

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15123**

In the Matter of

DOMINIC O'DIERNO

Respondent.

**RESPONDENT DOMINIC O'DIERNO'S  
PETITION FOR RECONSIDERATION**

**MOTION**

Upon the accompanying memorandum of law and the papers filed in support hereof, Respondent Dominic O'Dierno respectfully petitions the Securities and Exchange Commission ("Commission") for reconsideration of its December 6, 2012, Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sections and Cease-and-Desist Order, in the above-captioned administrative proceeding. This motion is submitted pursuant to Rule 154 of the SEC Rules of Practice, 17 C.F.R. § 201.154, to vacate the broker-dealer and penny stock collateral bars issued in the above 2012 order. This motion is supported by the accompanying memorandum of law and authorities.

///

///

///

# MEMORANDUM OF POINTS AND AUTHORITIES

## Table of Contents

PRELIMINARY STATEMENT .....	5
I. STATEMENT OF FACTS .....	6
A. Civil Suit Against Yusaf Jawed .....	7
B. Administrative Proceeding .....	8
C. Unintended Collateral Consequences from the Administrative Order.....	9
II. ARGUMENT .....	10
A. Legal Standard .....	11
1. Standard of Review for Modifying or Vacating Administrative Orders .....	11
2. Standard of Review for Impermissibly Retroactive Collateral Bars.....	13
B. Analysis .....	14
1. Compelling Circumstances Justify Removing the Bars Against Mr. O’Dierno .....	14
2. The Administrative Order Includes Impermissibly Retroactive Collateral Bars and Must be Modified .....	18
3. Alternatively, the Broker -Dealer Bar and the Penny Stock Bar Should be Temporarily Suspended or Lifted so that Mr. O’Dierno Can Establish a Track Record of Compliant Conduct. ...	19
III. CONCLUSION .....	20

## Table of Authorities

### Cases

<i>Bartko v. S.E.C.</i> , 845 F.3d 1217 (D.C. Cir. 2017).....	passim
<i>Brett Thomas Graham</i> , Release No. 5060 at *7 (Nov. 2, 2018) .....	17
<i>Fred F. Liebau, Jr.</i> , Exchange Act Release No. 92353 (July 8, 2021).....	12
<i>In Re Cozzolino</i> , Release No. 49001 (Dec. 29, 2003).....	20
<i>In re Jesse M. Townsley, Jr.</i> , Release No. 52161 (July 29, 2005) .....	14
<i>In re Salim B. Lewis</i> , Release No. 51817 (June 10, 2005).....	passim
<i>In re Stephanie Hibler</i> , Release No. 70140 at *3 (August 8, 2013) .....	14, 18, 20
<i>Koch v. S.E.C.</i> , 793 F.3d 147, 158 (D.C. Cir. 2015).....	19
<i>Linus N. Nwaigwe</i> , Exchange Act Release No. 69967 (July 11, 2013).....	12
<i>Michael H. Johnson</i> , Exchange Act Release No. 75894 at *3 (Sept. 10, 2015).....	13
<i>SEC v. Jawed, et al.</i> , Civ. Action No. 12-01696 (D. Oregon, Sept. 20, 2012).....	8
<i>See SEC v. Lewis</i> , 423 F. Supp. 2d 337, 341 (S.D.N.Y 2006). .....	18
<i>Stephen S. Wien</i> , Exchange Act Release No. 49000 at *4 (Dec. 29, 2003).....	13
<i>Teicher v. S.E.C.</i> , 177 F.3d 1016 (D.C. Cir. 1999).....	6, 12, 15, 20
<i>Vartelas v. Holder</i> , 566 U.S. 257, 273 (2012).....	15

### Statutes

15 U.S.C. § 78o .....	6
17 C.F.R. § 240.3a51-1 .....	21
17 C.F.R. § 201.193 .....	17
Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 .....	6, 14, 19

## Other Authorities

Division of Enforcement's Response in Opposition to Petitioners Guy S. Amico and Scott H.

