UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-20597

In the Matter of

THOMAS J. POWELL

DIVISION OF ENFORCEMENT'S RESPONSE TO THOMAS J. POWELL'S APPLICATION TO VACATE BAR OR FOR CONSENT TO ASSOCIATE/PARTICIPATE

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INTRODUCTION

The Division of Enforcement ("Division") submits this response to Thomas J. Powell's January 19, 2024, Application to Vacate Bar or For Consent to Associate/Participate ("Powell Application"). Powell asks the Commission to vacate settled-to administrative bars imposed by a 2021 Order. The Commission should deny Powell's request because he has not shown compelling circumstances that would justify vacating any part of that Order.

In the alternative, Powell asks for consent to associate with Resolute Capital Advisors LLC and for consent to participate in unspecified offerings of penny stocks. The Commission should deny these alternative requests without prejudice to allow Powell to pursue that relief through the process described on the SEC's website: https://www.sec.gov/enforcement-litigation/applications-reentry.

RELEVANT BACKGROUND

On September 24, 2021, the Commission entered a settled Order instituting administrative and cease-and-desist proceedings against Powell, Resolute Capital Partners LTD, LLC (an entity controlled by Powell), Stefan T. Toth, and Homebound Resources, LLC (an entity controlled by Toth). *In re Resolute Capital Partners LTD, LLC*, Securities Act Rel. No. 10987, 2021 WL 4354679 (Sept. 24, 2021) ("Resolute Order").

Respondents, including Powell, each submitted an Offer of Settlement, which the Commission accepted. Without admitting or denying the Commission's factual findings, Powell consented to the entry of an Order making factual findings,

requiring undertakings, setting a civil penalty, and imposing administrative bars. *See id.*

The Commission found that between 2016 and 2019, Respondents and salespeople acting on their behalf raised more than $250 million of debt and equity securities from retail investors in unregistered offerings related to oil and gas wells. *Id.* at *2. Respondents made misrepresentations about the investments, including insufficiently supporting projections of future oil production, advertising potential tax benefits that were unavailable to some investors, overstating cash reserves, and making certain incomplete disclosures, including not disclosing related-party transactions. *Id.*

In some cases, Respondents told investors that their money would be used to acquire oil and gas leases, among other things, but did not tell investors that most of the money raised would actually be used to make payments to investors in Respondents' other funds. *Id.* at *2, *5. Respondents also touted high rates of return from their earlier funds without disclosing that those returns were fueled by related-party transactions and funds from new investors—not from bona fide businesses operations. *Id.* at *6.

As a result of his conduct, the Commission found that Powell willfully violated Section 17(a)(2) and (a)(3) of the Securities Act of 1933 ("Securities Act"), Section 5(a) and (c) of the Securities Act, and Section 15(a) of the Securities and Exchange Act of 1934 ("Exchange Act"). *Id.* at *7.

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Powell agreed to certain undertakings, including engaging an Independent Compliance Consultant (ICC) for three years. *Id.* at **7–9. He also agreed to pay $75,000 in civil penalties. *Id.* at *10. The agreed-to Order also included two bars against Powell—he was

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; [and]
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Id. The Order also included an investment company prohibition against Powell that "prohibited [him] from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter." *Id.* The Order provided Powell "with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission." *Id.*

On January 19, 2024, Powell submitted an "Application To Vacate Bar or For Consent to Associate/Participate." Powell's Application asks the Commission to vacate the administrative bars imposed by the settled Order in their entirety.[1]

[1] Powell's Application does not appear to seek to vacate the investment company prohibition or seek consent to associate for purposes of the investment company prohibition separately ordered against him pursuant to Section 9(b) of the Investment Company Act of 1940. *See* Powell Application. Powell's Application does not express a desire to work with investment companies nor does he allege any harm suffered due to this prohibition. Nevertheless, if Powell's Application does

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In the alternative, Powell requests permission to associate with Resolute Capital Advisors LLC—a Delaware limited liability company that Powell owns, and which was formerly registered with the SEC as an investment adviser. *See* Powell Application, at 1, 6. At the time of Powell's securities law violations, Powell was the owner and Chief Executive of Resolute Capital Advisors LLC, which served as an advisor to some of the issuers of unregistered securities. *See* Resolute Order at *3.

