UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21400

In the Matter of

MICHAEL SZTROM and
DAVID SZTROM,

Respondents.

RESPONDENTS DAVID SZTROM'S AND MICHAEL SZTROM'S OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO COMMISSION RULE OF PRACTICE 250

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Respondents David Sztrom and Michael Sztrom respectfully oppose the Motion for Summary Disposition filed herein for the reasons set forth below and in the accompanying evidence on the grounds that there are substantial questions of material fact and additional facts and witnesses to be presented in the future, and it is imperative that the Hearing Officer have an opportunity to evaluate the substance and credibility of such facts and witnesses, including hearing directly from the Sztroms to understand their perspectives and state of mind, before determining whether any further sanction of the Sztroms is warranted in the public interest.

I. INTRODUCTION

The Division of Enforcement's (the "Division") pending motion for Summary Disposition (the "Motion") seeks to deprive Respondents David Sztrom ("David") and his father Michael Sztrom ("Michael") (collectively, "Respondents" or the "Sztroms") of their right to have the Hearing Officer hear from them directly in a live hearing in order to evaluate, among other things, their credibility, sincerity and state of mind, as well as additional important facts that the Division did not include in its Statement of Material Facts (cited as "SMF No. _"). It is imperative that the Hearing Officer have the opportunity to fully and fairly evaluate all of the relevant facts and other considerations necessary to determine whether any further sanction of the Sztroms is appropriate and in the public's interest. As demonstrated below, and as will be presented more fully at the Hearing, additional facts submitted by the Sztroms will support a conclusion by the Hearing Officer when assessing the *Steadman*[1] factors that:

- The Sztroms possessed the lowest degree of scienter in connection with the Divisions' allegations;
- There is no likelihood of recurrence of the alleged violations;

[1] *See infra* at Section V.A. (discussing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), and its progeny).

- The Sztroms' alleged violations involved a low degree of egregiousness as, among other factors, no customers incurred any damages or losses whatsoever, and the Chief Executive Officer and the Chief Compliance Officer of the Registered Investment Adviser working with the Sztroms, as well as representatives from the account custodian Charles Schwab, approved of and/or facilitated many aspects of their challenged actions;

- The Sztroms recognize their errors and are committed to full and complete compliance with all aspects of the securities laws in the future, which is consistent with the fact that they both have continued to work as investment advisers without any violations or other issues for *six years* since the time of the events at issue; and

- The Sztroms have already suffered substantial adverse consequences from their actions and the Division's allegations, and the further extreme permanent bar sanction sought by the Division would be improperly punitive and not remedial.

While the U.S. Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice authorize summary disposition motions, the SEC also has expressly recognized that in disciplinary cases, such as this one where the degree of scienter and egregiousness must evaluated by the Hearing Officer, "a hearing will still often be necessary in order to determine a respondent's state of mind and the need for remedial sanctions if liability is found." Comment to Rule 250 of the SEC's Rules of Practice.

Beyond attempting to hamper the Sztroms' right to a full hearing, the Division is vastly overreaching by seeking a *permanent* bar of both of the Sztroms based on the entry of a "neither admit nor deny" civil injunction where *none* of their investment advisory clients are even alleged to have suffered any losses or harm whatsoever. There simply is no precedent for such an onerous and punitive sanction and the Division's gambit to short circuit the Sztroms' right to a full hearing must fail.

II. PROCEDURAL BACKGROUND

Respondents adopt the Division's summary of the procedural background of the settled civil enforcement case against the Sztroms, *SEC v. Michael Sztrom, et al.*, Civil Action No. 3:21-

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cv-00086-H-RBB (S.D. Cal.) ("District Court Action"), and this follow-on proceeding pursuant to Section 203(f) of the Advisers Act (the "OIP Action").

III. THE HEARING OFFICER MUST CONSIDER ADDITIONAL COMPELLING FACTS TO DETERMINE WHETHER THE EXTREME SANCTION SOUGHT BY THE DIVISION IS IN THE PUBLIC INTEREST

The Division summarizes the allegations in the Commission's settled complaint[2] against the Sztroms as alleging that from November 2015 through March 2018 they "breached their fiduciary duties and defrauded the clients whom they advised through APA" [Advanced Practice Advisors, LLC], an SEC-registered investment advisor, by "concealing that Michael Sztrom was: (1) not associated with any investment advisor, (2) prohibited from providing investment advice under the aegis of the clients' registered investment advisor, and (3) was impersonating his son David Sztrom on telephone calls with [APA's] clearing broker [Charles Schwab], leading the clearing broker to terminate its agreement with [APA]." (Division's Opening Brief ("Op. Br."), at 3-4). And while the Sztroms do not contest that summary as Rule 250 of the Commission's Rules of Practice provides that the facts of the pleadings against whom a motion for summary disposition is made shall be taken as true, that rule also provides that such facts made by modified by uncontested affidavits. As described in Respondents' Statement of Additional Facts (cited as "Add'l Fact No. _"), filed concurrently herewith and described below, there numerous additional facts and circumstances to be presented and considered that will substantially bear upon the Hearing Officer's determination of whether the public interest is served by imposing the career-ending relief sought by the Division, including, but not limited to, multiple admissions

[2] Without admitting or denying the Commission's allegations, the Sztroms each settled the underlying civil case by consenting to the entry of injunctive relief and the payment of a $25,000 civil money penalty. See Exhibit 5 to the Declaration of Lynn M. Dean in Support of the Division's Motion for Summary Disposition ("Dean Decl.").

in documents and under oath in a deposition by the main witness repeatedly relied upon by the Division (Paul Spitzer, APA's Chief Executive Officer ("CEO"), referred to by the Division as "Individual 1") and evidence that APA, its CEO and its Chief Compliance Officers ("CCO"), as well as APA's clearing/custodian broker Charles Schwab ("Schwab"), knew about, participated in, and in some respects even encouraged many of Michael Sztrom's activities challenged by the Division, which are not articulated in the Division's brief, Statement of Facts or the complaint in the District Court Action.

It also is important for the Hearing Officer to understand what the Division's underlying lawsuit, which the Sztroms voluntarily settled without any adjudicated finding of liability, actually was and was not about. It did not involve any harm or damage to any investor or customer. Nor did it involve any allegations of misappropriation, lost money or anything of the sort. Rather, it stemmed from a lapse in registration *8 years ago* when Michael Sztrom helped his then recently-licensed son (David) in the transition Michael's advisory clients to David's control at a time when the father left a major investment advisor and did not yet have an active affiliation with a new one (both Michael and David now have been associated with another Registered Investment Adviser without incident since April 2018). (Add'l Fact Nos. 1-2).[3]

It is also important to understand that many aspects of the Commission's claims against the Sztroms were based on statements by Mr. Spitzer during his investigative testimony, which have been proven to be incomplete in some respects and simply false in others. Notably, the Division also fails to disclose that both APA and Mr. Spitzer were sanctioned by the Commission based

[3] See also Declaration of Sean T. Prosser ("Prosser Decl."), Ex. 1 (letter from Michael Young, President of Integrated Advisors Network ("Integrated"); Declaration of Michael Sztrom ("M. Sztrom Decl.") ¶ 2; Declaration of David Sztrom ("D. Sztrom Decl.") ¶ 2, all filed currently herewith in support of Respondents' Statement of Additional Facts).

on, among other things, their failure to properly supervise and other compliance failures. *In the Matter of Advanced Practice Advisors, LLC and Paul C. Spitzer,* Admin. Proc. File No. 3-20204 (Jan. 14, 2021).

