

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15170**

**In the Matter of**

**I. JOSEPH MASSOUD,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S MEMORANDUM**  
**IN OPPOSITION TO RESPONDENT'S MOTION TO VACATE BAR**

Respondent I. Joseph Massoud ("Massoud" or "Respondent") in his August 5, 2025 filing seeks to have a bar from association with any investment adviser, imposed by the Commission in a settled January 11, 2013 Order, vacated. The Division opposes the request.

**BACKGROUND**

**A. Procedural**

On December 12, 2012, a final judgment was entered by consent against Massoud in *SEC v. Massoud*, Civil Action Number 3:12-cv-01691-RNC, in the District of Connecticut (the "final judgment"), permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, ordering him to pay a total of \$1,432,811 (\$676,013 in disgorgement, \$80,785 in prejudgment interest, and a civil penalty of \$676,013), prohibiting him from acting as an officer or director of a public company, and barring him from participating in an offering of penny stock. Ex. 1. Massoud neither admitted nor denied the facts alleged in the Commission's Complaint (the "Complaint"). *Id.*; Ex. 2. In

consenting to the final judgment, Massoud agreed to comply with the terms of 17 C.F.R. § 202.5(e), including that he would “not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis . . . .” Ex. 3, § 11.

On January 11, 2013, based on the injunction, in a subsequent administrative proceeding the Commission ordered (“the “Commission Order”), pursuant to Section 206(f) of the Investment Advisers Act of 1940, that Massoud be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Ex. 4. In his offer of settlement (“Offer”) preceding the Commission Order, Massoud again agreed to comply with the terms of 17 C.F.R. § 202.5(e). Ex. 5, § VI. In 2018 the Commission vacated the collateral bars (i.e., from association with any broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization) based on *Bartko v. SEC*, 845 F.2d 1217 (D.C. Cir. 2017). Ex. 6. The Commission did not vacate the bar against association with an investment adviser, and the court-ordered officer and director and penny stock bars from the civil action remained in effect (and still do).

#### **B. Allegations That Massoud Agreed He Would Not Deny**

On the basis of the Commission Order and Massoud’s related Offer of Settlement, the Commission found that the Commission’s Complaint,<sup>1</sup> in the district court action, alleged the following facts:

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<sup>1</sup> The allegations set out in the Commission’s Complaint in the civil action which, again, Massoud agreed not to deny, are more detailed and fulsome than the summary of them in the Commission’s Order, with the conclusion the same: Massoud engaged in insider trading. While in possession of material, non-public information, and in direct

- Beginning in May 2009, Massoud engaged in insider trading in connection with his purchases of Patriot Capital Funding Inc. (“Patriot Capital”) stock prior to the August 3, 2009 announcement that Patriot Capital was to be acquired by Prospect Capital Corporation.
- From May through July 2009, while in possession of material non-public information he obtained from Patriot Capital about Patriot Capital’s financial condition and also about the value of acquisition proposals submitted to Patriot Capital by other bidders during the bidding process, Massoud bought 322,216 shares of Patriot Capital stock in his personal brokerage account in violation of an agreement, which among other things, included a provision that prohibited him from buying Patriot Capital shares.
- Following the August 3, 2009 announcement, Patriot Capital’s share price increased from \$1.79 per share to close at \$3.53 per share.
- On August 25, 2009, Massoud sold all 322, 216 shares of his Patriot Capital stock, earning over \$676,000 in profits from these transactions.

