DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	**Board Docket No. 21-BD-**
ROBERT SCHULMAN,	**Disciplinary Docket No. 2021-D083**
Petitioner	
A Suspended Member of the Bar of the District of Columbia Court of Appeals Bar Registration No. 377466	

DISCIPLINARY COUNSEL'S ANSWER TO
PETITIONER'S PETITION FOR REINSTATEMENT

Disciplinary Counsel files this Answer to Petitioner's Petition for Reinstatement pursuant to Board Rule 9.7(a) and D.C. Bar Rule XI, § 16(d).

On September 20, 2020, the District of Columbia Court of Appeals suspended Petitioner for three years, *nunc pro tunc* to June 28, 2018, with a fitness requirement. *In re Schulman*, 237 A.3d 71 (D.C. 2020). The disciplinary matter was based on Petitioner's conviction of one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371, and one count of securities fraud in violation of 18 U.S.C. §§ 78j(b) and 78ff, for trading in securities of King Pharmaceuticals based on material, non-public information that Petitioner obtained in connection with his representation of King while he was a partner of Hunton & Williams.

Disciplinary Counsel requests that this matter be assigned to a hearing

committee and that a hearing be scheduled. Pursuant to Board Rule 9.7(a), Disciplinary Counsel takes no position as to whether Petitioner should be reinstated unless and until he presents evidence, including testimony under oath and subject to cross-examination, demonstrating his fitness to resume the practice of law. Because Petitioner was found guilty of felonies that involved dishonesty and a breach of his obligation to maintain the confidences and secrets of a client, a more heightened scrutiny is required. *See In re Borders*, 662 A.2d 1381, 1382.

Under D.C. Bar R. XI, § 16(d)(1) and Board Rule 9.1(c), Petitioner bears the burden in this proceeding to demonstrate by clear and convincing evidence that he has the moral qualifications, competency, and learning in the law required for readmission, and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar, or to the administration of justice, or subversive to the public interest. The factors to be addressed in this reinstatement proceeding include: (i) the nature and circumstances of the misconduct for which the attorney was disciplined; (ii) the attorney's recognition of the seriousness of such misconduct; (iii) the attorney's post-discipline conduct, including steps taken to remedy past wrongs and prevent future ones; (iv) the attorney's present character; and (v) the attorney's present qualifications and competence to practice law. Board Rule 9.1(c); *see also In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985) (setting forth the standard adopted in the Board Rules).

Answers to Factual Allegations in the Petition for Reinstatement

Disciplinary Counsel responds below to the material facts alleged in the Petition for Reinstatement. Disciplinary Counsel has organized its responses according to the headings in Petitioner's Petition for Reinstatement.

I. Nature and Circumstances of Misconduct

Disciplinary Counsel denies that the allegations set forth in paragraphs 1-8 and 11-12 as they do not represent a complete and accurate description of the nature and circumstances of Petitioner's past misconduct or the criminal proceedings. In the underlying disciplinary matter, Petitioner stipulated to the following facts:

> 1. In 2010, Schulman was a partner at Hunton & Williams where he worked as an intellectual property lawyer in the firm's Washington, D.C. office.
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> 2. In or around 2000, Schulman and his wife hired Tibor Klein as their financial adviser while Klein was working at a brokerage firm. Klein later founded his own firm, Klein Financial Services, a registered financial advisor based in Long Island, New York.
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> 3. The Schulmans gave Klein discretionary authority over their accounts, which meant he could make individual trades without first obtaining their permission. Klein received one percent of the Schulmans' portfolio as his fee.
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> 4. Klein became a personal friend of the Schulmans – he socialized with them and stayed at the Schulmans' house when they met to discuss the Schulmans' portfolio.
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> 5. In 2008, Alpharma, a pharmaceutical company, retained Hunton in connection with a dispute with Purdue, another pharmaceutical company. Schulman worked on the Alpharma matter with another Hunton partner, Tom

Slater, together with David Kelly, a senior associate in the firm's Atlanta office.

6. During Hunton's representation of Alpharma in the Purdue litigation, King Pharmaceuticals acquired Alpharma.

7. In July 2010, Schulman and other Hunton lawyers were preparing for a summary judgment hearing in the Alpharma (now King) litigation later that month and a trial in August 2010.