In the Fall of 2015, Michael and David Sztrom contacted Mr. Spitzer, seeking to associate with APA. (Compl. ¶ 3). While the Commission alleged that Mr. Spitzer agreed to only David Sztrom, but not his father Michael, associating with APA due to a supposed ongoing FINRA investigation regarding Michael stemming from his prior employment (SMF Nos. 17-18),[4] Mr. Spitzer testified at his deposition in the underlying litigation that he consented to Michael Sztrom "assisting" David Sztrom with their APA clients and acting as a "consultant" with respect to the same clients and their accounts. (Add'l Fact No. 3). Further, substantial evidence reveals, among other things, that APA, its CEO (Spitzer) and CCOs (Bob Roche and Jill Young), as well as Charles Schwab representatives, approved, facilitated and/or knew about Michael's challenged actions, as described below and more fully in Respondents' Statement of Additional Facts, including, but not limited to, the following:

- Approving Michael to have "View Only" access to the Schwab platform, including customer account information and complete portfolio information. (*Compare* Add'l Fact No. 4 with *e.g.*, Compl. ¶ 51 (criticizing Michael's access to customer information, balances and portfolios)).

- Approving Michael to use the Schwab platform for research purposes. (*Compare* Add'l Fact No. 5 with Compl. ¶ 47 (criticizing Michael's access to Schwab platform for research purposes)).

[4] Notably, this allegation appears to be false as no FINRA investigation related to Michael Sztrom and UBS existed until at least late December, 2015 after the Sztroms began to work with APA, and Michael did not know about it until 2016. (Add'l Fact No. 20). In any event, the FINRA investigation was closed as of October 31, 2016 with no enforcement recommendation. (Add'l Fact No. 21).

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- Approving Michael to use a tool for customer portfolio rebalancing. (*Compare* Add'l Fact No. 6 with Compl. ¶ 49 (criticizing Michael assisting with portfolio rebalancing)).

- Offering to train Michael on "trade away actions" on the Schwab platform (Add'l Fact No. 7), and allowing and facilitating Michael's access APA's internal database known as the Tamarac System, including Mr. Spitzer and the CCOs training Michael on how to use the system that contained client information, account numbers and master account numbers. (*Compare* Add'l Fact No. 8 with Compl. ¶ 51 (criticizing Michael's access to customer information, balances and portfolios)).

- Working with Michael and David so both of their biographies were posted to APA's website (*Compare* Add'l Fact No. 9 with Compl. ¶ 70 (criticizing the listing of Michael on SWM's website)).

- Asking Michael to review and approve APA customer billing information. (*Compare* Add'l Fact No. 10 with Compl. ¶ 50 (criticizing Michael's review of billing records and draft billing statements prepared by APA).

- Providing to and allowing Michael to use APA's Master Account Numbers at a custodial brokers Schwab and Fidelity. (Add'l Fact No. 11).

- Schwab representatives repeatedly worked directly with Michael Sztrom regarding customer matters, without objection or any stated concern, from approximately November 2015 until April 2016. (Add'l Fact No. 16).

- APA and Mr. Spitzer knew that Schwab representatives had "coached" Michael Sztrom to identify himself as "David" when contacting Schwab in his role as David Sztrom's assistant but Mr. Spitzer did not want to "throw[] anyone under the bus" during his discussions with Schwab's Compliance Department. (Add'l Fact No. 14).

- APA's Chief Compliance Officer Bob Roche worked in person out of Sztrom Wealth Management's ("SWM") offices and directly with Michael and David Sztrom at least three days a week from when they began with APA in November 2015 until after January 1, 2016, and witnessed and never objected to Michael's role and activities within the office. (Add'l Fact No. 17).

- APA's Chief Compliance Officer Bob Roche sat in with Michael Sztrom and participated in two phone calls with Schwab where Michael identified himself as David, without objection. (Add'l Fact No. 15).

These true facts stand in sharp contrast to the Division's claims that Michael knowingly circumvented what he understood to be APA's requirements and/or that David assisted him (or

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even needed to assist him) in doing so. Indeed, both APA's CEO and its two Chief Compliance Officers repeatedly approved of and facilitated Michael's involvement with APA's customers and custodians, including Schwab. For example, the Division substantially relies on the allegation that Michael telephoned Schwab while identifying him as "David" on numerous occasions. (SMF Nos. 88-100). But the Division fails to disclose that (i) as the recorded phone calls to be played at the hearing will reveal, most of those calls involved mundane administrative tasks or questions that APA had allowed Michael to handle on David's behalf as his assistant; (ii) APA's *Chief Compliance Officer* sat in person with Michael during and participated in at least two of those phone calls when Michael identified himself as David, and consented to him doing so; and (iii) APA and Mr. Spitzer knew that *Schwab representatives had "coached" Michael Sztrom to identify himself as "David" when contacting Schwab* in his role as David Sztrom's assistant. (Add'l Fact Nos. 14-15. These compelling facts substantially undermine any finding that Michael Sztrom or David Sztrom acted with a high degree of scienter. Further, it will be important for the Hearing Officer to be able to hear directly from Michael Sztrom and to hear the actual recordings of the phone calls that the Division has put at issue, and not just cherry-picked snippets or summaries of a few of them.

The Division also alleged that Charles Schwab "refus[ed] to allow Michael Sztrom access to its platform" to service Sztrom Wealth Management ("SWM") clients affiliated with APA [SMF Nos. 17-18]. However, not only did APA allow Michael to interact with Schwab, as described above, but the complete facts reveal that Charles Schwab did approve APA's request for Michael to have access to Schwab's platform, and its employees knowingly and repeatedly worked with Michael Sztrom for many months while he was "a consultant to David Sztrom" (Add'l Fact Nos.

4, 16), which further undermines any finding of a high degree of scienter as well as the idea that David somehow was improperly involved in or allowed such actions and communications.

For example, APA's CEO Mr. Spitzer sought Schwab's approval for Michael Sztrom to have View-Only access to all SWM client account information, which Schwab gave to him. (Add'l Fact No. 4). In turn, Mr. Spitzer approved Michael Sztrom to "help[] David [Sztrom] do the transactions" within certain client accounts on the Schwab platform, and he frequently involved Michael in billing matters related to David's APA clients. (Add'l Fact Nos. 4, 10). The conclusion that Mr. Spitzer approved of Michael communicating Schwab and accessing its system is supported further by the fact that Mr. Spitzer also made Michael an "approved" person for APA to interact with Fidelity's custodial platform for SWM clients. (Add'l Fact Nos. 11-12).