## DISCUSSION

### **A. Vacating a Bar Requires Compelling Circumstances Not Present Here.**

The Commission repeatedly has held that “bars should remain in place in the usual case and be removed only in compelling circumstances.” *Kenneth W. Haver, CPA*, Release No. 54824, at \*4, 2006 WL 3421789, at \*3 (Nov. 28, 2006)(cleaned up). The Commission considers “whether lifting or modifying an administrative bar is consistent with the public interest and investor protection under all the facts and circumstances.” *In re Lewis*, Exchange Act Rel. No. 51817, at \*11, 2005 WL 1384087, at \*4 (June 10, 2005). As fully stated by the Commission in *In re Osborn*:

Relief [from certain administrative bars] is appropriate only in “compelling circumstances,” and in the usual case the bar will remain in place. Maintaining a bar serves the public interest and investor protection by ensuring that the

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violation of a Confidentiality Agreement put in place at his direction, he bought and then sold - profiting more than \$676,000 - 322,216 shares of Patriot Capital stock. Ex. 2.

Commission “retains its continuing control over [a] barred individual[’s] activities.” Nonetheless, the Commission will act in response to those situations in which the equitable need for relief warrants vacating or modifying the bar order. As explained below, Osborn fails to establish the compelling circumstances necessary to vacate or modify his bar order because the factors that guide our inquiry establish that relief is not appropriate.

*In re Osborn*, Securities Act. Rel. No. 10641, at \*3, 2019 SEC LEXIS 1269, 2019 WL 2324337, at \*3 (May 31, 2019).

In addition, Massoud, of course, consented to the both the entry of a final judgment in the civil action and the settlement of the public administrative proceedings instituted against him here. The Commission recognizes a “strong interest” in maintaining the finality of settlements and will only vacate an order issued as part of a voluntary agreement in, again, compelling circumstances. “If sanctioned parties easily are able to reopen consent decrees years later, the SEC would have little incentive to enter into such agreements.” *Miller v SEC*, 998 F.2d 62, 65 (2d. Cir 1993) (affirming Commission decision denying application to vacate prior administrative consent order); *Osborn*, 2019 WL 2324337, at \*3 (May 31, 2019) (Commission rejected request to vacate, noting that respondent’s “choice [to settle] was a risk, but calculated and deliberate and such as follows a free choice”); *see also Certain Off-Channel Communications Settled Orders*, Exchange Act Rel. No. 102860, at \*2, 2025 SEC LEXIS 1094, at \*2, 2025 WL 1101495, at \*1 (April 14, 2025).

A respondent bears the burden of showing “that there would be no adverse impact on the public interest and the protection of investors if the bar were vacated.” *In re Cozzolino*, Exchange Act Rel. No. 49001, 2003 SEC LEXIS 3083, 2003 WL 23094746, at \*2 (Dec. 29, 2003). In *Cozzolino* the Commission outlined the factors it considers when reviewing a motion to vacate an administrative bar, including: (1) the nature of the misconduct at issue in the

underlying matter; (2) the time that has passed since issuance of the bar; (3) the compliance record of and/or any regulatory interest in the respondent since issuance of the bar; (4) the age and securities experience of the respondent; (5) the extent to which the Commission has granted prior relief from the bar; (6) whether the respondent has identified verifiable, unanticipated consequences of the bar; and (7) whether other circumstances would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors. *Id.* at 3. Those continue to be relevant factors in determining whether to grant a request to vacate an administrative bar. *See, e.g., In re Amico, et al.*, Exchange Act Rel. No. 100453, 2024 SEC LEXIS 1516, at \*4 (July 2, 2024); *Osborn*, 2019 WL 2324337, at \*2, n.6. As discussed below, the strong weight of these factors is against vacating Massoud's bar.

First, though, throughout his submission Massoud asserts, variously, that the violation he settled to "was the result of an inadvertent mistake"; was "not based on any material non-public information"; "was inadvertent and aberrational"; occurred only because he "inadvertently and recklessly failed to cease trading in Patriot stock" and "he did not think he was in possession of material non-public information"; did not involve him "knowingly engag[ing] in insider trading"; involved information that was "not material"; and, involved trades that actually "were based on public information." And that he settled because "he believed he should take responsibility for his mistake, even if he might have otherwise been able to mount a defense." These claims are remarkable, completely unsupported by anything in the record of the case, contrary to the allegations of the Commission's Complaint, and, as a result, absolutely irrelevant, except to show a refusal by Massoud to truly accept responsibility for his actions. Massoud twice - in his Consent in the district court and his Offer in this proceeding - agreed that he would "not take any action or make or permit to be made any public statement denying, directly or

indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis . . . .” All of his above claims fall squarely within this prohibition. Massoud can’t now litigate, or deny, what he settled to – and agreed not to deny - twelve years ago.