Powell also seeks consent to participate in unspecified offerings of penny stocks. Powell Application, at 1, 6, 7.

On April 7, 2025, the Commission ordered the Division of Enforcement to file a response to Powell's Application by May 7, 2025. *In re Powell*, Securities Act Rel. No. 11370, 2025 WL 1042163, *1 (Apr. 7, 2025). The Division now submits this response, opposing Powell's Application to vacate and recommending that the Commission deny Powell's alternative requests without prejudice.

ARGUMENT

I. The Commission Should Deny Powell's Application to Vacate.

The Commission will only vacate an order issued as part of a voluntary agreement in "compelling" circumstances—a stringent standard which is not met here. *In re Certain Off-Channel Communications Settled Orders*, Exchange Act Rel. No. 102860, 2025 WL 1101495, at *1 (Apr. 14, 2025).

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seek to vacate the investment company prohibition, the Commission should deny that request on the same basis as denying the request to vacate his associational bar.

"The Commission and courts have long emphasized the 'strong interest' in maintaining the finality of settlements." *Id.* "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); *In re Osborn*, Securities Act Rel. No. 10641, 2019 WL 2324337, at *3 (May 19, 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"); *cf. SEC v. Conradt*, 309 F.R.D. 186, 188 (S.D.N.Y. 2015) ("When it comes to civil settlements, a deal is a deal…."), *aff'd*, 696 Fed. Appx. 46 (2d Cir. 2017).

To demonstrate compelling circumstances sufficient to vacate a settled order, the applicant bears the burden to show "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 WL 23094746, at *2 (Dec. 29, 2003).

In *Cozzolino*, the Commission took the opportunity "to review its precedent concerning, and to discuss the standard that it uses for review of, petitions for relief from administrative bar orders." *Cozzolino*, 2003 WL 23094746, at *1. The Commission outlined the factors that it considers when deciding an application to vacate administrative bars, including: (1) the nature of the misconduct at issue in the underlying matter; (2) the time that has passed since issuance of the administrative bar; (3) the compliance record of, and any regulatory interest in, the petitioner since issuance of the bar; (4) the age and securities industry experience of

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the petitioner; (5) the extent to which the Commission has granted prior relief from the administrative bar; (6) whether the petitioner has identified verifiable, unanticipated consequences of the bar; (7) whether there exists any other circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors. *See id.* at *3. The Commission continues to use these factors when deciding whether to grant a request to vacate administrative bars. *See, e.g.*, *Osborn*, 2019 WL 2324337, at *2, n.5.

A. Powell's Misconduct in the Underlying Matter Supports Keeping the Bar in Place.

The first *Cozzolino* factor that the Commission considers is "the nature of the misconduct at issue in the underlying matter (more serious and extensive allegations militate against relief)." *Cozzolino*, 2003 WL 23094746, at *3. While Powell's settlement did not include *scienter*-based charges, Powell's violations were serious, spanned years, and occurred despite Powell's Series 65 license and experience in the securities industry. This factor weighs against vacating the bars.

For years, Powell and his co-Respondents relied on material misrepresentations to raise more than $250 million in unregistered debt and equity offerings. Resolute Order at **3–7. Respondents provided investors insufficiently supported projections of future oil production, overstated cash reserves, and made other incomplete disclosures, including failing to disclose related-party transactions. *Id.* at **5–6.

Respondents raised certain funds without telling investors that their money would be used to pay investors from other funds. *Id.* at *7. They also attracted new investors by emphasizing high rates of return from their other funds but not disclosing that those high returns were powered by related-party transactions and money from new investors rather than business operations. *Id.*

The seriousness and duration of Powell's actions as described in the Resolute Order counsel against granting the request to vacate.