Further, while the Division states that Michael Sztrom told Spitzer that "he would serve in the limited role of financial planner to the clients who moved to APA" and that such "representation was a ruse" because he never collected fees for financial planning [Compl. ¶ 85; SMF Nos. 71-80], the reality is quite different. The true facts are that Mr. Spitzer instead testified at length that ***APA and he required*** Michael Sztrom to create his own entity for financial planning services so that he would be "legally capable of responding to clients and giving them sales, or giving them financial advice as well as receiv[ing] compensation from [APA] to do so." (Add'l Fact No. 18). In fact, Mr. Spitzer confirmed that APA's CCO Jill Young actually created and facilitated the filing of the paperwork for Michael Sztrom's entity, writing to Michael: "Please start the paperwork to register the new LLC entity for your new RIA so Jill can start your registration …. Once you've started the process please forward the application to Jill and she can take it from there"). (*Id.*). Thus, the setting up the new entity was in no way a "ruse" cooked up by Michael. Moreover, he *did* do financial planning work for clients through it, but as a courtesy

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he did not charge them for it they already were paying an adviser fee to APA/SWM. (Add'l Fact No. 19, which includes emails with APA's CCO and an example of a financial plan for a client prepared by Michael Sztrom). The Division improperly attempts to twist Michael's sincere desire to help clients into something nefarious because he did not charge them more fees.

Lastly, regardless of the facts and conduct alleged in both the Complaint or the OIP, at no point did ***any*** of the Sztrom clients affiliated with APA ever lose any funds or even have their investments put at risk. Indeed, Mr. Spitzer confirmed that at no point did Michael impersonate his son in conversations with Charles Schwab to actually process transactions, order or execute trades for clients, or to move client funds. Likewise, Mr. Spitzer confirmed that ***no*** clients of APA ever suffered any losses in connection with the alleged conduct at issue here. (Add'l Fact Nos. 25-26). These important points are confirmed by the fact that SEC never pursued any claim to seek disgorgement, restitution, or some other equitable remedy that would stem from clients losing funds or suffering losses.

IV. LEGAL STANDARDS

Motions for summary disposition in an administrative proceeding like this one are governed by 17 C.F.R. §201.250(b) and SEC Rule 250. The standard is virtually identical to the standard for granting summary judgment under Fed. R. Civ. P. 56(c)(2). The regulation provides that the hearing officer may grant the motion *only* "if 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." 17 C.F.R. §201.250(b); *see also* SEC Rule 250 (same). "The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to §201.323." 17 C.F.R. §201.250(a). The facts on summary disposition must be viewed in the light most favorable to the *non*-moving party. *See Jay T. Comeaux,* Securities Act Release No.

9633, 2014 SEC LEXIS 3001, at *8 (Aug. 21, 2014). In order to overcome summary disposition, "[t]he opposing party must set forth specific facts showing a genuine issue for a hearing and a determination made as to whether there is a genuine issue for resolution at a hearing." *In re Comverse Tech., Inc.*, SEC Release No. 400, AP File No. 3-13828, 2010 WL 2886397 at *1 (July 22, 2010) (internal citations and quotation marks omitted). The Hearing Officer may grant a motion for summary disposition only if there is no genuine issue with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. *Ted Harold Westerfield*, 54 S.E.C. 25, 32 & n.22 (1999) (citing 17 C.F.R. § 201.250(a), (b)).

Because of the nature of summary disposition (requiring a rule take place prior to any evidentiary hearing by the Commission as to the specific elements of the public interest standard), the SEC's *own* publicly issued comments on Rule 250 note that "[e]nforcement or ***disciplinary proceedings*** in which a motion for disposition prior to hearing would be appropriate ***are likely to be less common***." Securities and Exchange Comm'n, Rules of Practice, Rule 250, *available at* https://www.sec.gov/rulesprac072003#250 (emphasis added). Because "[t]ypically, enforcement or disciplinary proceedings that reach litigation involve genuine disagreement between the parties as to material facts," the SEC has publicly determined that "it would be inappropriate for a party to seek leave to file a motion for summary disposition or for a hearing officer to grant the motion" where, as here, a "genuine issue as to material facts clearly exists as to an issue." *Id.* As described herein, there are many additional material facts provided by the Sztroms now and in the future that the Hearing Officer must consider in determining whether the relief sought against them is warranted, *and those new facts are contrary to and/or shed a new light on the facts and conclusions promoted by the Division.* Indeed, the SEC has expressly recognized that in cases like this where the degree of scienter and egregiousness must be

evaluated, "***a hearing will still often be necessary in order to determine a respondent's state of mind and the need for remedial sanctions if liability is found***." *Id.* (emphasis added)

V. LEGAL ARGUMENT

Section 203(f) of the Advisers Act authorizes the Commission to impose a permanent bar against David and Michael Sztrom only, if: (1) at the time of the alleged misconduct, both were associated with an investment adviser; (2) both have been enjoined from any action, conduct, or practice specified in Advisers Act Section 203(e)(4); and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). Both David and Michael Sztrom consented to the entry of judgment against them in the associated civil enforcement proceeding that: (1) enjoined David Sztrom from future violations of the antifraud provisions of Section 206 of the Advisers Act and from aiding and abetting future violations of Section 204 of the Advisers Act and Rule 204-2(a) thereunder; and (ii) enjoined Michael Sztrom from future violations of the antifraud provisions of Section 206 of the Advisers act. Neither contests that the first two predicate elements of Section 203(f) are met. However, in order to prevail on its motion, the Division must also establish "there is no genuine issue with regard to any material fact" that a permanent bar against both David and Michael Sztrom is in the public interest. *See* 15 U.S.C. § 80b-3(f). The facts before presented by the Sztroms here (as established through declarations and other factual evidence) demonstrate that the opposite is true – a permanent bar against both David and Michael Sztrom is ***not*** in the public interest and is otherwise unwarranted. At a minimum, there is a genuine dispute of material fact as to whether the Division has met its burden, and an in person disciplinary hearing should be held to allow the Hearing Officer to conduct appropriate fact-finding that otherwise did not take place in the underlying proceeding.

A. The Public Interest Factors Do Not Support the Imposition of a Permanent Bar for Either David or Michael Sztrom or Any Sanction Even Remotely Close to that Sought by the Division.

