UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20184

In the Matter of

MUNISH SOOD,

Respondent.

DIVISION OF ENFORCEMENT'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

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The Division of Enforcement ("Division") submits the following Reply Brief in Support of its Motion for Summary Disposition ("Motion") against Respondent Munish Sood ("Sood").

A. The Steadman Factors Support a Bar.

Sood was convicted of multiple felonies for actively participating in two criminal bribery schemes to obtain business as an investment adviser. His arguments for lesser sanctions under the *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 91 (1981), factors are not persuasive and largely misplaced.[1]

Factor one: Sood cannot dispute the egregious nature of the underlying conduct at issue – two separate bribery schemes that endangered the livelihoods of multiple student-athletes and assistant basketball coaches, as well as the athletic programs of several NCAA member universities. Instead, Sood attempts to downplay his role in the schemes by focusing on his co-conspirators' conduct, his sentence in the criminal case, and arguing that he did not make misrepresentations or misappropriate client funds. These arguments fail.

First, Sood's own admissions and the undisputed record demonstrate that he made or knowingly funded multiple bribes to multiple individuals involving multiple student athletes. Sood tries to obfuscate the scope of his misconduct by claiming the criminal complaints only identify two of his illegal payments (Response at 10), while ignoring that his own testimony at the criminal trials and the Department of Justice's ("DOJ") sentencing letter establish Sood's involvement in many more payments involving many more athletes. *See* Motion at ¶¶ 2-8 &

[1]Sood's Response does not contest that the predicate elements for sanctions have been satisfied (*e.g.*, a qualifying conviction) and further concedes that summary disposition is appropriate. Response at 1-2. Thus, the sole contested issue is whether a bar is in the public interest.

Exs. 2, 9 & 10.[2] Further, regardless of the conduct of Sood's co-conspirators, Sood's own conduct, standing by itself, was egregious. More so considering that, unlike the other criminal defendants, Sood held a position of trust as an investment adviser at the time he committed his crimes.

Second, the fact that the District Court did not sentence Sood to prison time following his cooperation with the DOJ does not diminish the egregiousness of the underlying misconduct he committed before cooperating. There is simply no question that in the securities industry, which is the context here, criminal bribery and wire fraud by a securities professional constitutes highly egregious conduct. Whether that conduct, in the criminal context, results in a prison sentence under the sentencing guidelines after a credit for cooperation and based on other sentencing factors is a different issue and not determinative under *Steadman*. To the contrary, the fact that Sood did not receive harsh consequences in the criminal case, if anything, weighs in favor of imposing a bar here to deter other investment advisers from engaging in similar conduct.

Third, Sood misses the mark in arguing that he did not make misrepresentations to prospective clients or misappropriate client funds. This follow-on proceeding is based on Sood's criminal conviction and not, for example, a civil district court action alleging misrepresentations that resulted in an injunction. Sood engaged in misconduct that resulted in multiple criminal convictions that, by statute, each give rise to sanctions in the public interest. That the OIP does not also allege other types of misconduct does not diminish the highly egregious conduct that Sood indisputably did commit.

[2] Contrary to Sood's assertion that the prosecutors would not consider Sood's conduct to be egregious (Response at 1), the DOJ's sentencing letter demonstrates otherwise and details that Sood committed serious and substantial criminal misconduct. *See* Sentencing Letter at 2-9 (Ex. 2). Exhibits cited herein were submitted with the Division's Motion.

Factor two: Sood's attempt to characterize his misconduct as a one-time lapse in judgment (*e.g.*, one improper trade) is simply not credible. Response at 13. Sood's conduct was far from isolated as he participated in two separate criminal schemes and paid, or knowingly funded, multiple bribes to multiple individuals over an approximately one-year period. In fact, the testimony excerpts and sentencing letter submitted with the Division's Motion establish that Sood engaged in bribery and other fraudulent criminal misconduct over and over again until he was caught. *See* Motion at ¶¶ 2-8 & Exs. 2, 9 & 10.

Factor three: That Sood acted with a high degree of scienter is also not reasonably in dispute. Sood pleaded guilty to multiple scienter-based felonies, and he admitted at his plea hearing that he knew what he was doing was wrong and that he was knowingly putting the student athlete's scholarships and eligibility at risk. *See* Ex. 6 at 26:1-15. Sood addresses this factor by claiming, without support, that he was not motivated by profit, while at the same time conceding in the next breath that what he really means is that he was not anticipating short-term profit from the schemes. Response at 14. This argument is also not credible. Sood admittedly participated in the bribery scheme for the purpose of securing advisory business, and the fact that he was arrested before he could obtain *all* the fruits of his illegal scheme does not reduce his scienter.[3] Whether Sood was seeking short-term profit, long-term profit, and/or notoriety and cache, Sood unequivocally acted knowingly and for his own personal gain.[4]

[3] *See Tzemach David Netzer Korem*, Exchange Act Rel. No. 70044, 2013 WL 3864511, at *5 (July 26, 2013) ("Korem participated in a fraudulent scheme to … obtain personal financial gain. . . [h]is failure to achieve the goals of that fraud does not mitigate the fact that he attempted to perpetrate a serious crime that was thwarted only because law enforcement intervened.")

[4] Sood's claim that he never intended to harm the student athletes is similarly unconvincing. Knowingly placing the athletes' futures at risk by paying undisclosed bribes is not consistent with putting their interests first. And his concession that he needs to "rebuild the trust of … [his] clients" (Response at 15) also reflects that Sood recognizes that his actions were not promoting his clients' welfare.