8. In or around July 2010, Chris Klein, in-house counsel at King, informed Slater that King and Purdue were in settlement discussions and that King was in merger discussions with Pfizer. King's settlement talks with Purdue and the Pfizer acquisition of King were taking place at the same time.

9. The Hunton firm opened a separate file related to the acquisition. Slater and Kelly did most of the work on the acquisition matter, which the firm regarded as highly sensitive and confidential. Schulman did not work on the acquisition matter but learned about it in early August 2010.

10. On August 4, 2010, Slater and Kelly went to New York for a meeting with Chris Klein and Pfizer's lawyers in connection with the potential merger between King and Pfizer. Schulman did not attend the meeting. Shortly after the August 4, 2010 meeting, Kelly told Schulman about merger talks between King and Pfizer and told him to keep the information confidential. Schulman later told the SEC that he understood that the purpose of the meeting was for Pfizer's attorneys to conduct due diligence. Schulman further said that he did not know the timing or scope of the potential merger.

11. On Friday, August 13, 2010, Schulman and his wife had dinner with Klein at the Schulmans' home in Virginia. Klein was visiting the Schulmans to discuss their portfolio and other financial matters.

12. During their dinner at which they drank wine, Schulman improperly communicated to Klein that King might be acquired. In their discussion about King, Schulman told Klein it would be "nice to be King for a day," referring to King Pharmaceuticals. Schulman knew that Klein was aware that Schulman's firm represented King.

13. Klein described the dinner conversation with Schulman in his plea allocation (which occurred after a jury found Schulman guilty of conspiracy to commit securities fraud and securities fraud (see ¶ 36 below). Klein said, while under oath, the following:

> On August 14, 2010 I visited the Schulmans at their home in McLean, Virginia. At the time of the visit I knew that Robert Schulman was an attorney at Hunton & Williams and he was rendering legal services to King Pharmaceuticals. Consequently, I knew that Mr. Schulman owed a duty of confidentiality to King. During the course of the dinner with Mr. and Mrs. Schulman, Mr. Schulman provided me with material nonpublic information regarding the fact that King was the subject of an acquisition by Pfizer, Inc. More specifically, Mr. Schulman told me that he thought he had inside information because he had to give his files to someone at Hunton & Williams for a meeting with Pfizer. Mr. Schulman then stated, "You know, it would be nice to be King for a day." After I did not respond to his comment, Mr. Schulman then leaned forward toward me and emphatically repeated the statement about being King for a day. These gestures were immediately followed by Mr. Schulman stating, you know I can't trade it. . . .
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> When he told me about the material nonpublic information, I knew that Mr. Schulman was breaching his duty of confidence to King. During the rest of the evening and prior to my leaving to New York the next morning, Mr. Schulman never admonished me not to trade on the information that he told me during the dinner conversation. In fact, during the ensuing months, Mr. Schulman never told me not to trade on the information. I interpreted the full context of the conversation, and, in particular, the comment that you know I can't trade it to mean that Mr. Schulman could not directly trade the stock but that I could both for my benefit and his. As a result, I bought King for myself and for a number of my investment advisor clients, including Mr. Schulman, so that he too would benefit from the tip. I also passed the information to a broker who was a long-time friend of mine and eventually I shared in his trading profits. In 2011 I gave false information to the SEC during the course of my investigative testimony. . . .

15. In response to the court's question about what exactly Schulman said to Klein during their dinner that "was material nonpublic information," Klein responded:

> He said that he believed that he had inside information because he had to give his files over to someone at his law firm at Hunton & Williams for a meeting with Pfizer. And then he continued to make that King-for-a-day statement which I didn't -- I didn't get it at first and kind of -- he said it again and kind of looked at me like come on. And, you know, I figured it out from there.
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> . . .
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> He didn't specifically say that it -- come out and say King was the subject of an acquisition. He specifically stated that he had to give his files over. He didn't say what files. He just said he had to give his files over to someone at Hunton & Williams for a meeting with Pfizer. And the reference to King came in that statement that it would be good to be King for a day.

16 The government alleged, and a jury found, that Schulman shared the confidential or non-public information about King with Klein with the intent that Klein trade on the information and with the intent that Schulman would receive a benefit in return.

17 On Sunday, August 15, 2010, after returning to New York, Klein made several calls to Michael Shechtman, his friend and a financial advisor at Ameriprise Financial. When he reached Shechtman on Monday, August 16, 2010, Klein told him he had inside information. Klein told Shechtman that the inside information he had was that Pfizer was acquiring King.