Goldstein's Motion to Vacate Supervisory Bars, *Newbridge Securities Corp., et al.*,

Commission File No. 3-13099 at 12 (October 23, 2023)..... 13

*Two More Oregon Men Charged With Securities Violations in Alleged Grifphon Hedge Fund*

*Fraud*, THE OREGONIAN,

[https://www.oregonlive.com/finance/2012/12/three\\_brokers\\_charged\\_with\\_sec.html](https://www.oregonlive.com/finance/2012/12/three_brokers_charged_with_sec.html)..... 11

## **PRELIMINARY STATEMENT**

Respondent Dominic O'Dierno ("Mr. O'Dierno") hereby respectfully petitions the Securities and Exchange Commission for reconsideration of its December 6, 2012 Order (the "Administrative Order"), which bars him from associating with brokers-dealers and other classes of industry professionals ("broker-dealer bar") and from participating in any penny stock offerings ("penny stock bar").

Mr. O'Dierno files this Petition for relief from the bars because he is laboring under the weight of their influence in ways that were unintended and beyond the purpose for which they were designed. Specifically, the bars are hindering the ability of Mr. O'Dierno from participating the growth and development of artius.iD, Inc., a multimillion-dollar Texas-based business cybersecurity company co-founded by Mr. O'Dierno, as well as his ability to maintain stable financial relationships with financial institutions and pursue involvement in additional business development opportunities. Given the prior removal of the administrative bars regarding his association with investment advisors, municipal securities dealers, municipal advisors, transfer agents, and nationally recognized statistical rating organizations in 2020, and his continued compliance with Commission standards, Mr. O'Dierno has a substantial basis for vacating of the remaining collateral bars issued in the Administrative Order.

As a result of these unintended consequences and because Mr. O'Dierno poses no danger to the public or market participants, the administrative bars against Mr. O'Dierno must be removed. If not entirely removed, at the very least, the Administrative Order should be modified to conform with the mandates of *Bartko v. S.E.C.*, 845 F.3d 1217 (D.C. Cir. 2017) and *Teicher v. S.E.C.*, 177 F.3d 1016 (D.C. Cir. 1999). Mr. O'Dierno's alleged conduct occurred between 2005 and 2008, before passage of the Dodd-Frank Act. Although the Order notes that Mr. O'Dierno

acted as a broker without registration or without associating with a broker-dealer under Section 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”), he has never acted as a dealer under the terms of the Exchange Act, nor has he ever promoted or participated in offering any penny stocks during his professional career. Thus, the bar on those collateral classes and the penny stock bar should be removed.

Finally, and in the alternative, we respectfully request that the broker-dealer bar and the penny stock bar be at least temporarily suspended for a specific period of time, to give Mr. O’Dierno a chance to build a track record of compliant conduct similar to the track record he has created for the collateral bars that the Commission previously lifted.

## **I. STATEMENT OF FACTS**

Mr. O’Dierno currently resides in Portland, Oregon. He received a bachelor’s degree in finance and marketing from University of Oregon in 1989. He worked as a securities broker in Oregon between 1989 and 1991, becoming the firm’s youngest Vice President in a less than three-year tenure. Mr. O’Dierno left his work in the broker field and later co-founded Peregrine Holdings, Ltd., where he acted as Vice President and oversaw acquisitions, mergers, and reorganization for numerous privately held companies by managing corporate development and investor relations. With the goal of continuing his entrepreneurial efforts, Mr. O’Dierno then went on to cofound several additional companies, with a focus on personal identify management and business development consulting, including Eid Passport, Inc. (now known as Fortior Solutions) and Amare, LLC, a Portland-based business consulting firm.

As a result of his consulting services, Mr. O’Dierno continues to act as an advisor for several business, such as tech-enabled grocery supply company Pod Foods. He also currently serves an executive role for several companies, including Vice President of Business Development

for Jo Life Foods International, which provides allergy-free, plant-based food products. Additionally, Mr. O'Dierno currently acts as Executive Vice President and Co-Founder for artius.iD, Inc. (formerly Q5iD), an identity verification and authentication system which provides access control solutions to Fortune 1000 business and government entities.

