited investor. Personal Statement at 3-4. Desai's argument with respect to the service of interrogatories was rejected by the District Court, which found that Desai's assertions that he had somehow been prohibited from contacting third parties was untrue and held that Desai's numerous requests that he

be allowed to serve interrogatories on non-parties was clearly prohibited by Rule 33 of the Federal Rules of Civil Procedure. Div. Mot. Sum. Disp. Ex D at 5 (*SEC v. Desai*, 145 F. Supp. 3d 329, 334 (D.N.J. 2015)). In addition, while Desai's assertion that Dhyan was an "accredited investor" is not a defense to violating the anti-fraud provisions of the federal securities laws, there is nothing in the record that supports this assertion. Indeed, rather than being "accredited" investors as Desai claims, Desai's victims were "unsophisticated and vulnerable investors who trusted [Desai]." Div. Mot. Sum. Disp., Ex. M at 27-28. Further, as the ALJ correctly noted, this is not the appropriate forum for Desai to litigate issues underlying the Civil Action. Init. Dec. at 5.

Seventh, Desai argues that the administrative proceeding should have been filed at an earlier date. Personal Statement at 4. The administrative proceeding was predicated on judgments entered against Desai in the Civil Action and the Criminal Action, and, as such, was properly filed after the entry of those judgments.

Finally, Desai also argues vaguely that his right to "due process" was violated. Personal Statement at 2, 3. As the District Court's Opinion and Order showed, however, Desai had the opportunity to conduct discovery in the Civil Action but declined to do so. *SEC v. Desai*, 145 F. Supp. 3d 329, 334 (D.N.J. 2015); Div. Mot. Sum. Disp., Exs. D and E (Opinion and Order). To the extent Desai argues a due process violation from the administrative proceeding, the Commission and the courts have repeatedly rejected "[s]uch broad attacks on the procedures of the administrative process." *Harding Advisory LLC*, Securities Act Release No 9561, 2014 WL 988532, at *8 (Mar. 14, 2014); *see also, e.g., Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978) (recognizing that agencies "should be free to fashion their own rules of

procedure”); *McClelland v. Andrus*, 606 F.2d 1278, 1285-86 (D.C. Cir. 1979) (federal procedural rules are inapplicable in administrative hearings).

CONCLUSION

For the foregoing reasons, the Commission should affirm the Initial Decision in all respects and uphold the industry and penny stock bars imposed on Desai.

Dated: November 29, 2016
Washington, DC

Respectfully submitted,


Christina M. McGill

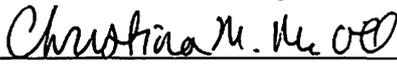
Attorneys for the Division of
Enforcement

David Stoelting
Senior Trial Counsel
3 World Financial Center
New York, NY 10285
(212) 336-0174
stoeltingd@sec.gov

Christina McGill
Senior Attorney
100 F Street, NE
Washington, DC 20549
(202) 551-5714
mcgillch@sec.gov

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Rule 450(d) that the Division of Enforcement's Brief in Opposition to Respondent Shreyans Desai's Personal Statement Filed in Support of Desai's Petition for Review dated November 29, 2016 complies with the length limitations set forth in the Commission's Order dated September 28, 2016. The Division's Brief is 4,588 words.


Christina M. McGill

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2016, I filed the Division of Enforcement's Brief in Opposition to Respondent Shreyans Desai's Personal Statement Filed in Support of Desai's Petition for Review dated November 29, 2016 with the Office of the Secretary of the Commission via hand delivery, and by e-mail to alj@sec.gov, and served copies on the following persons:

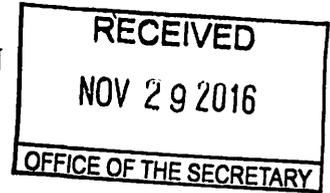
Brent J. Fields, Secretary (3 copies plus original, by hand)
Office of the Secretary
Securities and Exchange Commission
100 F Street N.E., Mail Stop 3628
Washington, DC 20549

Shreyans Desai. (e-mail to [REDACTED] and U.S. mail)
[REDACTED]
New Brunswick, NJ [REDACTED]
(Respondent, *pro se*)


Christina M. McGill



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



November 29, 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 Division of Enforcement's, Brief in Opposition to Respondent Shreyans Desai's Personal Statement Filed in Support of Desai's Petition for Review filed in connection with the above-referenced proceeding, along with a Certificate of Service and a Certificate of Compliance.

Respectfully submitted,

Christina M. McGill
Christina M. McGill

cc: Chief ALJ Brenda P. Murray, by e-mail (ALJ@sec.gov)
Shreyans Desai, *pro se*, by US Mail (New Brunswick, NJ) and by e-mail
[REDACTED]