UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20680

In the Matter of

JOHN A. PAULSEN,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT JOHN A. PAULSEN AND SUPPORTING MEMORANDUM OF LAW

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Pursuant to Rule 250 of the Commission's Rules of Practice, the Division of Enforcement ("Division") respectfully moves for summary disposition and an appropriate remedial action in the public interest against Respondent John A. Paulsen, namely the imposition of an industry bar from association pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"), and an industry bar from association pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act").

This action arises out of a federal district court action against Paulsen, a former analyst at broker-dealer Sterne, Agee & Leach, Inc. ("Sterne"), for aiding and abetting a pay-to-play scheme. On November 22, 2021, in *United States Securities and Exchange Commission v. John A. Paulsen*, Case No. 1:18-CV-6718-PGG (S.D.N.Y.), the district court entered a final judgment against Paulsen after a bench trial, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The undisputed facts, which the district court determined after Paulsen had a full and fair opportunity to litigate them, establish that the requirements for an associational bar have been satisfied and that a bar is in the public interest. Therefore, the Division's motion for summary disposition should be granted.

STATEMENT OF FACTS

A. The Court Permanently Enjoined Paulsen in the SEC's Action.

On July 26, 2018, the SEC filed a complaint against Paulsen, alleging that he knowingly aided and abetted a pay-to-play scheme by entertaining a New York state employee. The complaint alleged that, from early 2014 until February 2016, Navnoor S. Kang was the Director of Fixed Income of the New York State Common Retirement Fund (the "Fund"), with investment responsibility for approximately $50 billion of the Fund's assets. (Ex. A, Complaint

¶¶ 2, 14, 65.)[1] The complaint further alleged that Kang used his position at the Fund to solicit and receive improper entertainment from Paulsen and Deborah D. Kelley, a registered representative at Sterne. In exchange, Kang directed millions of dollars in state business to Sterne, generating sizable commissions. (*Id*. ¶¶ 3, 55.) The complaint further alleged that Paulsen and Kelley planned a ski trip for the purpose of entertaining Kang and his girlfriend. The complaint alleged that Kang told Paulsen and Kelley that the Fund had very strict rules that prohibited him from accepting anything from Paulsen. (*Id*. ¶¶ 4, 28, 34-36.) Yet, according to the complaint, Paulsen and Kelley spent thousands of dollars entertaining Kang and his girlfriend. Paulsen and Kelley then sought reimbursement of those expenses from Sterne, and submitted false expense reports that concealed the fact they had entertained Kang on the trip. (*Id*. ¶¶ 3, 5, 36-41.) The complaint alleged that later, when Sterne discovered inconsistencies in the expense reports and began an internal investigation, Paulsen and Kelley conspired to lie, and did lie, to the broker-dealer's internal investigators. (*Id*. ¶¶ 6, 56-64.) The complaint charged Paulsen with four counts of aiding and abetting Kang's and Kelley's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

On October 23, 2020, after a 3-day bench trial, the district court issued a Memorandum Opinion and Order finding that Paulsen was liable for aiding and abetting Kang's and Kelley's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. (Ex. B, Mem. Op. & Order at 32.) On October 28, 2021, the district court held that a civil penalty of $100,000 was appropriate for Paulsen's fraudulent conduct. (Ex. C., Order at 6-7.) On November 22, 2021, the district court entered a final judgment enjoining Paulsen from committing future violations of Section 17(a) of the Securities Act and Section 10(b) of the

[1] The Exhibits are appended to the Declaration of Alyssa A. Qualls, filed contemporaneously herewith.

Exchange Act and Rule 10b-5 thereunder, and ordering him to pay the $100,000 civil penalty. (Ex. D, Final Judgment.)

B. Paulsen Aided and Abetted Kang's and Kelley's Fraudulent Scheme.

The district court's opinion finding that Paulsen aided and abetted securities fraud contains extensive factual findings regarding Paulsen's role in the pay-to-play scheme. As relevant here, the district court found:

Between 2013 and 2015, Paulsen was a managing director in the New York City office of Sterne, a registered broker-dealer. After leaving Sterne, from 2015 through 2018, Paulsen worked as the head of research for a registered investment adviser. Kelley was a sales representative at Sterne, and Navnoor Kang was Director of Fixed Income and Head Portfolio Strategist for the Fund. The Fund was one of Sterne's clients. (Ex. B, ¶¶ 1, 3 5, 6, 18.)