#### **A. Civil Suit Against Yusaf Jawed**

On September 20, 2012, the Commission filed a lawsuit in federal district court for the District of Oregon against Yusaf Jawed ("Mr. Jawed"), Grifphon Asset Management, LLC, and Grifphon Holdings, LLC, both of which were Portland-Based advisory entities that managed various hedge funds. *See SEC v. Jawed, et al.*, Civ. Action No. 12-01696 (D. Oregon, Sept. 20, 2012); Exhibit A (Cease and Desist Order) at 2. Among the allegations were claims that Mr. Jawed and the advisory entities were used to perpetrate a long running Ponzi Scheme that raised over \$37 million from over 100 investors throughout the United States. *Id.* Mr. Jawed was alleged to have created false marketing materials with false return rates to attract investors for his hedge funds, when he instead used the funds for his own personal use. *Id.* The Commission further alleged that Mr. Jawed created false assets and account statements and instituted a fraudulent buyout of the funds to support investor belief that hedge fund interests would soon mature. *Id.* As part of their allegations, the Commission stated that Mr. Jawed retained Mr. O'Dierno's consultation services to raise funds. *Id.* During his time as a consultant, Mr. O'Dierno was alleged to have identified potential investors and provide the information and materials created by Mr. Jawed regarding the hedge fund's returns. *Id.* In that time, the Commission noted that out of the more than 100 investors who provided funding, Mr. O'Dierno helped place seven investors, who invested an approximate total of \$2.3 million dollars into the Grifphon fund. *Id.* As a result of his support, Mr. O'Dierno was provided a finder's fee that totaled approximately \$118,770.00. *Id.* at 3. Mr. Jawed enlisted the

services of several other individuals to find investors for the hedge fund, many of which were also provided finder's fees for their services. *Id.* Additionally, in 2011 Mr. Jawed requested \$82,728 from Mr. O'Dierno based on the representation that such funds were needed to support the hedge fund until would be purchased by a third party later that year, which he provided. *Id.*

## **B. Administrative Proceeding**

Based on their findings regarding Mr. O'Dierno's participation in Mr. Jawed's perpetuation of fraudulent activity, the Commission instituted administrative proceedings I against Mr. O'Dierno. In anticipation of those proceedings, Mr. O'Dierno submitted an Offer of Settlement, which the Commission accepted. Following this agreement, the Commission issued its Administrative Order against Mr. O'Dierno on December 6, 2012. *See* Exhibit A. The Administrative Order required Mr. O'Dierno to cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act, and barred him from:

(i) associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (i.e., the broker-dealer bar); and (ii) participating in any offering of a penny stock, including by 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 (i.e., the penny stock bar). *Id.* at 4.

The Commission made twelve findings in connection with its Administrative Order, the first seven of which, in relevant part, set forth the information provided above. *See* Section I, A; Exhibit A at 2-3. Additionally, the Commission noted that based on this conduct, Mr. O'Dierno: (i) acted as a broker without being registered or associated with a registered broker or dealer (ii) such conduct constituted a willful violation of Section 15(a) of the Exchange Act; and (iii) has submitted a sworn Statement of Financial Condition and additional evidence notice an inability to pay a civil penalty



related to these actions. *Id.* at 3-4. Despite noting this inability to pay, the Commission enforced Mr. O'Dierno to pay a disgorgement and prejudgment fee of \$45,561, which he successfully paid. On September 28, 2018, Mr. O'Dierno filed a request to vacate collateral bars in light of *Bartko v. SEC*. Exhibit B (Request to Vacate). The Commission subsequently issued an order on April 13, 2020, vacating the collateral bars to the extent they prevented Mr. O'Dierno from associating with an investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, but otherwise left the order unmodified. *Id.* The remaining collateral bars of the Administrative Order have been in place since issuance of the December 6, 2012 Order, without any infractions by Mr. O'Dierno.

### **C. Unintended Collateral Consequences from the Administrative Order**

Following the administrative Bar, Mr. O'Dierno has managed to stay active in the business community. Unfortunately, however, the Administrative Order has adversely affected him in ways that were presumably unintended by the Commission, including by chilling potential business development and business opportunities.

On its face, the Administrative Order does not bar Mr. O'Dierno from serving as an officer or director of a private or public company or from being involved in promoting its initial public offering were it to occur. However, Mr. O'Dierno has suffered serious prejudice and has even been put in the position to potentially have to step down from the companies he has managed and co-founded, and impacts his abilities to engage in further advisory roles specifically due to the Order.