B. Powell Did Not Seek Incremental Relief or Demonstrate Sufficient Compliance Before Moving to Vacate.

While the Commission rarely vacates administrative bars, it has vacated administrative bars in some cases where applicants have previously been granted incremental relief and, after receiving that relief, applicants have demonstrated consistent compliance. The applicable *Cozzolino* factors include: (2) the time that has passed since issuance of the administrative bar, (3) the compliance record of the petitioner since issuance of the bar, (4) the age and securities industry experience of the petitioner; and (5) the extent to which the Commission has granted prior relief from the administrative bar. *See Cozzolino*, 2003 WL 23094746, at *3. In those rare cases, granting a motion to vacate was generally "the last in a series of incremental grants of relief — that is, the petitioner earlier had been permitted to associate." *Id.* at *2. This incremental approach helps the Commission decide whether vacating the bars and allowing the applicant to participate in the securities industry without the safeguards provided by the bars would be in the public interest and sufficiently

protect investors. *See In re Graham*, Exchange Act Rel. No. 84106, 2018 WL 4348490, at *8 (Sept. 12, 2018).

Under this deliberative approach, the Commission first allows the applicant to seek consent for reentry under Rule of Practice 193, which permits the applicant to reenter 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 the bars in their entirety only after an applicant demonstrates consistent compliance over a period of time. Simply put, a brief time being subject to the bars—especially without first asking for or receiving limited permission to participate in the securities industry—is not sufficient to show that vacating administrative bars would be in the public interest.

In a similar case, the Commission denied a request to vacate, explaining that "[l]ess than five years have passed since we entered the Order imposing the bars that Osborn seeks to have vacated." *Osborn*, 2019 WL 2324337, at *3. This "relatively short period of time . . . weighs against" vacating the bars. *Id.* The Commission explained that Osborn's failure to seek prior limited relief from the administrative bar through Rule 193 "weighs heavily against Osborn." *Id.* at *3. Like Powell, "Osborn ha[d] not obtained consent to associate notwithstanding his bar, and now seeks to avoid this process entirely." *Id.* The Commission explained that Osborn should have first moved for limited relief under Rule 193 to reenter the securities industry, which would have allowed Osborn first 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 (discussing same process and factor analysis) (quoting *In re Lewis*, Exchange Act Rel. No. 51817, 2005 WL 1384087 (June 10, 2005)).

Powell's situation is similar. Under *Cozzolino* Factor 2, Powell's petition to vacate the bars was filed less than three years after he agreed to them—a "relatively short period of time" which "weighs against" vacating the bars. *Osborn*, 2019 WL 2324337, at *3. For Factor 3, Powell did not seek permission to participate in the securities industry under Rule 193 before moving to vacate the bars, so he "cannot demonstrate a record of compliance in any capacity." *Id.* However, Powell does not appear to have been the subject of any regulatory scrutiny, so "[a]s a whole, [*Cozzolino* Factor 3] militates neither for nor against relief." *Id.*

Cozzolino Factor 4—the age and securities industry experience of the petitioner—also supports maintaining the bars. The Commission sometimes considers whether the violation occurred when the applicant was young and inexperienced in the industry without proper supervision. In *Quarles*, for example, the Commission granted an application to vacate, in part because the violations occurred 24 years earlier when Quarles "was a new broker in his first job in the securities industry." *See In re Quarles*, Exchange Act Rel. No. 66530, 2012 WL 759386, at *1 (Mar. 7, 2012); *see also In re Bendall*, Exchange Act No. 38326, 1997 WL 76700, at *1 (Feb. 24, 1997) (noting that the violation occurred when Bendall was 24 years old, which supported his request to vacate).