As of August 2014, both Kelley and Paulsen knew that Kang (as a Fund fiduciary) was prohibited from accepting gifts or benefits of any kind. (*Id*. ¶¶ 14, 17.) Kelley and Paulsen also knew that Sterne required them to abide by the Fund's rules. (*Id*. ¶ 11.) Despite this knowledge, Kelley provided thousands of dollars' worth of benefits and entertainment to Kang between August 2014 and 2015, including a VIP Paul McCartney concert, meals, and entertainment. (*Id*. ¶¶ 15-16, 29, 32-34.)

Paulsen aided and abetted Kang's and Kelley's pay-to-play scheme in connection with one such improper benefit: a ski trip to Park City, Utah in February 2015, which Paulsen, Kelley, Kelley's husband, Kang, and Kang's girlfriend attended. (Ex. B, ¶¶ 28-29.) Paulsen and Kelley spent $12,692 on the ski trip – including expenses related to a hotel room and food for Kang and Kang's girlfriend. Paulsen and Kelley later submitted all of their expenses to Sterne for reimbursement. Kelley and Paulsen omitted any reference to Kang and Kang's girlfriend in their

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expense reports, and instead falsely claimed that other firm clients were present in Park City. (*Id*. ¶¶ 29, 32-34.)

After Paulsen and Kelley submitted their false expense reports, they exchanged messages in which they agreed that: "Lo[o]se lips sink ships! No talky re ski trip si vous plait." They further agreed to tell another trader to "stay quiet" about the presence of Kang and Kang's girlfriend on the ski trip and to conceal their expenditures related to Kang-related hotel and food charges from their expense reports. (*Id*. ¶ 38) In the same message exchange, Paulsen also referenced an energy trade that Sterne had just executed on behalf of the Fund. The district court found that Paulsen's discussion of the energy trade with a Sterne trader in connection with the ski trip, and Paulsen's admonishment of that trader and another research to stay quiet, establishes that Paulsen understood that Kelley had provided the ski trip to Kang in exchange for trading business from the Fund. (*Id*. ¶¶ 39-45.) Notably, Sterne's trading commissions from the Fund increased by approximately 200 percent after the ski trip. (*Id*. ¶ 46.)

Shortly after Paulsen left Sterne for an investment adviser in March 2015, Sterne hired outside counsel to investigate Kelley's expense reports. These lawyers contacted Paulsen in April 2015 to arrange an interview. Paulsen then contacted Kelley about the investigation, and the two agreed that Paulsen would delay his interview until after Kelley's interview, so that Paulsen could learn what the investigators asked and how Kelley responded. (Ex. B., ¶ 47.) During Kelley's interview on April 29, 2015, Kelley lied to investigators about the ski trip in order to conceal that she and Paulsen had included expenses for Kang and Kang's girlfriend on their expense reports. Kelley relayed to Paulsen the lies she had told investigators, and Paulsen largely repeated those lies during his interview on May 4, 2015. (*Id*. ¶¶ 48-50, 53.)

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The district court specifically found that Paulsen's trial testimony about his reasons for lying to investigators were not credible. (Ex. B., ¶¶ 53-56.) Paulsen lied to investigators to protect himself, not Kang.

> . . . [Paulsen] understood that Kelley and Kang had a *quid pro quo* relationship in which she provided gifts and entertainment to Kang in exchange for Fund business; that this relationship was illegal; and that given his own role in providing benefits to Kang, he could also be in jeopardy if he told the truth. Although Paulsen claims that his primary concern was obtaining reimbursement for his Park City expenses, he was no longer employed by Sterne [] when he was interviewed by the [] lawyers. Accordingly, his lies to them were not motivated by concerns about expense reimbursement. Instead, Paulsen lied because he understood that Kang and Kelley were engaged in an illegal *quid pro quo* relationship, and that his involvement in the Park City trip presented some risk to him.