Moreover, several months following the imposition of his administrative bar, Mr. O'Dierno received notice from his financial institution that they were shutting down all his accounts and that he would need to remove them and transfer them elsewhere. The entire process was extremely

embarrassing for Mr. O'Dierno and created a difficult situation for Mr. O'Dierno as he searched for a new institution for his assets while working to continue his business. Mr. O'Dierno was also the subject of a news article by The Oregonian, a well-known and widely circulated newspaper in Oregon regarding the allegations against him and the administrative bars imposed by the Commission.<sup>1</sup>

These unforeseen and unintended consequences of the Administrative Order are not only punishing Mr. O'Dierno and his businesses, including artius.iD, but also the investors and employees who have devoted an extraordinary amount of time and effort to building these companies, and hinders Mr. O'Dierno's ability to leverage his experience and knowledge to propel young businesses and entrepreneurs to growth without the unnecessary association with the reputational limitations imposed by the Commission.

## II. ARGUMENT

We respectfully submit that the Administrative Order should be vacated or, alternatively, modified because it is harming Mr. O'Dierno in ways that were unintended and go well beyond its scope and purpose by chilling the ability for Mr. O'Dierno to maintain his active involvement in the development, operation, and support of his businesses and generally harming his productive life as an entrepreneur and advisor to burgeoning business professionals. These consequences have ensued even though Mr. O'Dierno has no plans to associate with any broker or dealer (or other barred entities) and does not intend to participate in the offering of any penny stock. The Administrative Order is thus overbroad and more punitive than necessary to prevent further violations by Mr. O'Dierno. Moreover, the primary bases for entry of the Administrative Order—

---

<sup>1</sup> *Two More Oregon Men Charged With Securities Violations in Alleged Grifphon Hedge Fund Fraud*, THE OREGONIAN, [https://www.oregonlive.com/finance/2012/12/three\\_brokers\\_charged\\_with\\_sec.html](https://www.oregonlive.com/finance/2012/12/three_brokers_charged_with_sec.html).

Mr. O’Dierno’s efforts as a so-called “broker”—are no longer applicable in his current position as an entrepreneur providing advice on business development and related issues only. For these reasons, the Administrative Order should be vacated.

If not entirely vacated, the Administrative Order should at least be modified to comply with the mandates of *Bartko* and *Teicher*, to prevent its retroactive application to conduct with which Mr. O’Dierno had no nexus at the time of imposition. Finally, in the alternative, we respectfully request that the broker and dealer bar and the penny stock bar be at least temporarily suspended to allow Mr. O’Dierno to demonstrate a satisfactory compliance record.

## **A. Legal Standard**

### **1. Standard of Review for Modifying or Vacating Administrative Orders**

Pursuant to Exchange Act § 15(b)(6)(A), the Commission is authorized to bar from association with a broker or dealer or participation in an offering of any penny stock, anyone associated, or seeking to become associated with, a broker or dealer, or any person who was participating in the offering of a penny stock if such bar is in the public interest and:

- (i) the person has committed or omitted certain acts, including having willfully violated any provision of the Exchange Act; (ii) the person has been convicted within the last ten years of certain crimes, including crimes involving the purchase or sale of securities arising out of the conduct of the business of a broker or dealer; or (iii) the person is enjoined from certain actions, conduct, or practices, including engaging in or continuing any conduct or practice in connection with the purchase or sale of a security.

15 U.S.C.A § 78o(b)(6)(A).

The Commission has vacated or modified bar orders when the legal predicate for the bar has been removed, *see e.g., Linus N. Nwaigwe*, Exchange Act Release No. 69967 (July 11, 2013) (vacating bar order based on reversal of criminal conviction) or, additionally, where significant

time has passed since the entry of the order and the petitioner has demonstrated a track record of compliance after a period of Commission-approved reassociation. *See Fred F. Liebau, Jr.*, Exchange Act Release No. 92353 (July 8, 2021) (22-year old supervisory bar vacated as to Liebau, who was 72 years old). Although, the SEC Division of Enforcement (“Division”) has commented in previous cases that a shorter period of time may be sufficient on a balance of other relevant factors. *See* Division of Enforcement’s Response in Opposition to Petitioners Guy S. Amico and Scott H. Goldstein’s Motion to Vacate Supervisory Bars, *Newbridge Securities Corp., et al.*, Commission File No. 3-13099 at 12 (October 23, 2023).