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Powell, on the other hand, was 53 years old when the Commission issued its Order. *See* Resolute Order at *2. During the relevant time, Powell held positions of responsibility and trust in the securities industry—he was the owner and Chief Executive Officer of Resolute Capital Advisors LLC, an SEC-registered investment adviser that counseled issuers that made unregistered offers of securities. *Id.* Powell also held a Series 65 license. *Id.*

Powell argues that the Commission should remove the bars in their entirety because since 2017 he has completed additional legal education and received certifications, which now give him a better understanding of securities regulations. Powell Application, at 4–5. But there is no evidence that Powell's prior violations occurred due to a lack of education or that these new certifications will sufficiently protect the public. Indeed, Powell's past securities law violations occurred *despite* his prior education and Series 65 license. Powell's "age and experience are not substantially different from when the Commission entered the Order barring him" and these certifications "do not provide grounds to vacate the bars imposed less than five years ago." *Osborn*, 2019 WL 2324337, at *3.

Factor 5—the extent to which the Commission has granted prior relief from the administrative bar—"weighs heavily against" granting Powell's request. *Osborn*, 2019 WL 2324337, at *3. The settled Order imposing the bars on Powell provided "the right to apply for reentry" under Rule 193 after two years. Resolute Order at *10. But Powell did not apply for reentry under Rule 193 before submitting his Application. Instead, Powell "seeks to avoid this [process] entirely" by asking the

Commission to vacate the bars. *Osborn*, 2019 WL 2324337, at *3. As explained in the Commission's opinions, the most appropriate path here would be for Powell first to apply for reentry pursuant to Rule 193 as contemplated in his agreed-to Order before moving to vacate.

Powell cites to *Cozzolino* to argue that "the Commission does not require an applicant to initially seek 'incremental grants of relief' such as consent to associate with an advisor or consent to participate in a penny stock offering." Powell Application, at 1, n.1. But Powell misreads that opinion. The Commission in that case granted a motion to vacate 29 years after Cozzolino agreed to the bar. *Cozzolino*, 2003 WL 23094746, at *4. The Commission had previously granted Cozzolino incremental relief (including permission to associate with a firm in supervised capacity), Cozzolino had remained in compliance for decades, and he was 69 years old when he submitted his application. *Id.* at *1, *4. The Division of Enforcement, however, opposed Cozzolino's request to vacate the bars on the basis that the Cozzolino had not been granted incremental permission "to act in a supervisory and proprietary capacity" and urged the Commission to first grant him that limited, incremental permission before removing the bars in their entirety *Id.* at *4. The Commission disagreed, finding that first requiring even more incremental relief was not necessary because Cozzolino had already demonstrated compliance while supervised for nearly three decades and the other factors supported granting his request.

The lesson from *Cozzolino* is that the Commission generally requires applicants to first seek permission to associate in a limited, supervised capacity and to demonstrate compliance before it will grant a motion to vacate in these circumstances. At the same time, the Commission will not always require incremental permission to practice as a supervisor or in a proprietary capacity before vacating administrative bars—sometimes showing compliance while supervised can be enough. In short, the *Cozzolino* quote from Powell's Application does not help him because Powell has not sought incremental relief under Rule 193 or demonstrated compliance in any capacity, supervised or otherwise.

The other cases cited by Powell all support the principle that an applicant must first seek incremental relief. *See Quarles*, 2012 WL 759386 (Commission granting an application to vacate, relying on Quarles's prior permission to reenter and practice while supervised, his unblemished record in the 27 years since the bar was imposed, and his age of 70 years old); *In re Wien*, Exchange Act Rel. No. 49000, 2003 WL 23094748, at *5 (Dec. 29, 2003) (the Commission granted the application, noting that that Wein's "record since 1982 [when he was barred] is unblemished" and that his demonstrated compliance came after he had been granted incremental permission to reenter and participate in the securities industry);[2] *Bendall*, 1997 WL 76700 (the Commission vacated a bar that was imposed 28 years prior, when

[2] Wien moved to vacate in 1998—16 years after the bar was entered—but the Commission denied his request, noting that "among other things, in all of the cited instances [where the Commission vacated a bar] the bar was in effect for a longer period of time than in the present situation." *In re Wien*, Exchange Act Rel. No. 40239, 1998 WL 404638 (July 21, 1998).