(Ex. B. ¶ 56 (internal citations omitted).)

Kang and Kelley were charged with conspiracy to commit securities fraud, among other things. In 2017, Kang and Kelley each pleaded guilty to conspiracy to commit securities fraud and honest services wire fraud, for which they were sentenced to 21 months' imprisonment and three years' probation, respectively. (Ex. B. ¶¶ 57-71.) The district court found that Kang and Kelley each committed securities fraud through a *quid pro quo* arrangement in which Kelley provided entertainment to Kang in exchange for Kang steering Fund business to Sterne. (Ex. B at 25.)

As to Paulsen's knowledge of these primary violations, the district court found that "Paulsen knew there was an illegal *quid pro quo* arrangement between Kang and Kelley, and feared that his involvement in the Park City trip might present a risk to him." (*Id*. at 28.) The district court found that these conclusions "flow directly" from Paulsen's conduct, including: "his submission of a false and fabricated expense report for the first time in his thirty-year career"; "his repeated lies at his first-ever meeting with outside counsel"; his association of the ski trip with an energy trade Sterne made on behalf of the Fund right after the trip; his direction

to others to "stay quiet" about the ski trip; and his admission that, by the time he got back from the trip, he knew something was "very wrong." (*Id*. at 28-29.)

The district court also found that Paulsen substantially assisted this illegal arrangement by: paying for Kang and his girlfriend's meal on the trip; agreeing with Kelley to submit false expense reports concerning the ski trip and then submitting false and fabricated expense reports; agreeing with Kelley to conceal the ski trip and instructing others to "stay quiet"; and agreeing with Kelley to lie to the outside counsel investigators, and repeatedly lying thereafter during his interview. (Ex. B. at 28-31) (internal citations omitted).)

On the basis of these factual findings and conclusions of law, this district court found Paulsen liable for (1) aiding and abetting Kelley's violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act (Count One); (2) aiding and abetting Kelley's violations of Section 10(b) of the Exchange Act and Rule 10b-5 (Count Two); (3) aiding and abetting Kang's violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act (Count Three); and (4) aiding and abetting Kang's violations of Section 10(b) of the Exchange Act and Rule 10b-5 (Count Four). (Ex. B at 32.)

C. The Commission Initiated This Follow-On Administrative Proceeding.

On December 16, 2021, the Commission instituted this proceeding pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. Paulsen agreed to waive service of the Order Instituting Proceedings ("OIP") on January 5, 2022. (Ex E, OIP.) The Division informed Paulsen that, in 2019, it produced its investigative file to him in connection with the district court action. (Ex. F, Joint Statement Regarding Prehearing Conference ¶ 2.)

Paulsen answered the OIP on March 7, 2022. (Ex. G, Answer.) In his Answer, Paulsen did not dispute the allegations set forth in the OIP. Rather, Paulsen contends the Division cannot establish that it is in the public interest to impose additional remedial sanctions against him

because of his allegedly aberrant behavior, his relative culpability to Kang and Kelley, the absence of investor losses, his role in the ski trip, and the absence of financial benefit, among other things. (*Id*. ¶ 5.)

On March 21, 2022, the parties agreed that the only issue to litigate is the appropriate sanction, if any, for the permanent injunction enjoining Paulsen from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. (Ex. F ¶ 1.)

ARGUMENT

A. Summary Disposition is Appropriate.

Rule 250(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(b), provides that after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying, a party may move for summary disposition of any or all allegations of the OIP. Summary disposition may be granted if the "undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(b).[2]

Summary disposition is particularly appropriate in proceedings such as this, where the administrative proceeding is based on a civil injunction. *See Herman*, 2019 WL 1529572, at *3 ("The Commission has repeatedly upheld use of summary disposition in cases such as this one,