**B. Respondent’s Insider Trading Violation Weighs Against Vacating His Bar.**

The first *Cozzolino* factor is the nature of the misconduct at issue in the underlying action, with more serious and extensive allegations militating against relief. *Cozzolino*, 2003 WL 23094746, at \*3. Here, in the Connecticut district court action, Massoud settled to violating a scienter-based antifraud provision of the Exchange Act (Section 10(b) and Rule 10b-5 thereunder) by insider trading that netted him more than \$676,000 in profits. By any measure that’s a serious offense. Beyond the actual profits made in this case, “insider trading causes harm to the credibility of the public markets,” *SEC v. Michel*, 521 F. Supp. 2d 795, 830 (N.D. Ill. 2007), by making would-be investors hesitant “to venture their capital in a market where trading based on misappropriated nonpublic information is unchecked by law,” *United States v. O’Hagan*, 521 U.S. 642, 658 (1997).

In determining what level of seriousness to attach to insider trading violations (*e.g.*, for purposes of imposing a civil penalty) courts have looked at factors such as “(1) the egregiousness of the violations; (2) the isolated or repeated nature of the violations; (3) the defendant's financial worth; (4) whether the defendant concealed his trading; (5) what other penalties arise as the result of the defendant's conduct; and (6) whether the defendant is employed in the securities industry.” *S.E.C. v. Happ*, 392 F.3d 12, 32 (1st Cir. 2004). This framework underscores the seriousness of Massoud’s misconduct: he used a position of elevated trust and responsibility to enrich himself substantially; at the time of the violation he was the

chief executive officer of a publicly-traded company and the founder and managing partner of an unregistered investment adviser based in Connecticut; he returned his ill-gotten gains via disgorgement, but his sole financial penalty was a “one-time” civil penalty and, as Massoud points out in his motion, there was no criminal prosecution; and, he was an experienced and seemingly well-compensated participant in the securities industry. Massoud’s violation was singular and did not involve a pattern of concealment, but those factors clearly do not outweigh the factors detailed above that militate against the requested relief.

**C. Time Passage Since Imposition of the Bar Does Not Support Vacating It.**

Massoud was 44 years of age when he settled the district court and administrative actions. Fewer than 13 years have passed since imposition of the bar, a period that does not weigh in favor of the relief requested. *See, e.g., Charles E. Gaecke*, Release No. 2681, at \*3, 2007 WL 4246109, at \*2 (Dec. 4, 2007) (no compelling circumstances that warrant vacating a bar where “[o]nly thirteen years have passed since imposition of the bar”); *see also Lewis*, 2005 WL 1384087, at \*4 (14 years); *In re Wien*, Exchange Act. Rel. No. 49000, 2003 WL 23094748, at \*5 (Dec. 29, 2003) (21 years not unduly lengthy and does not weigh significantly in favor of relief); *Cozzolino*, 2003 WL 23094746, at \*4 (29 years deemed “lengthy” but not, standing alone, weighing significantly in favor of relief)). At 57, vacating the bar likely would provide Massoud the opportunity to participate in the securities industry for many years.

**D. Respondent Has Not Sought Incremental Relief and Other Factors**

*1. Incremental Relief:* The Commission rarely vacates administrative bars, but has done so in a handful of cases where the party seeking relief first has been granted incremental relief from the bar, thereafter demonstrated consistent compliance in the securities

sphere, and then sought to have the bar vacated outright. That and related *Cozzolino* factors include time passage (discussed above), the compliance record of the respondent since the issuance of the bar, the age and experience of the respondent, and, finally, the extent to which the Commission has granted prior relief from the bar. *Cozzolino*, 2003 WL 23094746, at \*3.