18 Based on the information that Schulman had given Klein about King, which Klein shared with Shechtman, Klein and Shechtman traded in King stock and options for their own accounts.

19 Klein also purchased King stock for the accounts of 48 of his clients, including the Schulmans. Specifically, Klein purchased 3,000 shares of King stock for Schulman's IRA account, costing almost $27,000. The

3,000 shares Klein purchased in Schulman's account were the fourth largest purchase of King shares that Klein made in any single account.

20 Altogether, Klein purchased more than 65,000 shares of King stock for his clients' accounts for approximately $585,000. With a few exceptions, the vast majority of those shares were purchased on August 16, 2010, the first trading day after Klein's meeting at the Schulmans' home.

21 Klein's firm sent or caused to be sent to the Schulmans monthly statements for their accounts. The monthly statement for Schulman's IRA reflected that 3,000 shares of King stock were acquired for $26,899.20 on August 16, 2010. The monthly statement included a one or two-page summary for the account. Schulman told the SEC that he did not read the monthly statements other than reviewing the summary on the first couple of pages, and did not know that Klein had purchased King stock for his IRA account until April 2011, after Hunton received a Financial Industry Regulatory Authority (FINRA) inquiry listing Klein.

22 Pfizer's acquisition of King was announced on October 12, 2010. Within days of the announcement, Shechtman sold the King stock and options.

23 Klein sold the shares of King stock he had purchased for himself on October 12, 2010, the same day the Pfizer-King merger was announced, for a profit of approximately $8,000.

24 On that same day, Klein sold all of the King stock he had purchased for his family and clients, including the Schulmans, generating a profit of $328,038.

25 As a result of the purchase and sale of King stocks for his IRA account, Schulman made a profit of more than $15,500, which represented more than a 50 percent profit in less than two months.

26 In November 2010, a compliance officer with Ameriprise contacted Shechtman about his trading in King securities. Shechtman falsely told the investigators that he had been looking at King stock for a while. Shechtman later sent a follow up e-mail to the investigator and others disclosing that he had spoken with Klein about King because he was concerned that the investigators would learn about his numerous phone calls

with Klein around the trading. Shechtman told Klein about the Ameriprise investigation about a week later.

27 After discussions with Klein, Shechtman met with Ameriprise investigators and lied about his reason for trading in King stock. He later testified that he lied because he felt he had no choice and hoped the investigators would believe him and go away.

28 The Securities and Exchange Commission opened an investigation and questioned Shechtman.

29 On September 19, 2013, the SEC charged Shechtman and Klein with insider trading in violation of Rules 15(b) and 14(e) of the Securities Exchange Act. The SEC did not charge Schulman.

30 Shechtman admitted liability and agreed to cooperate with the United States Attorney's Office. Shechtman resolved the charges with the SEC and pled guilty in the related criminal case to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371.

31 After the SEC filed charges against Klein, Schulman and his wife fired Klein as their investment advisor.

32 On August 4, 2016, a grand jury in the Eastern District of New York returned an indictment against Schulman and Klein, charging them with conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff. The charges stemmed from the trading in King securities based on material, non-public information that Schulman obtained in connection with his and his firm's representation of King.

33 On February 24, 2017, the district court granted Klein's motion to sever his trial from Schulman's. Klein later pled guilty to Count One of the indictment, charging conspiracy to commit securities fraud. Klein did not enter his guilty plea until July 25, 2017 – after the jury had found Schulman guilty of both counts in the indictment.

34 Schulman's trial began on March 6, 2017. The government introduced the testimony of several witnesses, including Slater, Schulman's former partner at Hunton; Shechtman, who was a cooperating witness; and

Richard Cinnamo, a Postal Inspector who described Schulman's sworn deposition testimony to the SEC on August 27, 2012, and statements in an interview with the USAO for the Eastern District of New York on May 19, 2015.

35 Schulman did not testify at his criminal trial, but his wife, Ronnie, was one of the witnesses who testified for the defense.

36 On March 15, 2017, the jury returned its verdict finding Schulman guilty of both felony counts – conspiracy to commit securities fraud and securities fraud.