[2] Under Rule 323, "official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body." 17 C.F.R. § 201.323; *see, e.g., Rosalind Herman*, Initial Dec. Rel. No. 1371, 2019 WL 1529572, at *2 n.16 (Apr. 5, 2019) (taking official notice of criminal case docket, orders issued in the criminal case, and investment adviser's Form ADV); *Robert Burton*, Initial Dec. Rel. No. 1014, 2016 WL 3030850, at *2 (May 27, 2016) (taking official notice of docket reports and court orders from criminal and civil cases); *Application of Eric David Wanger*, Rel. No. 34-79008, 2016 WL 5571629, at *2 & n.11 (Sept. 30, 2016) (taking official notice of documents and information filed in the Central Registration Depository maintained by FINRA).

where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction."); *see also Gary M. Kornman*, Rel. No. 34-59403, 2009 WL 367635, at *10 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson,* Rel. No. 34-57266, 2008 WL 294717, at *5 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009).

The predicate facts for the requested bars have been established through the Memorandum Opinion and Order finding Paulsen liable for aiding and abetting Kang's and Kelley's securities fraud scheme and the permanent injunctions the district court imposed in Paulsen' final judgment. Where, as here, facts have been litigated and determined in an earlier judicial proceeding, a respondent may not relitigate them in an administrative proceeding. *Peter J. Eichler, Jr.,* Initial Dec. Rel. No. 1032, 2016 WL 4035559, at *2 (July 8, 2016) ("It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial.") (collecting cases); *James E. Franklin,* Rel. No. 34-56649, 2007 WL 2974200, at *4 & n.13 (Oct. 12, 2007), *pet. denied,* 285 F. App'x 761 (D.C. Cir. 2008).

B. Imposition of a Permanent Bar is Appropriate.

Section 15(b)(6)(A) of the Exchange Act provides that the Commission may bar from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization any person who has a qualifying conviction or injunction and who was associated with a broker at the time of the alleged misconduct. 15 U.S.C. § 78o(b)(6)(A). Similarly, Section 203(f) of the Advisers Act provides for an identical associational bar for a person with a qualifying conviction or injunction who at the time of the misconduct was associated with an investment adviser. 15 U.S.C. § 80b-3(f). To impose a bar under either provision, the Commission must find that a bar is in the public

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interest. Section 15(b)(6)(A) of the Exchange Act, 15 U.S.C. §§ 78o(b)(6)(A); Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f).

1. Paulsen's permanent injunction satisfies the requirements for imposing a bar.

A bar may be imposed pursuant to Section 15(b)(6) of the Exchange Act or Section 203(f) of the Advisers Act on the basis of certain qualifying criminal convictions or injunctions. 15 U.S.C. § 78o(b)(6)(A)(ii), (iii); 15 U.S.C. § 80b-3(f). In this case, the permanent injunction imposed in the district court action is sufficient to give rise to a bar.

The permanent injunction against Paulsen's future violations of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder enjoins conduct or practices in connection with the activity of an investment adviser, broker, or dealer, or in connection with the purchase or sale of any security. *See* Section 15(b)(4)(C), 15 U.S.C. § 78o(b)(4)(C); Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4); *see also* Ex. D, Final Judgment. Accordingly, Paulsen's permanent injunction falls within the categories of injunctions that may give rise to a bar.

2. Paulsen was associated with a broker-dealer and an investment adviser at the time of his misconduct.

In finding Paulsen liable for aiding and abetting securities fraud, the district court found that he was associated with a broker-dealer and an investment adviser in connection with his misconduct. Specifically, the district court found that Paulsen was a managing director at a registered broker-dealer at the time he aided and abetted Kang's and Kelley's pay-to-play scheme in connection with February 2015 ski trip, and he was head of research at an investment adviser when he lied during the internal investigation to cover up his involvement. (Ex. B ¶¶ 1, 3, 28-56.) Paulsen has never disputed either of these facts, either in the district court or in this proceeding. Accordingly, this Court should conclude that Paulsen is a person associated with a

broker-dealer and an investment adviser. *See* Section 3(a)(18) of the Exchange Act, 15 U.S.C. § 78c(a)(18) (defining "person associated with a broker or dealer" to include or "any employee of such broker or dealer," provided his or her functions are not "solely clerical or ministerial"); Section 202(a)(17) of the Advisers Act, 15 U.S.C. § 80b-2(a)(17) (defining "person associated with an investment adviser" to include "any employee of such investment adviser," provided his or her functions are not "clerical or ministerial").

