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 REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT JOHN A. PAULSEN

Pursuant to Rule 250 of the Commission's Rules of Practice, the Division of Enforcement ("Division") respectfully submits this reply brief in support of its motion for summary disposition and the imposition of associational industry bars against Respondent John A. Paulsen, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.

ARGUMENT

Permanent Bars Against Paulsen Are in the Public Interest.

As an initial matter, contrary to Paulsen's suggestion (Opp'n Br. at 2 n.2), permanent industry bars against Paulsen are appropriate and in the public interest due to the permanent injunction the district court already imposed for his violations of the antifraud provisions of the securities laws. (Qualls Decl., Ex. D, Final Judgment.) As the Commission has held, the fact that a person has been permanently enjoined by judgment of any court of competent jurisdiction from violating the antifraud provisions, as here, has "especially serious implications for the public interest." *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 Michael T. Studer*, Rel. 34-50411, 2004 WL 2104496, at *4 (Sept. 20, 2004) (holding in public interest to impose permanent bar based on injunction from violating antifraud provisions). Under such circumstances, courts have upheld permanent industry bars. *See, e.g.*, *Gibson v. SEC*, 561 F.3d 548, 555 (6th Cir. 2009) (denying petition for review of permanent industry bar based on permanent injunction and *Steadman* factors).

The factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), also demonstrate that it is in the public interest to

permanently bar Paulsen from the industry.[1] *Peter Siris*, Rel. No. 34-71068, 2013 WL 6528874, at *5 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). As the evidence established and the district court recognized, Paulsen's conduct was egregious and involved a high degree of scienter. (Division's Mem. of Law at 11 (citing Qualls Decl., Ex. C at 6; Ex. B ¶¶ 14, 17, 27-29, 32-56).)

While Paulsen did not profit from aiding and abetting the pay-to-pay scheme, he would have profited through his annual discretionary bonus had he not left Sterne for a new position at an investment adviser. (Ex. Qualls Decl., Ex. B ¶¶ 4, 46 (Sterne's weekly commissions from the Fund increased nearly 200 percent after the ski trip).) Moreover, contrary to Paulsen's assertion (Opp'n Br. at 4), the district court never found that Paulsen was not motivated by pecuniary gain. Rather, the district court found that Paulsen's motive in lying during the internal investigation was not to protect Kelley and Kang, as he falsely claimed, but to "protect himself" because he understood that his involvement in the pay-to-play scheme "presented a risk to Paulsen." (*Id*. at 31.)

The fact that the Division did not charge Kelley's supervisor is irrelevant to this court's determination of whether a permanent industry bar against Paulsen is in the public interest. Kelley's supervisor did not illicitly entertain Kang in violation of Sterne's and the Fund's rules, file a false expense report, or lie repeatedly during an internal investigation. (Qualls Decl. Ex. B ¶¶ 28-29, 32-34, 47-500, 53-56.) While Kelley's supervisor knew that Kang would attend the trip and that Paulsen was would seek reimbursement for Paulsen's expenses (*id*. ¶ 26), there was no

[1] These factors include: (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. *Id*.

evidence adduced at trial that Kelley's supervisor specifically approved expensing payments for Kang and his girlfriend. If the supervisor had explicitly approved of Paulsen's conduct, surely Paulsen would have called him as a witness in his defense. The fact that he did not is telling.

Finally, Paulsen has still not demonstrated any contrition for his misconduct. Paulsen has continuously denied that he was aware that Kelley and Kang were involved in a pay-to play scheme. Even after the district court specifically found that each of his self-serving explanations were not credible (Qualls Decl., Ex. B ¶¶ 27, 41-42, 53-56) and that Paulsen ***was aware*** of the *quid pro quo* scheme (*id*. at 28-30), which is an element of the adding and abetting charges, Paulsen has not admitted his misconduct or accepted responsibility for his actions. Indeed, Paulsen simply reasserts that he knew it was wrong to entertain a public fund employee and states that he accepts the district court's ruling, without ever admitting that he knew about the pay-to-play scheme or expressing any remorse for his participation in the scheme. (Opp'n Br. at 6-7.)

Accordingly, permanent associational bars against Paulsen are in the public interest.

CONCLUSION

For the foregoing reasons and the reasons stated in its Memorandum of Law, 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

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broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Dated: June 6, 2022

Respectfully submitted,

DIVISION OF ENFORCEMENT

/s/ Alyssa A. Qualls

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I hereby certify that I caused a true copy of the foregoing Division of Enforcement's Reply in Support of its Motion for Summary Disposition against Respondent John A. Paulsen to be served on the following on this 6th day of June 2022, in the manner indicated below:

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