Pursuant to Advisers Act Sections 203(e) and 203(f), proof that a court of competent jurisdiction has enjoined an investment adviser or a person associated with an investment adviser from engaging in conduct related to investment advisory activities provides a sufficient basis for imposing remedial sanctions against the party so enjoined, provided that the sanctions are in the public interest. *See SEC v. Teicher*, 177 F.3d 1016 (D.C. Cir. 1999); *Charles Phillip Elliott*, 50 S.E.C. 1273, 1274, 1276-77 (1992); *Kimball Securities, Inc.*, 39 S.E.C. 921, 923-24 (1960). The following factors are relevant considerations in making the public interest determination: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations: (5) the respondent's recognition of the wrongful nature of his conduct; (6) the likelihood that the respondent's occupation will present opportunities for future violations; (7) the age of the violation and the degree of harm to investors and the marketplace resulting from the violation, and (8) the deterrent effect of administrative sanctions. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at *8 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003).

The severity of a sanction depends on the facts of the particular case and the value of the sanction. *See Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973); *Hiller v. SEC*, 429 F.2d 856, 858-59 (2d Cir. 1970). Under the SEC's own interpretation, no one factor controls. *See SEC v. Fehn*, 97 F.3d 1276, 1295-96 (9th Cir. 1996). The severity of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. *See* 2006 SEC LEXIS 832, *14-15; *Berko v. SEC*, 316 F.2d 137, 141 (2d Cir. 1963); *Leo Glassman*,

46 S.E.C. 209, 211-12 (1975). "It is familiar law that the purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers." *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) (emphasis added); *see also Glassman*, 46 S.E.C. at 211-12 ("Sanctions related to registration status of regulated persons or entities are not intended to punish a particular respondent, but to protect the public from future harm.") (emphasis added).

But punishing the Sztroms is precisely what the Division improperly is seeking to accomplish since it is undisputed that the Sztroms' actions never harmed a single customer, much less the public, and there is no logical risk of future harm. This conclusion is bolstered by the fact that the Sztroms now have worked as registered advisers since leaving APA for *nearly six years* without incident and with heightened controls in place, as confirmed by the current RIA. (Add'l Fact Nos. 23-24).

B. There Are Significant Facts to be Evaluated by the Hearing Officer Regarding the Degree of the Sztroms' Alleged Scienter, Along with the Degree of Alleged Egregiousness and Alleged Recurrent Nature of the Violations.

While the Sztroms do not contest that they agreed to the entry of the District Court's Final Judgment, without admitting or denying the allegations of the Complaint, and further do not contest that they each waived findings of fact and rulings of law in connection with the Final Judgments, summary disposition here is not appropriate given the myriad factual disputes still to be adjudicated. *See* 17 C.F.R. §201.250(b) (stating hearing officer may grant the motion only "if 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."). The Division's recitation of the uncontested facts alleged in the OIP Complaint fail to consider the full factual circumstances of the Sztroms' conduct, including, but not limited to, what they knew and their state of mind and the instructions and approvals that they received from APA, its CEO and two Chief Compliance

Officers, which are highly relevant to the Hearing Officer's inquiry as to scienter, egregiousness and recurrence, namely:

- There is no dispute that with respect to ***all*** of the conduct alleged in the Complaint and the subsequent OIP Complaint, ***none*** of the funds from any of the Respondents' customers were either involved or at risk with respect to the alleged conduct. (*See generally* Complaint (setting forth no allegations that any customers either lost or were at risk of losing funds due to alleged activities); Add'l Fact No. 25).

- There is no dispute that the SEC, in either the civil enforcement action or in this follow-on OIP, has never sought disgorgement from the Sztroms or restitution or any other restitutionary remedies for the Sztroms' clients.

- In contrast to the Division's assertions that the Sztroms knowingly deceived their clients with scienter, APA's Chief Executive Officer, Paul Spitzer, testified repeatedly at his deposition that he or others at APA: (i) approved of giving Michael Stzrom view-only access to customer accounts and associated custodial accounts with Charles Schwab, and that Charles Schwab also approved Michael's access; (ii) Mr. Spitzer did so because he allowed Michael to "assist" David with his accounts with APA; (iii) Mr. Spitzer knew and approved of Michael "helping David do the transactions" within certain client accounts; (iv) Mr. Spitzer frequently involved Michael in billing questions related to David's clients, and repeatedly sent Michael billing information for David's clients; (v) Mr. Spitzer made Michael an "approved" person with respect to interacting with Fidelity's custodial platform, another custodial platform used by APA and David Sztrom; and (vi) that Michael did not impersonate his son in conversations with Charles Schwab to process any transactions, to order or execute trades for clients, or otherwise move client funds.

- In contrast to the Division's allegation that Michael Sztrom set up a separate financial planning entity as a "ruse," [Brief at 4 and SMF Nos. 71-80], APA's President Spitzer testified that APA ***required*** Michael Sztrom to set up his own entity so that he would "be legally capable of responding to clients and giving them sales – or giving them financial advice and as well as receive compensation from Advanced Practice Advisors to do so." Further, APA's CCO actually helped to set up the entity, and Michael did provide such services to clients. (Add'l Fact Nos. 18-19).

- With respect to Michael Sztrom's calls to Charles Schwab impersonating his son David, the actual recordings and transcripts do not reflect that Michael ordered actual customer transactions but are consistent with Michael's recollection that he was "coached" by Schwab employees during his transition to identify himself as David to ask research-related (i.e., "how to") questions of Charles Schwab. In fact, APA's CCO attended two separate calls with Michael Sztrom where he identified himself to Schwab as David Sztrom, without objection.

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All of these factual issues, and others that will be presented at the Hearing, directly undercut the Division's arguments that David and Michael Sztrom's conduct was egregious and knowingly deceitful. The actual evidence suggests that: (1) Michael undertook most of the alleged conduct at the knowing direction, or at least with the consent, of APA's CEO and CCOs; that Charles Schwab indeed granted Michael Sztrom continued and repeated access to view data related to David's customers on Schwab's platforms; that Schwab readily and frequently interacted with Michael Sztrom (as Michael Sztrom), and that Schwab did so even knowing Michael was not registered as an investment adviser at the time.

These factual issues go directly to the issue of the appropriateness of summary disposition in a case like this, as the Hearing Officer should be permitted to take ***all*** factual circumstances and evidence into account via a robust evidentiary hearing process. Summary disposition is especially inappropriate where, as here, the conduct alleged with respect to David Sztrom indicates he: (1) was appropriately registered as an investment adviser under the Adviser Act; (2) did not undertake *any* conduct that was not explicitly approved or facilitated by the officers of APA; and (3) was not alleged to have participated in the purported impersonation of him by his father, David. Finally, there are no allegations or evidence to suggest that either of the Sztroms personally benefitted from the conduct alleged or that the conduct harmed any client.