Bendall was 24 years old, noting that Bendall had been granted permission for limited participation in the securities industry and over the next 19 years, had an unblemished compliance record); and *In re Zimmerman*, Exchange Act Rel. No. 36275, 1995 WL 568759 (Sept. 25, 1995) (the Commission vacated the bars after finding that "the Order was entered almost twenty years ago," "he is now sixty-eight years old," and, Zimmerman had been granted permission to reenter and associate with two broker-dealers in 1976, certain other restrictions were relaxed in 1984, and that throughout that time, Zimmerman's record "remained unblemished").[3]

In each of these cases,[4] the applicant first applied for—and was granted—incremental relief from the administrative bars pursuant to Rule 193, which allowed them to participate in the securities industry while remaining under supervision. Only after the applicant demonstrated compliance while participating in the securities industry did the Commission find it was appropriate and in the public interest to vacate the administrative bars. Powell's request to vacate the administrative bars is premature and should be denied.

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[3] Zimmerman moved in 1986 to vacate the bars—ten years after the bars were imposed—and the Commission denied that request. *See Zimmerman*, 1995 WL 568759, at *1.

[4] Powell also cites to *In re Van Dusen*, Exchange Act Rel. No. 18284, 1981 WL 315505 (Nov. 24, 1981). That opinion does not involve an application to vacate, but rather an appeal from National Association of Securities Dealers, Inc.'s (NASD) denial of an application to associate. *Id.* In that case, the Commission directed NASD to permit Van Dusen to associate with a broker-dealer in a supervisory capacity because the time to apply to associate had expired and no new facts had come to light. *Id.* The underlying administrative bars remained in place.

C. No New Facts, Changes in Law, or Unanticipated Consequences Warrant Modifying the Order.

The remaining *Cozzolino* factors do not support vacating the administrative bars. The Commission also considers (6) whether the petitioner has identified verifiable, unanticipated consequences of the bar or (7) whether there exists any other circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors. *See Cozzolino*, 2003 WL 23094746, at *3. A party seeking to vacate or modify an order based on these factors must establish "that a significant change in circumstances warrants revision of the decree." *Off-Channel*, 2025 WL 1101495, at *2. "Modifications may be appropriate, for example, where new factual conditions make compliance with the decree substantially more onerous; when the consent decree becomes unworkable because of unforeseen obstacles; when enforcement of the decree without modification would be detrimental to the public interest; or when there is a significant change in law." *Id.* (quotation marks and citations omitted).

Powell identifies three categories of consequences that he claims are "unanticipated"—missing out on potential business opportunities, financial institutions closing his accounts, and third parties citing to the Order in private litigation. Powell Application, at 5–6. But none of these weighs in favor of removing the administrative bars. As the Commission has explained, a complaint that an Order with an administrative bar "hinders [an applicant's] dealings with prospective business associates" and financial institutions "is not in all respects verifiable, nor is it unanticipated." *Wein*, 2003 WL 23094748, at *5; *see also In re*

Frankel, Exchange Act Rel. No. 49002, 2003 WL 23094747, at *5 (Dec. 29, 2003) (negative impact of Order and bars on applicant's job and job prospects were not unanticipated and not an unfair surprise); *Osborn*, 2019 WL 2324337, at *4 (same); *In re Johnson*, Exchange Act Rel. No. 75894, 2015 WL 5305993, at *4 n.20 (Sept. 10, 2015). Moreover, if a third party "attempt[s] to misuse the order" in litigation, Powell Application, at 6, the appropriate forum to seek relief is the court handling that litigation, not before the Commission.