3. Imposing a permanent bar is in the public interest.

In determining whether a particular sanction is in the public interest, the Commission considers the following six factors: (1) the egregiousness of the defendant's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the defendant's assurances against future violations; (5) the defendant's recognition of the wrongful nature of his conduct; and (6) the likelihood that the defendant's occupation will present opportunities for future violations. *Peter Siris*, Rel. No. 34-71068, 2013 WL 6528874, at *5 (Dec. 12, 2013 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). The inquiry is a flexible one, with no single factor being dispositive. *Id*.

The Commission has recognized that a permanent bar is particularly appropriate in cases, like this one, involving a previous injunction against violations of the antifraud provisions of the securities laws. *See Marshall E. Melton*, Rel. No. IA-2151, 2003 WL 21729839, at *9 (July 25, 2003) ("[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry, . . . a respondent who is enjoined from violating the antifraud provisions."); *see also Siris*, 2013 WL 6528874, at *6 ("We have repeatedly held that 'conduct that violates the

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antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws.'").

a. Paulsen's violations were egregious and intentional.

As the district court recognized in determining the amount of the civil penalty, Paulsen's conduct was egregious and involved a high degree of scienter. Addressing these factors, the district court stated that "Paulsen was aware that his conduct was illegal; he lied repeatedly to deceive his employer and investigators about the improper benefits to Kang." (Ex. C. at 6.)

The evidence establishes that Paulsen's conduct was egregious and involved a high degree of scienter. In participating in this scheme, Paulsen had numerous opportunities to turn back, but at each turn he doubled-down. Paulsen knew Kang was prohibited from being entertained, but Paulsen agreed to go on the ski trip anyway and participated in the entertainment of Kang and his girlfriend. (Ex. B. ¶¶ 14, 17, 27-29.) Paulsen admitted that that he knew something was "very wrong" by the time he got back from the trip, but he conspired with Kelley to cover up the trip and submitted a false and fabricated expense report and instructed others to conceal his misconduct. (Ex. B. ¶¶ 32-44.) He repeated lies to cover up his own wrongdoing. (Ex. B. ¶¶ 47-56.) And his juxtaposition of the ski trip with an energy trade Sterne made on behalf of the Fund right after the trip proves that Paulsen knew exactly what he and Kelley were buying from Kang – weekly commissions, which increased 200 percent after the ski trip. (Ex. B. ¶¶ 38-46.)

b. Paulsen still has not recognized the wrongful nature of his conduct.

A permanent injunction is also warranted because Paulsen has still not recognized the wrongful nature of his conduct. At trial, Paulsen repeatedly attempted minimize his role in the misconduct. Nevertheless, each and every time, the district court found that Paulsen's testimony was not credible. For example, the district court found that Paulsen's purported reliance on the

fact that Kelley's boss had approved the ski trip was not credible. In light of his thirty years' experience in the highly-regulated financial services industry, Paulsen could not have reasonably believed that Kelley's boss could override Sterne's policies. (Ex. B ¶ 27.) Similarly, the district court found that Paulsen was not credible when he testified that "he didn't know anything" about the energy trade because he did not cover that sector and he did not understand that there was any "relationship" between the trade and the ski trip. (*Id*. ¶¶ 41-42.) Finally, the district court found that Paulsen was not credible when he testified that he did not think the internal investigation was a "big deal," and that he only lied in the internal investigation to protect Kang (who was not his friend) to obtain a few hundred dollars in reimbursements (when he had already left Sterne). (*Id*. ¶¶ 53-56.) Rather, the district court found that Paulsen lied to investigators because he knew that Kang and Kelley were engaged in an illegal *quid pro quo* relationship and that his involvement in the scheme presented some risk to him. (*Id*. ¶ 56.)