While recognizing that "the appropriate remedial action depends on the facts and circumstances of each particular case and cannot be determined precisely by comparison with the action taken in other cases," *see Martin J. Cunnane, Jr.*, 53 S.E.C. 285, 288 (1997) (citing *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973)), the Sztroms note that with respect to the factors concerning egregiousness and scienter, they are unable to identify a single instance where the Commission imposed a ***permanent*** bar on the registration of an Investment Adviser

Representative ("IAR") where, as here, the IAR was ***neither*** convicted of a crime for the conduct alleged nor forced the Commission to litigate the civil issues in an enforcement proceeding to their factual and legal conclusions before a jury. Instead, past case law is replete with cases where permanent bars were appropriate ***only*** after the IAR was convicted of and/or pled guilty to fraud (securities, wire, or other), and/or found liable in civil enforcement proceedings after trying those claims to conclusion. *See, e.g., Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155 (July 26, 2013) (imposing permanent bar after respondent pled guilty to conspiracy to commit securities fraud ***and*** voluntarily settled civil enforcement proceeding by Commission for securities fraud); *Shermin Neman and Neman Financial, Inc.*, 2017 SEC LEXIS 3648, *11 (Nov. 20, 2017) (finding respondent's "135-month prison sentence, and the order of more than $ 3.25 million in restitution, underscore the egregiousness of his misconduct" (internal citations omitted)). Here, given the nature of the underlying conduct, the additional facts put forth into evidence here, and the fact that the Sztroms voluntarily consented to final civil judgment entering without trial, establish that the Division's request for a permanent bar is highly disproportionate to the facts concerning the egregiousness and scienter factors.

C. The Sztroms Have Recognized the Wrongful Nature of the Conduct at Issue.

The Division's brief with respect to the fifth *Steadman* public interest factor ("the respondent's recognition of the wrongful nature of his conduct") is highly misleading and erroneous. The Division contends that "to date, Respondents have failed to recognize that they did anything wrong" (Brief at 11), citing as support the Sztroms' (1) answer denying certain allegations in the District Court Action, and (2) answer denying certain allegations in the OIP Complaint here. (*Id.*). Citation to answers to pleadings in both the District Court Action and the OIP Action fail to establish that the Sztroms do not "recognize that they did anything wrong" – as the Division well knows, denying certain allegations in an operative pleading is simply a

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procedural right ***every*** individual enjoys in any civil litigation or enforcement action. This conduct bears no relationship to the degree to which the Sztroms recognize the wrongfulness of the conduct alleged. More importantly, the fact that Respondents ***voluntarily consented*** to a settlement that imposed on them permanent restrictions from violations of the antifraud provisions of the Advisers Act, and agreed to pay civil money penalties, is direct evidence that Respondents ***do*** recognize the issues with the alleged conduct. *See, e.g., Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155 (noting that settling via voluntary consent was respondent "acknowledge[ing] the wrongful nature of his past conduct and [taking] responsibility for it by settling the earlier parallel case"). *Contrast Robert Radano*, 2006 SEC LEXIS 832 (Mar. 24, 2006) (finding appeal of federal court findings of fact against respondent was evidence against "recognition . . . of the wrongfulness of the violative conduct enjoined by the district court"). Moreover, the additional factual evidence the Sztoms put forward in this OIP Action does not suggest that they fail to recognize their underlying conduct, but simply suggests that there are mitigating factors that demonstrate that a bar (or even a lengthy suspension) is highly disproportionate and not in the public interest, and thus any remedial relief is unwarranted and inappropriate. The fifth *Steadman* factor thus weighs heavily against a permanent bar.

D. The Sztroms' Are Not Alleged to Have Engaged in any Misconduct Since 2016 – Over Six Years Ago – and Their Current Investment Advisor Has Substantial Oversight and Other Safeguards In Place That Minimize the Risk of Future Violations.

In support of the sixth *Steadman* factor, the Division suggests that it weighs in favor of permanent bar because "absent a bar, Respondents could seek to defraud clients in the future." (Brief at 12). This statement has no actual support and is purely speculative as the Division ignores several mitigating factors that suggest the Sztroms ***are not likely*** to violate the securities laws in the future.

First, the substantive allegations in the Complaint and the related OIP Complaint date between 2015 and 2016. In fact, the date of the last substantive allegation is July 21, 2016. (Complaint ¶ 123). Since leaving APA, both Respondents have remained employed in the securities industry without a single allegation that either engaged in conduct that violated the securities laws or otherwise engaged in conduct that risked harm to their clients or the general public. (Add'l Fact Nos. 1, 2, 23). Second, they are currently associated with Integrated, and have been "model advisors" since joining in April 2018 without even a single customer complaint. (*Id*.). As stated by Integrated's President:

> *During the Sztroms' tenure with Integrated, they have been model advisors. There have not been any customer complaints, there were no issues during the time they were working with Integrated's custodians, and they have been responsive to any and all requests that Integrated has made in the compliance program administration. We enjoy working with Mike and David and look forward to supporting their advisory business as long as they desire to remain in the industry.*

(*Id*.).

Further, as part of the Sztroms' affiliation, Integrated has put in place a compliance framework for them that significantly limits any risk of future violation by requiring, among other rules, that neither of the Sztroms conduct trades by himself, and instead requiring the Sztroms to submit those trades to other individuals who then approve of the transaction and implement it. (Add'l Fact No. 24). As confirmed by Integrated's President,

> *As long as the Sztroms maintain registrations with Integrated, they must run all custodian-related requests through Integrated, as they do not have access to their direct systems or service teams. The Integrated staff interfaces with the custodians to handle all client matters on their accounts and all trades that are*

> *placed. Having this activity flow through Integrated ensures that the Sztroms will not repeat the alleged violations.*

(*Id*.).

Indeed, this information and evidence suggests that this case is much like the respondent's case in *McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005), in which the Second Circuit found the Commission abused its discretion by imposing a permanent suspension against an IAR whose actions "were of relatively short duration and ended in 1996, and by all accounts he has been lawfully trading ever since. . . . [T]he SEC does not dispute [Respondent's] contention that, with the exception of [two years of alleged conduct], [Respondent] has operated lawfully and within the rules." *Id.* at 189. There is no dispute here that since departing association with APA, both of the Sztroms have ably proven themselves to be "rule-abiding trader[s]." *Id. See also Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003) (Commission must consider the age of the violation and the degree of harm to investors and the marketplace resulting from the violation). Because the alleged conduct dates back over eight years in the past, and both Respondents have worked the past nearly six years in the securities industry without incident, a permanent bar is substantially disproportionate, unwarranted, and not in the public interest. The sixth *Steadman* factor thus weighs against permanent bar.