The Commission will vacate a bar “in compelling circumstances.” *In re Salim B. Lewis*, Release No. 51817 (June 10, 2005) at \*2 (vacating bar order in part where defendant received a presidential pardon and demonstrated equitable reasons for vacatur). Moreover, the Commission has also stated that “[i]n reviewing requests to lift or modify an administrative bar order, [it] will determine whether, under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry, without the safeguards provided by the bar.” *Stephen S. Wien*, Exchange Act Release No. 49000 at \*4 (Dec. 29, 2003).

Several factors guide the inquiry into whether a bar should be vacated or modified based on compelling circumstances, including:

(i) The nature of the misconduct at issue in the underlying matter; (ii) the time that has passed since issuance of the administrative bar; (iii) the compliance record of, and regulatory interest in, the petitioner since issuance of the administrative bar; (iv) the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar; (v) whether the petitioner has identified verifiable, unanticipated consequences of the bar; (vi) the position and persuasiveness of the Division of Enforcement; (vii) and whether there exists any other circumstances that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors.

*In re Lewis*, Release No. 51817 at \*4. The Commission has indicated that “not all of these factors will be relevant in determining the appropriateness of the relief in a particular case, and no one factor is dispositive.” *Michael H. Johnson*, Exchange Act Release No. 75894 at \*3 (Sept. 10, 2015).

The Commission generally prefers to grant incremental relief rather than fully vacate a bar. *See In re Jesse M. Townsley, Jr.*, Release No. 52161 (July 29, 2005). Where appropriate, the Commission will modify a bar by vacating a portion of it so that the petitioner can associate with certain entities while still being subject to the remaining bar and, thus, the Commission’s oversight. *See, e.g., In re Lewis*, Release No. 51817 at \*5; *see also In re Stephanie Hibler*, Release No. 70140 at \*3 (August 8, 2013). Relatedly, the Commission prefers that petitioners first seek consent to associate with a regulated entity to establish a “track record” of association without incident. *In re Hibler*, Release No. 70140 at \*3 ) (“Because [Hibler] has not previously obtained Commission consent to associate with a regulated entity and thus cannot establish a ‘track record’ of association without incident, Hibler falls short of what we previously have found to constitute compelling circumstances sufficient to vacate a bar order.”).

## 2. Standard of Review for Impermissibly Retroactive Collateral Bars

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), the Commission may collaterally bar a participant from associating with all classes in the securities market in one proceeding. A collateral bar prohibits a participant “from associating in a capacity in the securities industry with which [the participant] was not associated or [was] not attempting to associate at the time of [the] securities law violations.”<sup>2</sup>

---

<sup>2</sup> *Commission Statement Regarding Decision in Bartko v. SEC*, SEC.GOV (Feb. 23, 2017), <https://www.sec.gov/news/statement/commission-statement-regarding-bartko-v-sec.html>;

Before Dodd-Frank, the Commission was required to show, among other things, that the participant was associated—or seeking to become associated—with each class or industry from which debarment was sought. *See Bartko*, 845 F.3d at 1226. If the Commission intended to bar a participant from associating with classes or industries with which he was not associated, it had to conduct an analysis to determine whether it was in the public interest to do so. *Id.*

Dodd-Frank effectively removed the industry-specific “nexus” required before barring a participant from a class with which he was not associated, making available an industry-wide ban for class-specific misconduct. *Bartko v. SEC*, 845 F.3d 1217, at 1220-21 (citing *Teicher v. SEC*, 177 F.3d 1016, at 1020-21). The application of post-Dodd-Frank penalties to pre-Dodd-Frank misconduct constitutes a quintessential example of “attaching new legal consequences to events contemplated before Dodd-Frank’s enactment” and is legally impermissible because Congress did not expressly authorize such retroactive application. *Bartko*, 845 F.3d at 1224 (citing *Vartelas v. Holder*, 566 U.S. 257, 273 (2012)).