In short, Powell has not identified any significant change in law or facts since the Order was entered that requires vacating the bars to be consistent with the public interest or the protection of investors. These factors weigh against granting Powell's Application.

* * *

After weighing the relevant *Cozzolino* factors, the Commission should deny Powell's motion to vacate.

II. The Commission Should Deny Powell's Alternative Requests Without Prejudice.

The Commission should deny without prejudice Powell's alternative requests for consent to associate and consent to participate in penny stock offerings. Powell's Application does not satisfy the requirements of Rule 193 and does not address the factors relevant to consent to participate in penny stock offerings. *See* 17 C.F.R. § 201.193 *and In re Application on behalf of Manish Singh*, Securities Act Rel. No. 11375, 2025 WL 1091664, at *2 (Apr. 10, 2025). However, the Commission should dismiss without prejudice to allow Powell to submit an application through the

process described on the SEC's website at https://www.sec.gov/enforcement-litigation/applications-reentry.

A. The Commission Should Deny Powell's Request to Associate Without Prejudice.

The Commission should deny without prejudice Powell's request for consent to associate with Resolute Capital Advisors LLC because his Application is incomplete. Rule 193 sets out the factors the Commission considers when reviewing an application for reentry, and the Rule instructs the applicant to address each factor in an affidavit attached to the application:

> (1) The time period since the imposition of the bar;
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> (2) Any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;
>
> (3) The applicant's compliance with the order imposing the bar;
>
> (4) The applicant's employment during the period subsequent to imposition of the bar;
>
> (5) The capacity or position in which the applicant proposes to be associated;
>
> (6) The manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;
>
> (7) Any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and
>
> (8) Any other information material to the application.

17 C.F.R. § 201.193(e). Rule 193 also sets out the form of the application and what additional information and documents are required. *See* 17 C.F.R. § 201.193(c).

The factors in Rule 193 to determine whether "an applicant's reentry to the securities industry" is "by necessity a fact-intensive, individualized inquiry." *In re Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on Behalf of Roger T. Denha for Consent to Associate with SkyOak Wealth, LLC*, Advisers Act Release No. 6872, 2025 WL 1091846, at *5 (Apr. 11, 2025). The applicant must make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest. 17 C.F.R. § 201.193(d). The applicant bears an "appropriately heavy [burden] given Congress's recognition that the securities industry should be regulated for the protection of investors and in the public interest." *Id.* When considering a request, "the Commission will consider, and an applicant should address, all of the factors under Rule 193(e), taking into account the egregiousness and scope of the applicant's underlying violation, as set forth in Rule 193(a)." *Id.*

Here, Powell's Application for consent to associate should be denied without prejudice because it is incomplete. Even considering Powell's declaration (Powell Decl.) and interim ICC report,[5] his request for consent to associate do not

[5] The publicly available Application filed with the Commission in January 2024, docketed on the Commission's website appears not to contain two exhibits—a Certification of Compliance dated December 31, 2023 (Exhibit A) and a Declaration of Thomas J. Powell dated January 19, 2024 (Exhibit B). *See* https://www.sec.gov/files/litigation/apdocuments/3-20597-2024-01-30-request.pdf and https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-20597. On April 25, 2025, counsel for Powell provided the Enforcement Division staff with those two exhibits and has informed the Division that those two exhibits were submitted to the Commission attached to Powell's Application.

satisfactorily address the requirements outlined in Rule 193. *See* 17 C.F.R. § 201.193.

Powell's Application, for example, does not contain a written statement by his proposed employer, Resolute Capital Advisors LLC. Rule 193(c)(4) requires a written statement by the applicant's proposed employer, describing the terms of employment, the supervision over the applicant, the qualifications of the proposed supervisor, the compliance and disciplinary history of the proposed employer, among other things. 17 C.F.R. § 201.193(c)(4); *see also Graham v. S.E.C.*, 794 Fed. Appx. 81, 84 (2d Cir. 2019) (affirming denial of Rule 193 application when Graham "did not provide any information about who he would work for, and it did not indicate that he would be supervised"). The Commission cannot evaluate whether Powell will be properly supervised without this required information.