E. The Permanent Bar Sought By The Division Would Be Would Be Improperly Punitive, Rather Than Remedial.

The Division's brief contains no argument regarding why imposing a ***permanent*** suspension of the Sztroms is remedial in nature, rather than punitive. *See Siegel v. SEC*, 592 F.3d 147, 157 (D.C. Cir. 2010) ("As an initial matter, it is important to remember that the agency may impose sanctions for a remedial purpose, but not for punishment." (internal quotations omitted)). "To justify a sanction as remedial, the agency must do more than say, in effect, petitioners are

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bad and must be punished." *Id.* (internal quotations omitted); *see also John P. Flannery*, Advisers Act Release No. 3981, 2014 SEC LEXIS 4981, at *89 (Dec. 15, 2014) ("the remedy is intended to "protect[] the trading public from further harm," not to punish the respondent."). Yet the only reasons cited by the Division to justify a permanent suspension revolve around the purported bad actions by Respondents, and ***not*** around the remedial justification for such a harsh punishment. (*See generally* Brief). Yet since 2018, Respondents have a clear nearly six-year history of unquestioned adherence to the securities laws and their ethical obligations to their clients. *See McCarthy*, 406 F.3d at 189 (arguing that respondent's nine years of history since sanctionable conduct occurred established he was a "rule-abiding trader" and permanent suspension was unwarranted). Moreover, at the time of the purported conduct, David Sztrom was in his mid-20s and had just passed his securities licensing exam. While David now has much more experience, his still is only 32 and imposing a fatal suspension that would foreclose any possibility of his continued work in the securities industry for violations that generally were approved by APA and its senior officers, and which neither put client funds at issue nor impermissibly enriched himself. Such a punitive sanction is heavily disproportionate to the conduct at issue and to the Commission's requirement that sanctions are remedial in nature, not punitive. *See Beck v. SEC*, 430 F.3d 673, 675 (6th Cir. 1970) (overturning SEC's imposition of temporary *four-month suspension* of young investment adviser as abuse of discretion due to "tenuous" relationship between "the remedy adopted and the stated reasons for its adoption").

Further, in addition to consenting to injunctive relief and paying civil money penalties in the settlement of the underlying federal lawsuit, since the public disclosure of the SEC's lawsuit in early 2021, they have lost at least 50% of their clients and revenue, resulting in significant

harm to their financial health and preventing Michael Sztrom from being able to retire with any degree of financial security. (Add'l Fact No. 27). They have been punished enough.

Here, there is simply no evidence in the record to suggest that either Respondent is inclined to commit any further actions that violate the federal securities laws. Given all of the mitigating factors here, the conditions and controls put in place at their current RIA, and the lack of any of the aggravating factors found in other cases (*e.g.*, criminal convictions, refusal to take responsibility, millions of dollars in client funds misappropriated, etc), imposing a permanent bar on either of the Sztroms is pure punishment and is not in the public interest. The Division's motion for summary disposition should therefore be denied.

VI. CONCLUSION

Based on the facts and arguments above, the mitigating factors identified by Respondents Michael and David Sztrom, and the totality of the circumstances including the necessity for the Hearing Officer to evaluate to determine the Sztroms' state of mind and the need for remedial sanctions, summary disposition is not appropriate and imposing a permanent bar on them is punitive and disproportionate. Considering the *Steadman* factors in their entirety, including the evidence in mitigation, as well as the Commission's requirement that sanctions be remedial and not punitive, it is not in the public interest to permanently bar Respondents from the securities industry. The Hearing Officer should thus deny the Division's motion for summary disposition.

09/28/2023

By: */s/ Sean T. Prosser*

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OS Received 09/28/2023

CERTIFICATE OF SERVICE

Pursuant to Rule 141 of the Commission's Rules of Practice, I hereby certify that service of the foregoing RESPONDENTS' OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION was made via electronic service on this 28th date of September, 2023, to the following parties:

By eFAP
Vanessa Countryman, Secretary
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/s/ Sean T. Prosser
Sean T. Prosser

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21400

In the Matter of

MICHAEL SZTROM and
DAVID SZTROM,

Respondents.

STATEMENT OF ADDITIONAL FACTS IN SUPPORT OF RESPONDENTS DAVID SZTROM'S AND MICHAEL SZTROM'S OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO COMMISSION RULE OF PRACTICE 250

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No.	Fact	Supporting Evidence
1	David Sztrom currently is 33 years old, has been registered as an investment adviser since 2015, and has been formally associated with Integrated Advisors Network ("Integrated"), a Registered Investment Advisor, without incident or complaint, since April 2018.	Declaration of David Sztrom ("D. Sztrom Decl.") ¶ 2. Declaration of Sean T. Prosser ("Prosser Decl."), Ex. A (letter from Michael Young, President of Integrated).
2	Michael Sztrom currently is 69 years old and has been formally associated with Integrated Advisors Network, without incident or complaint, since April 2018.	Declaration of Michael Sztrom ("M. Sztrom Decl.") ¶ 2. Prosser Decl., Ex. A.
3	The Chief Executive Officer of Advanced Practice Advisors, LLC ("APA") testified at his deposition in the underlying litigation that he consented to Michael Sztrom "assisting" David Sztrom with his the APA clients, and to Michael acting as a "consultant" with respect to the same clients and their accounts. Michael also was provided with an APA email account.	Prosser Decl., Ex. B (Transcript of the Deposition of Paul C. Spitzer), at 25:4-5; 42:18-22; 106:9-18.
4	APA's custodial broker Charles Schwab ("Schwab"), Mr. Spitzer and APA all approved Michael Sztrom to have "View Only" access to the Charles Schwab platform, which included customer account information and complete portfolio information.	Prosser Decl., Ex. B, at 27:21-25; 26:9-12; 26:15-21; 41:9-42:16; Exs. B-32 & B-29 (Mr. Spitzer wrote, *"We applied for a "View Only" SAC access for Mike Sztrom and received approval on Nov. 17, 2015"* and in response to a Schwab comment on May 18, 2016 that "Michael was asked not to have access to the platform," Mr. Spitzer wrote, *"This is contrary to my knowledge. APA received approval from Schwab for mS to have "View Only" access to SAC. (In addition MS had numerous interactions with Grace and others in the Schwab NB office."*). M. Sztrom Decl. ¶ 3.

		D. Sztrom Decl. ¶ 3.
5	Mr. Spitzer and APA approved Michael Sztrom to use the Schwab platform for research purposes.	Prosser Decl., Ex. 2, at 28:1-4. M. Sztrom Decl. ¶ 5. D. Sztrom Decl. ¶ 5.
6	Mr. Spitzer and APA knew about and approved Michael's involvement in customer portfolio rebalancing.	Prosser Decl., Ex. B-10. M. Sztrom Decl. ¶ 6. D. Sztrom Decl. ¶ 6.
7	Mr. Spitzer offered to "walk [Michael] through the trade away actions" process on in the Schwab Advisory Center.	Prosser Decl., Ex. 2, at 55:23 – 56:5.
8	APA allowed and facilitated Michael Sztrom's access APA's internal database known as the Tamarac System, including Mr. Spitzer and APA's Chief Compliance Officers training Michael on how to use the system that contained client information, account numbers and master account numbers.	Prosser Decl., Ex. 2, at 49:22-52:23, 66:4-67:13, 82:7-16, 79:1-23 & Exs. B-13, B-18, B-24 & B-25. M. Sztrom Decl. ¶ 7. D. Sztrom Decl. ¶ 7.
9	APA, including its CCO, knew about and worked with Michael and David Sztrom to have both of their biographies posted to APA's website.	Prosser Decl., Ex. 2, at 44:6-45:7 & Ex. B- 11.
10	APA and Mr. Spitzer regularly asked Michael Sztrom to review and approve APA customer billing information.	Prosser Decl., Ex. 2, at 25:11-12, 45:15-18, 46:6-47:12, 48:19-21, 80:1-19, 81:9-17 & Exs. B12, B-22, B-23 & B-24. M. Sztrom Decl. ¶ 8. D. Sztrom Decl. ¶ 8.
11	APA and Mr. Spitzer provided and allowed Michael Sztrom to use APA's Master Account Number at custodial brokers Schwab and Fidelity.	Prosser Decl., Ex. 2, at 62:4-18 & Ex. B-8. M. Sztrom Decl. ¶ 9.