In his Answer to the OIP, Paulsen raises numerous arguments suggesting that he is still attempting to minimize his conduct and has not accepted any responsibility. He characterizes his own conduct as "isolated and relatively minor when viewed in the context of Kelley and Kang's pay-to-play scheme" (Ex. G. ¶ 5(b)); claims his role in the ski trip was "minimal" (*id*. ¶ 5(e)); suggests his conduct should be somehow excused in light of Sterne's overall encouragement of client entertainment (*id*. ¶ 5(d)); and claims he should be afforded leniency because he did not benefit financially from the fraud (since he already left Sterne before bonuses could be distributed) and there is no evidence that investors suffered any losses (*id*. ¶ 5(c), (f)).

None of these arguments are true or persuasive. Paulsen was an integral participant in the ski trip pay-to-play scheme and its concealment. Paulsen actively entertained Kang on the trip and then lied about repeatedly – on his false and fabricated expense report, by telling others to

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stay quiet, and by providing a false cover story to investigators. (Ex. B ¶¶ 28-56.) Paulsen did not have a minor or minimal role in this offense.

Moreover, the fact that there was no evidence adduced at trial that investors were harmed by this scheme is no excuse. Sterne's weekly commissions from the Fund increased nearly 200 percent after the ski trip. (Ex. B ¶ 46.) Those profits would have been factored into Paulsen's discretionary bonus had he not left the firm shortly after the ski trip. (*Id*. ¶ 4.) Accordingly, it is merely happenstance that Paulsen did not benefit financially from this scheme.

c. The remaining *Steadman* factors weigh in favor of a permanent bar.

A bar is also appropriate and in the public interest to prevent Paulsen from engaging in future violations. While Paulsen claims that "it is unlikely he will find employment without great difficulty in the securities industry" (Ex. G ¶ 5(g), (h)), notably Paulsen neither precludes the possibility that he will work in the securities industry again nor sincerely assures the Court against the potential of future violations. Indeed, if Paulsen did not want to work in the industry again there would be no reason to contest an industry bar at all. Accordingly, there is some likelihood that Paulsen's occupation will present opportunities for future violations.

In similar pay-to-play schemes, the Commission has imposed substantial industry bars following permanent antifraud injunctions in pay-to-play schemes. *See, e.g., Deborah D. Kelley*, Rel. No. 34-82828, 2018 WL 1234190 (Mar. 19, 2018) (settled order imposing permanent bar for primary violator in same scheme as Paulsen); *Neil M.M. Morrison*, Rel. No. 34-69627, 2013 WL 2253158 (May 23, 2013) (settled order imposing bar with right to reapply after five years for registered representative involved in pay-to-play scheme). Indeed, Kelley has been permanently barred from the industry for this very pay-to-play scheme.[3]

[3] Kang was not barred because as a Fund employee he was not associated with either a broker-dealer or an investment adviser.

Paulsen contends that since he has been effectively barred from the industry since 2018 (when he was fired from his position at the investment adviser), any further industry bar is unwarranted.[4] This argument is not persuasive. Paulsen should not receive credit for the time his case was pending. Otherwise, respondents will simply delay proceedings to avoid an industry bar for their conduct.

CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted and that an order be entered against Respondent John A. Paulsen permanently barring him from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

Dated: April 18, 2022

Respectfully submitted,

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[4] Paulsen's citations (Ex. G. ¶ 5(i)) are distinguishable. *See Clark T. Blizzard and Rudolph Abel*, Initial Dec. Rel. No. 229, 2003 WL 21362222, at *25 (June 13, 2003) (ordering 90-day suspension where respondent only acted recklessly); *Howard M. Brenner*, Rel. 34-43960, 2001 WL 121984 (Feb. 14, 2001) (settled order imposing six-month suspension for failing reasonably to supervise others in pay-to-play scheme).

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In the Matter of
JOHN A. PAULSEN,
Respondent.

I hereby certify that I caused a true copy of the foregoing Division of Enforcement's Motion for Summary Disposition against Respondent John A. Paulsen and Supporting Memorandum of Law to be served on the following on this 18th day of April 2022, in the manner indicated below:

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