The Application does not describe with sufficient detail any other meaningful supervisory controls that would exist if the Commission granted his request for consent to associate with Resolute Capital Advisors LLC. *See* 17 C.F.R. § 201.193(e)(6). Nor does it provide details about the capacity or position in which Powell proposes to be associated. *See* 17 C.F.R. § 201.193(e)(5). His declaration states that he wishes "to associate with a[n] exempt registered advisory ('ERA') for the purpose of serving as a manager and indirect control person, officer, or director of an advisory that advises private funds, and propose to serve as the investment trustee of an irrevocable trust." Powell Decl., at ¶ 10. But it is not clear whether the reference to an ERA refers to Resolute Capital Advisors LLC or some other entity,

and the application does not provide sufficient details about the referenced private funds or trusts. Powell also claims that "in associating with an ERA as an indirect control person, my authority will be limited by a fellow manager and member of the LLC with no disciplinary history, and all investor-related agreements requiring execution by the LLC, if any, would be approved and signed by the member and manager of the LLC." *Id.* at ¶ 11. But Powell does not identify this "fellow manager and member" or provide any way to verify his or her disciplinary history.

Powell claims that if he were allowed to associate, he "would have no role in valuing fund assets for reporting or fee computation purposes." *Id.* He claims to be "bound by the rules of various ethics boards and boards of professional responsibility" and "may be bound by the California Rules of Professional Conduct" should he be admitted to the State Bar of California. *Id.* And, he claims, "I remain under the scrutiny of an . . . ICC . . . that was approved as not unacceptable by the SEC following entry of the settled OIP. The ICC is under contract for the remainder of the year (2024)." *Id.*[6]

Other than these voluntary undertakings and the now-ended ICC, Powell does not identify the terms and conditions under which he would work and be supervised, or the disciplinary history of those who would supervise him.[7] He does

[6] He further notes, "The ICC conducts site visits and remote meetings to ensure I and Defendant Resolute Capital Partners are in full compliance with the Settled OIP. The ICC submits written repots confirming the same to the SEC on an annual basis, and ensures that I am restricted in what I do in the securities arena, and provides both ongoing oversight and supervision." *Id.* ¶ 11.

[7] If Powell's Application seeks reentry without any supervision or if he "wishes to become the sole proprietor of a registered entity [Resolute Capital Advisors LLC],

not provide details concerning his planned interactions with investors or market participants. And he does not explain how his proposed voluntary undertakings are "reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar." 17 C.F.R. § 201.193(a)(1); *see In re Graham*, Advisers Act Release No. 5060, 2018 WL 5734348 at *3 (Nov. 2, 2018).[8]

Powell's Application is also incomplete because it does not attach a copy of the Commission order imposing the bar. *See* 17 C.F.R. § 201.193(c)(1). The Application does not contain an undertaking by Powell to notify the Commission immediately in writing if any information submitted in support of the Application becomes materially false or misleading while the Application is pending. 17 C.F.R. § 201.193(c)(2). And the Application does not contain the Form ADV for Resolute Capital Advisors LLC as an exempt-reporting adviser. 17 C.F.R. § 201.193(c)(3)(iii) & 17 C.F.R. § 275.204-4.

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and thus is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet." 17 C.F.R. § 201.193(a)(2). Powell's incomplete Application does not meet that burden.

[8] *See also Denha*, 2025 WL 1091846, at *5 ("Most importantly, we consider the capacity in which Mr. Denha proposes to be associated and the manner and extent of the supervision to be exercised over him. The supervisory controls that will be in place for Mr. Denha as a SkyOak investment adviser representative are critically important to our decision to grant his Application. These supervisory controls are reasonably designed to prevent a recurrence of the conduct that led to the imposition of Mr. Denha's bar. SkyOak's enhanced supervision over Mr. Denha—including daily reviews of his transactions and positions, pre-approval of personal transactions, surveillance of his e-mails, required compliance training, his required use of a models-based asset allocation program, and the additional controls in place for his placing of block trades--would provide safeguards against Mr. Denha's recidivism. SkyOak's willingness to hire Mr. Denha also signals that the firm's management feels comfortable there is no likelihood of recidivism by him.").