		D. Sztrom Decl. ¶ 9.
12	APA and Mr. Spitzer encouraged and obtained approval for Michael Sztrom to be an "Authorized Individual" to work with custodial broker Fidelity, West Silver.	Prosser Decl., Ex. 2, at 37:9-18, 37:23-38:4 & Exs. B-8 & B-9. M. Sztrom Decl. ¶ 10. D. Sztrom Decl. ¶ 10.
13	APA and Mr. Spitzer approved and allowed Michael Sztrom to communicate with Schwab by both email and telephone for information and research purposes.	Prosser Decl., Ex. 2, at 61:17-65:9. M. Sztrom Decl. ¶ 11. D. Sztrom Decl. ¶ 11.
14	APA and Mr. Spitzer knew that Schwab representatives had "coached" Michael Sztrom to identify himself as "David" when calling Schwab in his role as David Sztrom's assistant but Mr. Spitzer did not want to "throw[] anyone under the bus" by disclosing that fact during his discussions with Schwab's Compliance Department.	Prosser Decl., Ex. B-31. M. Sztrom Decl. ¶ 12.
15	APA's Chief Compliance Officer Bob Roche sat in with Michael Sztrom and participated in two phone calls with Schwab where Michael identified himself as David, without objection.	Prosser Decl., Ex. C & Ex. D (Transcripts of telephone calls with Charles Schwab). M. Sztrom Decl. ¶ 13.
16	Schwab representatives repeatedly worked directly with Michael Sztrom (only) regarding customer matters, without objection or any stated concern, from approximately November 2015 until April 2016.	Prosser Decl., Ex. 2, at 61:17-65:9, 86:15-88:14, 92:22-94:19 & Ex. B-29 (Spitzer writes, "*Mike and David Sztrom maintained a working relationship with Grace Schlichter and the SoCal Service Team from Nov. 3, 2015 until we were asked to remove MS from SAC on May 11, 2016."*), Ex. B-16 (M. Sztrom emails with Schwab representative regarding

		customer information and requests) & Ex. B-17 (same). M. Sztrom Decl. ¶ 14.
17	APA's Chief Compliance Officer Bob Roche worked in person out of Sztrom Wealth Management's ("SWM") offices and directly with Michael and David Sztrom at least three days a week from when they began with APA in November 2015 until after January 1, 2016, and witnessed and never objected to Michael's role and activities within the office.	Prosser Decl., Ex. B-29 & Ex. B-32. M. Sztrom Decl. ¶ 13. D. Sztrom Decl. ¶ 13.
18	Mr. Spitzer and APA ***required*** Michael Sztrom to create his own entity for financial planning services so that he would be "legally capable of responding to clients and giving them sales, or giving them financial advice as well as receiv[ing] compensation from [APA] to do so." In fact, APA's CCO Jill Young actually created and facilitated the filing of the paperwork for Michael Sztrom's new entity, Sztrom Wealth Management, Inc.	Prosser Decl., Ex. 2, at 73:8-20, 74:23-75:11-16 & Ex. B-20 (Spitzer email to Michael Sztrom: "Please start the paperwork to register the new LLC entity for your new RIA so Jill can start your registration …. Once you've started the process please forward the application to Jill and she can take it from there"). M. Sztrom Decl. ¶ 16.
19	Michael Sztrom did provide financial planning advice and services to his clients through his entity Sztrom Wealth Management, Inc. but generally did not charge fees to existing investment advisory clients for such work since they already were paying an advisory fee to APA and SWM.	M. Sztrom Decl. ¶¶ 17-18, Ex. 1 (email exchange with APA's CCO, Jill Young), Ex. 2 (sample financial plan materials prepare for client).
20	The FINRA investigation related to Michael Sztrom and UBS did not begin until, at the earliest, late December 2015 *after* the Sztroms began to work with APA, and Michael did not know of any FINRA investigation related to him until 2016.	Prosser Decl., Ex. 2, at 94:20-95:13 & Ex. B-29 (Spitzer writes, "On April 7th we received an email from Grace Schlichter asking us to research a FINRA investigation of UBS and Mike Sztrom that was initiated on 12/24/2015."). M. Sztrom Decl. ¶ 19.

21	The FINRA investigation related to Michael Sztrom was closed as of October 31, 2016 with no enforcement recommendation.	M. Sztrom Decl. ¶ 20, Ex. 2 (FINRA letter).
23	The Sztroms are currently associated with Integrated, and have been since April 2018. According to Integrated's President, *'They have been model advisors. There have not been any customer complaints, there were no issues during the time they were working with Integrated's custodians, and they have been responsive to any and all requests that Integrated has made in the compliance program administration. We enjoy working with Mike and David and look forward to supporting their advisory business as long as they desire to remain in the industry."*	Prosser Decl., Ex. 1. D. Sztrom Decl. ¶ 17. M. Sztrom Decl. ¶ 21.
24	As part of the Sztroms' current affiliation with Integrated, it has put in place a compliance framework for them that significantly limits any risk of future violation by requiring, among other rules, that neither of the Sztroms conduct trades by himself, and instead requiring the Sztroms to submit those trades to other individuals who then approve of the transaction and implement it. As Integrated's President writes, *"As long as the Sztroms maintain registrations with Integrated, they must run all custodian-related requests through Integrated, as they do not have access to their direct systems or service teams. The Integrated staff interfaces with the custodians to handle all client matters on their accounts and all trades that are placed. Having this activity flow through Integrated ensures that the Sztroms will not repeat the alleged violations."*	Prosser Decl., Ex. 1. D. Sztrom Decl. ¶ 17. M. Sztrom Decl. ¶ 21.
25	No client of the Sztroms, SWM or APA ever their investments put at risk or lost any money whatsoever as a result of the facts and conduct alleged in the SEC's Complaint.	Prosser Decl., Ex. 2 (Spitzer Ts., at 90:22-91:6 (confirming no client losses resulted from

		Michael Sztrom's conversations with Charles Schwab). D. Sztrom Decl. ¶ 15. M. Sztrom Decl. ¶ 22.
26	Michael Sztrom never impersonated his son in conversations with Charles Schwab to actually process transactions, order or execute trades for clients, or to move client funds.	M. Sztrom Decl. ¶ 23.
27	Since the public disclosure of the SEC's lawsuit against the Sztroms in early 2021, they have lost at least 50% of their clients and revenue, resulting in significant harm to their financial health and preventing Michael Sztrom from being able to retire with any degree of financial security.	D. Sztrom Decl. ¶ 16. M. Sztrom Decl. ¶ 24.