Massoud has not, and does not, seek incremental relief from the associational bar, including under Commission Rule of Practice 193. Rule of Practice 193 permits an applicant, upon a proper showing, to re-enter the securities industry while remaining subject to the Commission's supervision. *See* 17 C.F.R. § 201.193. Even then the Commission will consider vacating bars in their entirety only after an applicant demonstrates consistent compliance over time. The incremental approach provides the Commission with a firmer basis for deciding whether vacating the bars and allowing the applicant to participate in the securities industry would be in the public interest and sufficiently protect investors. *In re Graham*, Exchange Act Rel. No. 84106, 2018 WL 4348490, at \*8 (Sept. 12, 2018). In large part that potential basis derives from the applicant establishing a satisfactory compliance record while working under heightened supervision. *Id.* Massoud's requested relief would bypass that process.

While involving a shorter period of time (less than five years since imposition of a bar), in *Osborn* the Commission punctuated the importance of proceeding in stages, explaining that Osborn's failure to seek prior limited relief from an administrative bar through Rule 193 "weighs heavily against" him. *Osborn*, 2019 WL 2324337, at \*3. Like Massoud, "Osborn ha[d] not obtained consent to associate notwithstanding his bar, and now seeks to avoid this process entirely." *Id.* The Commission opined that Osborn first should have moved for limited relief under Rule 193 to reenter the securities industry, which would have allowed him the opportunity to "establish a satisfactory compliance record" while under heightened supervision 'before

moving to vacate the bar.” *Id.* (citations omitted); *see also Graham*, 2018 WL 4348490, at \*5 (quoting *Lewis*, 2005 WL 1384087, at \*4).

**2. Age and Experience:** The fourth factor referenced in *Cozzolino* – the age and securities experience of the applicant – also supports maintaining the bar. Massoud was not early in his securities career when the insider trading violation occurred. *See, e.g., In re Quarles*, Exchange Act Rel. No. 66530, 2012 WL 759386, at\*1 (March 7, 2012) (“a new broker in his first job in the securities industry”); *see also In re Bendall*, Exchange Act Rel. No. 38326, 1997 WL 76700, at \*1 (Feb. 24, 1997) (violation occurred when the Respondent was 24 years old). Massoud was neither young (44 at the time of the violation) nor inexperienced (*i.e.*, he was the chief executive officer of a publicly-traded company and the founder and managing partner of an unregistered investment adviser based in Connecticut).

**3. Unanticipated Consequences:** There are none. Massoud makes a half-hearted attempt to establish unanticipated consequences referencing that the “bars imposed on Mr. Massoud have significantly restricted him.” But the restrictions identified – *i.e.*, being precluded from taking on new clients or building a third-party advisory business – are hardly unanticipated.

**4. Public Interest or Protection of Investors:** Most of Massoud’s submission focuses on *Cozzolino*’s public interest factor. The Division neither disputes nor minimizes the extensive charitable and other good works that Massoud details. The fact that he is generous with time and money, encourages and motivates others to do the same, and other than this matter has an unblemished professional record is laudable. But it is not a compelling argument for why it would be in the public interest to vacate his associational bar. From his own submission it appears Massoud has been a generous, charitable, accomplished professional both before and after the 2009 conduct underlying his insider-trading violation. In other words, notwithstanding

these characteristics he profited \$676,013 from illegal insider-trading. The bar imposed by the Commission was an appropriate sanction for that conduct and the request to vacate it should be denied.

### **CONCLUSION**

For the reasons discussed above, Massoud's motion to vacate his bar from association with any investment advisor should be denied.

Respectfully submitted,

//s// Martin F. Healey  
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### **CERTIFICATE OF SERVICE**

I, Martin F. Healey, hereby certify that on September 24, 2025, the above was filed via eFAP and served via electronic mail pursuant to Rule 150(c) on the following counsel of record for Respondent:

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