## **B. Analysis**

### **1. Compelling Circumstances Justify Removing the Bars Against Mr. O’Dierno**

Compelling circumstances in this case militate in favor of the Commission’s removal of the bars in the Administrative Order. As set forth above, the Commission looks to several factors to determine whether it should vacate or modify a bar. *See In re Lewis*, Release No. 51817 at \*4. As applied to Mr. O’Dierno, those factors overwhelmingly demonstrate that there are compelling reasons to vacate or, at the very least, modify the bars against him.

First, the underlying conduct sustaining the bars occurred between 16-20 years ago. Moreover, it has been nearly 12 years since the application of administrative bars. While this term is somewhat lower than those previously noted by the Commission in a successful petition, when

balanced with other relevant factors under the current standard, it shows that Mr. O'Dierno is no longer a risk to the public interest of further offenses.

With respect to the nature of the conduct, Mr. O'Dierno did not fabricate false information or provide services that were beyond the provision of information to investors provided to him by Mr. Jawed in his role as an advisor. Rather, he is alleged to have advised seven of the more than 100 investors who provided funding for Mr. Jawed's hedge fund regarding information and details that Mr. Jawed had alone fabricated and provided to him in exchange for a finder's fee. Several other individuals who were involved in efforts to recruit investors for the hedge fund also received finder's fees for their efforts and received no administrative sanctions from the Commission. Rather, Mr. O'Dierno's efforts can almost exclusively be traced to false assertions and fraudulent statements from Mr. Jawed. Moreover, rather than challenge the findings, Mr. O'Dierno agreed to settle his administrative action and accept an agreement and collateral bars with the right to reapply within three years, which he has continuously abided by.

Before the filing of charges against him, Mr. O'Dierno had an unblemished record. Likewise, since the imposition of the Administrative Order nearly 12 years ago, there have been no infractions on Mr. O'Dierno's part. This is especially telling where Mr. O'Dierno has been continuously involved in the development and management of numerous businesses in an advisory capacity for nearly thirty years, as well as in an executive role with numerous companies, including some that have maintained relationships with government entities, with much of his focus on corporate governance and strategic development.

The Commission also looks to whether the petitioner has been granted prior relief. *See In re Lewis*, Release No. 51817 at \*4. In this case, Mr. O'Dierno applied for, and received, an order vacating the administrative bars regarding his association with investment advisers, municipal

securities dealers, municipal advisors, transfer agents, or nationally recognized statistical rating organizations on April 13, 2020. In the more than four years since these collateral bars have been lifted, Mr. O'Dierno has continued to comply with the remaining collateral bars. Additionally, given that the Commission favors incremental relief to establish a track record of a petitioner's ability to abide by the applicable laws and policies, Mr. O'Dierno has demonstrated his ability and commitment to do so.

Mr. O'Dierno has also stated that he has no intention to re-enter the securities industry as a broker, a position for which he has not held in thirty years, and has no desire to participate in any penny stock offering. In fact, Mr. O'Dierno has *never* been associated with most of the classes of professionals in the broker and dealer bars and has *never* participated in a penny stock offering. He ceased working as a broker in the securities industry before he was charged with the underlying conduct and has since become a successful entrepreneur in the identity management and food logistics space with a focus on advising business professionals and developing business solutions.

That Mr. O'Dierno no longer works for a broker (and does not intend to), has never worked as a dealer under the provisions of the Exchange Act, and has no intention to ever participate in the promotion of any penny stock in his current role, all support the conclusion that any application by Mr. O'Dierno to re-enter the securities industry pursuant to SEC Rule of Practice 193 would therefore be futile. *See Brett Thomas Graham*, Release No. 5060 at \*7 (Nov. 2, 2018). To this end, Mr. O'Dierno is instead seeking relief from the Administrative Order due to unintended consequences that are having overbroad and chilling effects on Mr. O'Dierno's businesses and his career as an entrepreneur, neither of which has anything to do with the underlying conduct, nor are they related to the intended purpose of the broker-dealer bar and penny stock bar, which relate



to his prior professional role. *See id.* (“[T]he Commission will act in response to those situations in which the equitable need for relief warrants vacating or modifying the bar order.”).