His Application also does not address if Powell accepts responsibility for his serious misconduct, and he has not provided additional information in this proceeding, such as a final ICC certification or a supplemental declaration. *See* 17 C.F.R. § 201.193(e)(8).

For these reasons, the Commission should deny Powell's request for consent to associate with Resolute Capital Advisors LLC without prejudice. Should Powell re-submit an application that addresses all factors in Rule 193, the Division will review and make a further recommendation as appropriate.

B. The Commission Should Deny Powell's Request for Consent to Participate in Penny Stock Offerings Without Prejudice.

Powell's Application to participate in penny stock offerings is also incomplete and should be denied without prejudice. Powell's Application addresses some, but not all, of the factors that the Commission considers for an Application for reentry from an administrative penny stock bar with a right to reapply. Those factors include:

> (1) applicant's compliance with the order;
>
> (2) applicant's employment since the date of the order;
>
> (3) the proposed nature of the applicant's participation in the offering of penny stocks; and
>
> (4) the identity of any broker, dealer, or issuer with whom the applicant will be engaged in activities for purposes of the issuance or trading of any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Singh, 2025 WL 1091664, at *2; *see also In re Taft*, Exchange Act Rel. No. 44685, 2001 WL 912360, at *2 (Aug. 13, 2001). Based upon these factors, the Commission

will determine if the applicant has made a satisfactory showing that the proposed consent to participate is appropriate and not adverse to the public interest. *Singh*, 2025 WL 1091664, at *2.

Powell's Application is incomplete because it addresses some—but not all—of those factors. Powell represents that he has complied with the terms of the Order, including the engagement of an ICC. Powell Decl., at ¶ 4. Powell also represents that he has not been employed since the issuance of the Order but instead has spent his time winding up his existing investments and taking graduate-level university coursework, including coursework in law and ethics. *Id.*, at ¶ 5.

Powell further represents that he plans, among other things, to participate as an investor in penny stocks and private offerings, as well as to serve as an officer, director, or in some other supervisory capacity in private investment vehicles. *Id.*, at ¶ 10. But Powell does not provide any further details about his plans or how penny stock offerings fit into those plans. *See id.*; Powell Application at 7 ("Mr. Powell is not proposing involvement in a specific penny stock offering . . ."). Powell also does not identify any broker or dealer that he would engage for the purpose of issuing or trading penny stocks or inducing others to purchase penny stocks. *See* Powell Decl.

Lastly, Powell states—and the Division does not disagree—that the conduct addressed in the Order did not involve penny stocks and did not allude to any misconduct relating to penny stocks. Application at 7.

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In short, Powell's Application for consent to participate in penny stock offerings is incomplete, and the Commission should deny this alternative request without prejudice, which would allow Powell to resubmit an application that addresses each of these factors.

CONCLUSION

For the reasons set forth in this brief, the Commission should deny Powell's request to vacate the administrative bars. Powell's alternative requests are incomplete, so the Commission should deny those requests without prejudice.

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Respectfully submitted,

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WORD COUNT CERTIFICATION

I certify that this response brief complies with the length limitation set forth in Rule 154(c). According to the word count of the word processing program used to prepare this document, the brief contains 5,904 words (excluding the title, tables of contents, table of authorities).

/s/ Zachary A. Avallone
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CERTIFICATE OF SERVICE

I certify that pursuant to Rule 150, this response brief was electronically served on counsel for Applicant, Nicolas Morgan on May 7, 2025 at nicolas.morgan@icanlaw.org

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