09/28/2023

By: */s/ Sean T. Prosser*

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OS Received 09/28/2023

CERTIFICATE OF SERVICE

Pursuant to Rule 141 of the Commission's Rules of Practice, I hereby certify that service of the foregoing STATEMENT OF FACTS IN SUPPORT OF RESPONDENTS' OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION was made via electronic service on this 28th date of September, 2023, to the following parties:

By eFAP
Vanessa Countryman, Secretary
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/s/ Sean T. Prosser
Sean T. Prosser

OS Received 09/28/2023

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21400

In the Matter of

MICHAEL SZTROM and
DAVID SZTROM,

Respondents.

DECLARATION OF MICHAEL SZTROM IN SUPPORT OF RESPONDENTS DAVID SZTROM'S AND MICHAEL SZTROM'S OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

OS Received 09/28/2023

I, Michael Sztrom, declare as follows:

1. I am a Respondent in the above-captioned action, I make this declaration in support of Respondents' concurrently-filed Opposition to the Division of Enforcement's Motion for Summary Disposition in this action. I have personal knowledge of the facts set forth in this declaration, and if called to testify, I could and would testify competently hereto.

2. I am a resident of San Diego, California and am 69 years old. I am a registered investment adviser and have been formally associated with Integrated Advisors Network, without incident or complaint, since April 2018.

3. When my son, David Sztrom, associated as an investment adviser with Advanced Practice Advisors, LLC ("APA") in approximately November 2015, I met and spoke repeatedly with APA's Chief Executive Officer, Paul Spitzer, regarding what role I could play because APA chose not to formally associate me at that time. Mr. Spitzer agreed that I could assist David with his clients at APA, and to act as a "consultant" with respect to the same clients and their accounts. It was my understanding and belief that I was authorized to act in that role until early 2018. I also believe that APA's Chief Compliance Officers, Bob Roche and later Jill Young, agreed that I could operate in that role.

4. Mr. Spitzer told me that APA and APA's custodial broker, Charles Schwab ("Schwab"), approved me to have "View Only" access to the Charles Schwab platform, which included customer account information and complete portfolio information.

5. Mr. Spitzer and APA also approved me to use the Schwab platform for research purposes.

6. Mr. Spitzer and APA also knew about and approved me to be involved in customer portfolio rebalancing.

7. APA allowed and facilitated my access APA's internal database known as the Tamarac System, including Mr. Spitzer and APA's Chief Compliance Officers offering to and/or

training me on how to use the system that contained client information, account numbers and master account numbers.

8. APA and Mr. Spitzer regularly asked me to review and approve APA customer billing information.

9. APA and Mr. Spitzer provided and allowed me to have and to use APA's Master Account Number at custodial brokers Schwab and Fidelity.

10. APA and Mr. Spitzer obtained approval for me to be an "Authorized Individual" to work with an APA custodial broker Fidelity, West Silver.

11. APA and Mr. Spitzer approved and allowed me to communicate with Schwab by both email and telephone for information and research purposes.

12. I also told Mr. Spitzer in or about November 2015 that Schwab representatives had "coached" me to identify myself as "David" when calling Schwab in my role as David Sztrom's assistant.

13. APA's Chief Compliance Officer Bob Roche sat with me in my office and participated in two phone calls with Schwab where I identified himself as David. Mr. Roche never objected to me doing so or told me that it was not allowed by APA or otherwise.

14. I frequently communicated orally and in writing with Schwab personnel as myself regarding APA customer matters in my role as David Sztrom's assistant. No one from Schwab objected or stated any concern about those interactions, which I believed were proper, from approximately November 2015 until April 2016.

15. APA's Chief Compliance Officer Bob Roche worked in person out of Sztrom Wealth Management's ("SWM") offices directly with myself and David Sztrom at least three days a week from November 2015 until after January 1, 2016. He witnessed but never objected to my

involvement with SWM/APA clients or the day to day role that I played within the office, which I believe had been approved by APA.

16. Mr. Spitzer and APA required that I create my own entity for financial planning services so that I could advise clients and receive compensation. Jill Young, APA's CCO assisted me in the formation of that entity.

17. I did provide financial planning advice and services to his clients through Sztrom Wealth Management, Inc. but generally did not charge fees to existing investment advisory clients for such work since they already were paying an advisory fee through APA. Attached hereto and incorporated herein as Exhibit 1 is a true and accurate copy of an email exchange with Ms. Young regarding my financial planning work and fees.

18. Also attached hereto and incorporated herein as Exhibit 2 is a true and accurate copy of financial planning materials that I prepared for a client through Sztrom Wealth Management, Inc. I did similar work for other clients as well.

19. I was not aware of an investigation by FINRA related to my work at UBS until 2016, and did not know about any such investigation when I had discussions with Mr. Spitzer and APA in August and November 2015.

20. I was notified that FINRA had closed its investigation in or about October 31, 2016. It was closed with no enforcement recommendation. Attached hereto and incorporated herein as Exhibit 3 is a true and accurate copy of a letter that I received through my attorney from FINRA regarding that closure.

21. As part of my current affiliation with Integrated, it has put in place a compliance framework for David and myself that significantly limits any risk of future violation by requiring, among other rules, that neither of us may conduct trades ourselves, and instead we are required to

submit those trades to other individuals at Integrated who then approve of the transaction and implement it. I have been diligent about closely following these and other rules at Integrated, and believe both David's and my work there has been exemplary.

22. I am not aware of any client of David or myself or of APA ever having their investments put at risk or losing any money whatsoever as a result of the facts and conduct alleged in the SEC's Complaint against David and myself.

23. During my calls with Schwab, I am not aware of ever having ordered trades for clients or asking Schwab to move client funds.

24. Since the public disclosure of the SEC's lawsuit against myself and David in early 2021, we have lost at least 50% of our clients and revenue, resulting in significant harm to our financial health and preventing me from being able to retire with any degree of financial security. It is extremely important to my family and myself that I am able to continue working in the securities industry.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed on September 28, 2023 in San Diego, California.

[redacted]

Michael Sztrom

CERTIFICATE OF SERVICE

Pursuant to Rule 141 of the Commission's Rules of Practice, I hereby certify that service of the foregoing DECLARATION OF MICHAEL SZTROM IN SUPPORT OF RESPONDENTS' OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION was made via electronic service on this 28th date of September, 2023, to the following parties:

By eFAP
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
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OS Received 09/28/2023