37 In April 2017, Schulman filed motions for acquittal and for a new trial. The government opposed the motions.

38 In September 2017, the federal court denied Schulman's motions to acquit and for a new trial finding there was sufficient record evidence for a jury to find beyond a reasonable doubt all the elements of insider trading – *i.e.*, (1) that Schulman had a relationship of trust and confidence with the source from which he obtained the material non-public information that he disclosed; (2) that he violated that duty of trust and confidence by disclosing the information to Klein; (3) that he intended Klein to trade on the information and that Klein did, in fact, trade; and (4) that Schulman intended to receive a personal benefit in return for the disclosure.

39 The federal court also found that there was sufficient record evidence for a jury to find beyond a reasonable doubt that Schulman was guilty of conspiracy to commit securities fraud – *i.e.*, (1) Schulman had an agreement with one or more person to commit an unlawful act; (2) Schulman knowingly and willfully joined and participated in the conspiracy; and (3) some member of the conspiracy knowingly committed at least one overt act in furtherance of the conspiracy.

40 On October 5, 2017, the federal court sentenced Schulman to three years' probation to run concurrently on both counts, a $50,000 fine, forfeiture in the amount of $15,527, and 2,000 hours of community service.

41 Schulman appealed his conviction.

42 On January 10, 2019, the Second Circuit affirmed Schulman's conviction. The mandate on the appeal issued on February 1, 2019.

43 Schulman's criminal conviction established that he violated the following District of Columbia Rules of Professional Conduct:

a. Rule 1.6(a) in that Schulman knowingly revealed a confidence or secret of a client and/or used a confidence or secret of a client for the advantage of the lawyer or a third person;

b. Rule 8.4(b), in that Schulman committed criminal acts, conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and securities fraud, in violation of 15 U.S.C. §§ 78(j)(b) and 78ff, that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and

c. Rule 8.4(c), in that Schulman engaged in conduct involving dishonesty, deceit, fraud, and/or misrepresentation.

44. Schulman's conviction also violated D.C. Bar R. XI, § 10, in that Schulman was convicted of a serious crime.

To the extent Petitioner's assertions in the Statement of Material Facts differ from the facts to which Petitioner previously stipulated, Disciplinary Counsel denies them. Disciplinary Counsel also denies Petitioner's characterization of his misconduct, his state of mind, and the actions or decisions of the SEC, the district court, or the Second Circuit as set forth in paragraphs 1 through 9 and 11 through 12.

Disciplinary Counsel admits that, as set forth in paragraphs 6 and 10, Petitioner was required to disgorge the profits from the illegal stock trading and pay a $50,000 fine. Petitioner also was placed on probation for three years and required to perform 2,000 hours of community service.

II. Recognition of Seriousness of Misconduct

Petitioner's assertions in this section are largely legal conclusions or his personal beliefs about the consequences of his misconduct on others, which do not require a response or for which Disciplinary Counsel lacks knowledge to respond. To the extent that the statements in paragraphs 13-18 in this section contain factual allegations, Disciplinary Counsel lacks knowledge to respond to them.

III. Post-Discipline Conduct

Disciplinary Counsel lacks knowledge to respond to the factual assertions in paragraphs 19 through 23 in this section.

IV. Present Character

Many of Petitioner's assertions in this section are legal conclusions or his personal views, which do not require a response or for which Disciplinary Counsel lacks knowledge to respond. To the extent factual allegations are made in paragraphs 24 through 29, Disciplinary Counsel lacks knowledge to respond to them.

V. Present Qualifications and Competence

Some of Petitioner's assertions in this section are legal conclusions or his personal opinions, which do not require a response or for which Disciplinary Counsel lacks knowledge to respond. To the extent factual allegations are made in paragraphs 30 through 36, Disciplinary Counsel lacks knowledge to respond to

them.

If Disciplinary Counsel is deemed not to have answered any allegation in the Petition for Reinstatement, Disciplinary Counsel denies each such allegation and demands strict proof. No admission of fact should be interpreted as a concession by Disciplinary Counsel that one or more of the *Roundtree* factors has been satisfied.

Respectfully submitted,

/s Hamilton P. Fox, III
Disciplinary Counsel

/s Julia L. Porter
Deputy Disciplinary Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, I caused a copy of the foregoing Answer to be e-mailed to Petitioner Robert Schulman at rms22102@yahoo.com

/s Julia L. Porter