The SEC also considers whether it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar. *See In re Hibler*, Release No. 70140 at \*2. Mr. O’Dierno is not seeking to function in the securities industry and thus investors do not need protection from his activities. Moreover, the SEC always retains the ability to pursue claims against Mr. O’Dierno, as against all others, should he violate the U.S. securities laws. *See SEC v. Lewis*, 423 F. Supp. 2d 337, 341 (S.D.N.Y. 2006).

Similar to *Lewis*, Mr. O’Dierno’s alleged misconduct most recently occurred in 2008 — almost 17 years ago—but, unlike *Lewis*, Mr. O’Dierno was never convicted of a crime. Before the charges, Mr. O’Dierno worked in the securities industry for almost 20 years and had an unblemished record. Likewise, since the alleged misconduct and imposition of the bars in 2012, Mr. O’Dierno, like *Lewis*, has had a spotless and satisfactory compliance record. *See Lewis*, 423 F. Supp. 2d at 340-41. Moreover, Mr. O’Dierno is also able to demonstrate unintended consequences of the Administrative Order.

As discussed herein, the effect of the bars against Mr. O’Dierno has extended well beyond their intended or permitted reach, causing undue hardship and unintended consequences. Indeed, the bars have become substantially more onerous as shown by the unforeseen obstacles Mr. O’Dierno has faced in trying to maintain his role as an advisor and entrepreneur, and participate in an administrative role for his company, artius.iD. Although the bars in no way prohibit Mr. O’Dierno from serving as the Vice President of artius.iD (or any public company), now that artius.iD has expanded and seeks to obtain further business with government entities

and larger corporations, Mr. O'Dierno has been unable to associate with his company, and at one point has discussed with the Board a potential need to step away from the business based on the remaining administrative bars. Additionally, Mr. O'Dierno has been forced to remove his assets from his business bank account, which he had held for years, based on the administrative bars. In this way, the bars are having the unintended consequence of hampering his ability to maintain stable financial conditions for his occupation. Moreover, Mr. O'Dierno has been the subject of an extremely defamatory news article by a major local newspaper, which has indicated they will not remove the article until all the administrative bars have been lifted. As a result, the Administrative Order has a substantial chilling effect, making it more punitive than intended or warranted.

Prior removal of several existing collateral bars, Mr. O'Dierno's unblemished record before and after the alleged conduct between 2005 and 2008, his positive impact on the tech industry and the market via his contributions to help grow countless companies and counteract identify fraud, and the unintended consequences that flow directly from the administrative bars, all militate in favor of granting the petition for reconsideration to remove the bars. *In re Lewis*, Release No. 51817 at \*4-5.

2. The Administrative Order Includes Impermissibly Retroactive Collateral Bars and Must be Modified

The bars against Mr. O'Dierno in the Administrative Order are based solely on conduct that occurred between 2005 and 2008, prior to Dodd-Frank. Because the bars include classes and industries with which Mr. O'Dierno was not associated at the time and because they are impermissibly retroactive, they must be removed. *Bartko*, 845 F.3d at 1220–21; *Koch v. S.E.C.*, 793 F.3d 147, 158 (D.C. Cir. 2015). As Mr. O'Dierno was only alleged to have operated as a broker under the terms of the exchange act at the time of his alleged conduct, barring him from

associating with dealers is an impermissibly retroactive application of Dodd-Frank. *See Bartko*, 845 F.3d at 1220–21.

Moreover, although Congress authorized the Commission to impose penny stock bars in 1990, prior to Mr. O’Dierno’s alleged conduct, Mr. O’Dierno has never been involved with penny stock and has no intention to participate in any offering of penny stock. Thus, the penny stock bar is an impermissible collateral bar as applied to Mr. O’Dierno. *See Teicher*, 177 F.3d at 1019-20 (concluding that the Commission could not bar a participant from a class with which he had no association or nexus). The petitioner in *Bartko* was not barred from participating in any offering of penny stock so the court did not reach the issue. However, the same principles from *Bartko* and *Teicher* apply here, where Mr. O’Dierno has been barred from a sector or industry with which he had no nexus at the time of the imposition of the bars. Further, Mr. O’Dierno and his business associations, including artius.iD, are suffering unintended, punitive consequences from the ambiguity surrounding the language in the broker, dealer, and penny stock bars and thus equitable reasons militate in favor of removing them.