Factors four and five: Sood repeatedly attempts to downplay his crimes and culpability in his Response. This raises doubts about the sincerity of Sood's acceptance of responsibility and assurances about not engaging in future misconduct. And Sood's continued involvement with several of the student (now professional) athletes (*see, e.g.* Kyle Kuzma Dec. at ¶ 16), and his claims that he did nothing to harm the athletes or their universities, raises more doubts and establishes that Sood either does not understand, or is intentionally mischaracterizing, the nature of his misconduct.

Factor six: Sood concedes that, if allowed, he will continue to work in the securities industry, which will undoubtedly present him opportunities for future violations. Response at 15. Indeed, Sood submitted with Response declarations from several of the very clients he obtained through the bribery scheme that indicate he will continue to provide them with investment or other financial advice. *See, e.g.,* Kyle Kuzma Dec. at ¶¶ 5, 16; Devon Reed Dec. at ¶¶ 5, 14. This is troubling. Sood appears to take the position that because some of the athletes do not take issue with the bribes, the ends justify the means, and he should be allowed to keep his illegally obtained clients. However, Sood should suffer consequences for his criminal misconduct and not receive a windfall because his bribery scheme apparently worked (or be put in a position where he could again breach the trust of the very same athletes). It is in the public interest for the Commission to deter – not reward or condone – investment advisers obtaining clients through bribery. *See Schield Mgmt. Co.*, Exchange Act Rel. No. 53201, 2006 WL 231642, at *8 (Jan. 31, 2006) (deterrent effect of the sanction is relevant).

B. Harm to Investors Is Not Required.

Sood argues that he is entitled to a lesser sanction, because his conduct did not harm

investors. This argument is misplaced. While harm to investors and the marketplace are relevant considerations in some circumstances for determining whether sanctions are in the public interest, it is not expressly one of the *Steadman* factors and far from a prerequisite for a bar. At the outset, criminal convictions that warrant a bar do not necessarily involve investors, much less result in direct investor harm. *See Gary M. Kornman,* Exchange Act Rel. No. 59403, 2009 WL 367635, at *7 & n.28 (Feb. 13, 2009), *pet. denied*, 592 F. 3d 173 (D.C. Cir. 2010) (barring associated person based on conviction for making false statements to the Commission, recognizing that "the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business," and collecting cases imposing such bars).

Further, here it is undisputed that Sood's actions created a substantial risk of harm to his prospective student-athlete clients, the assistant coaches to whom bribes were paid, and NCAA member universities that were affected by the bribery scandal. The fact that Sood claims his criminal conduct did not end up causing harm despite the admitted risk, even if true, was merely fortuitous and should not reduce his sanction. *See, e.g., Kornman,* 2009 WL 367635, at *9 (Commission declining to give mitigating weight to fact that district court stated at sentencing that "no particular investor was directly harmed by [the] conduct…because "our focus is on the welfare of investors generally and the threat one poses to investors and the markets in the future."); *Korem*, 2013 WL 3864511, at *5 (Commission imposing bar without evidence of direct investor harm for the same reason).

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C. Sood Relies on Inapposite Authority.

Contrary to Sood's assertion that the Commission and its administrative law judges universally choose not to impose bars for cases with similar culpability levels (Response at 7), imposing a bar based on multiple felony convictions, including for bribery and conspiracy to commit wire fraud, is highly consistent with, and extensively supported by, prior precedent. *See, e.g., Mark J.* Moskowitz, Advisers Act Rel. No. 5728, 2021 WL 1718863, *4 (April 30, 2021) (imposing industry bar against investment adviser based on conviction for one count of wire fraud); *Kornman,* 2009 WL 367635, at *9; Joseph *P. Galluzzi*, Exchange Act Rel. No. 46405, 2002 WL 1941502, at *4-5 (Aug. 23, 2002); *Sheryans Desai,* Exchange Act Rel. No. 80129, 2017 WL 782152, at *4 (Mar. 1, 2017).

As Administrative Law Judge Foelak recently found:

> The Commission considers fraud to be especially serious and to subject a respondent to the severest of sanctions. Indeed, from 1995 to the present, there have been over fifty litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred—at least fifty unqualified bars and three bars with the right to reapply after five years.

Talman Harris and Victor Alfaya, Initial Dec. Rel. No. 1402, 2020 WL 5407727, at *8 (Sept. 2, 2020) (internal citation omitted).

Tellingly, Sood does not cite a single decision in which an investment adviser convicted of a felony received a sanction less than a bar without the right to reapply. In fact, none of the decisions Sood relies upon involve a sanction based on a felony conviction. For example, in *Khaled A. Eldaher*, Initial Dec. Rel. No. 857, 2015 WL 4881988, at *10 (Aug. 17, 2105), the sanctions were premised on the respondent "selling away" from his employer in violation of Exchange Act Section 15(a)(1). There was no allegation of fraud, much less a felony conviction.

In *Clarke T. Blizzard and Rudolph Abel,* Initial Dec. Rel. No. 229, 2003 WL 21362222, at *25 (June 13, 2003), the sanction was again not premised on a felony, and the respondent was found to have not acted with a high degree of scienter and in connection with an isolated violation that involved only one client. The other decisions that Sood cites, which also do not involve felony convictions or the type of intentional, egregious misconduct at issue here, are also easily distinguishable and provide no support for a lesser sanction.

D. Conclusion

For the foregoing reasons, and the reasons set forth in the Motion, the Division requests that the Commission grant its Motion and the relief requested therein.

June 10, 2021

Respectfully submitted,

KEEFE BERNSTEIN

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Service List

Pursuant to Rule 150 of the Commission's Rules of Practice, I certify that on June 10, 2021, the *Division of Enforcement's Reply Brief in Support of Its Motion for Summary Disposition* was filed using the eFAP system and that a true and correct copy was served electronically upon each person previously agreeing to accept document by electronic means. A copy of the foregoing document has also been provided to the APFilings@sec.gov mailbox.

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