3. Alternatively, the Broker -Dealer Bar and the Penny Stock Bar Should be Temporarily Suspended or Lifted so that Mr. O’Dierno Can Establish a Track Record of Compliant Conduct.

Finally, and in the alternative, we respectfully request that the broker-dealer bar and the penny stock bar be at least temporarily suspended or lifted for a finite period of time, so that Mr. Mr. O’Dierno can build a track record of compliant conduct. See, e.g., *In re Hibler*, Release No. 70140 at \*4; *In re Lewis*, Release No. 51817 at \*4-5. As mentioned, supra, Mr. O’Dierno does not intend to associate with any of the barred classes or entities, nor does he intend to promote or participate in the offering of any penny stock. Thus, Mr. O’Dierno has had no basis upon which to make a formal application for consent to associate pursuant to SEC Rule of Practice 193. However,

the Commission has discretion to lift or modify a bar order when it comports with the public interest and investor protection. *In Re Cozzolino*, Release No. 49001 (Dec. 29, 2003) (vacating bar order where, if petitioner could not obtain new employment in the industry, he “[would] not be in a position to establish the ‘track record’ of association without restrictions that the Division indicates it would wish to see before supporting relief from the bar”).

Mr. O’Dierno’s companies have no current intention of issuing penny stock in connection with any future public offerings. However, because it is in the realm of theoretical possibility that, in the future, some of his companies stocks could fall into the SEC’s definition of a “penny stock” pursuant to 17 C.F.R. § 240.3a51-1, the Commission should grant incremental relief to Mr. O’Dierno where he does not intend to at all be involved in the process of soliciting investment of or other funding efforts on his business’ behalf.

Likewise, although Mr. O’Dierno does not intend to associate with broker or dealers, his business and its employees may affiliate with such classes or entities in connection with their operations. Thus, the Commission should, in the alternative, grant the same incremental relief by suspending the broker and dealer bars and/or permitting Mr. O’Dierno to associate with the barred classes for a period of time to demonstrate a compliant track record or to otherwise show, as an executive vice president and business advisor, that he can operate in a tangentially related industry and abide by the law.

### **III. CONCLUSION**

For the forgoing reasons, we respectfully request that the Commission remove the Administrative Order’s broker and dealer bars and penny stock bar in their entirety. In the alternative, we request that the Administrative Order at the very least be modified, pursuant to

Bartko and Teicher, to remove: (i) the bars against association with brokers and dealers; and (ii) the penny stock bar. Finally, and also alternatively, we respectfully request that the Commission temporarily lift or suspend the broker and dealer bars and the penny stock bar so that Mr. O'Dierno can demonstrate compliance in connection with his several roles as a business executive and advisor.

DATED this 26th day of February 2025.

/s/ Justin Rusk  
JUSTIN RUSK, OSB No. 175946  
HOFFMAN LAW LLC  
1000 SW Broadway, Ste. 1500  
Portland, OR 97205  
Phone: (503) 222-1125  
Email: [justinr@hoffmanlawpnw.com](mailto:justinr@hoffmanlawpnw.com)  
Attorney for Respondent

### **WORD LIMITATION CERTIFICATION**

I hereby certify that this Petition complies with the Commission's Rules of Practice, including the length limitation set forth in 17 C.F.R. § 201.154(c). The Petition contains 5,524 words, excluding the table of contents and table of authorities, as calculated by the word processing system.

DATED this 26th day of February 2025.

/s/ Justin Rusk  
JUSTIN RUSK, OSB No. 175946  
HOFFMAN LAW LLC  
1000 SW Broadway, Ste. 1500  
Portland, OR 97205  
Phone: (503) 222-1125  
Email: [justinr@hoffmanlawpnw.com](mailto:justinr@hoffmanlawpnw.com)  
Attorney for Respondent

**Certificate of Service**

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 151, I hereby certify that copies of Respondent Dominic O'Dierno's Petition for Reconsideration and its accompanying Memorandum of Points and Authorities were served on the following party on February 26, 2024 by mailing:

Securities and Exchange Commission  
Office of the Secretary  
100 F Street, N.E.  
Washington, DC 20549

DATED this 26th day of February 2025.

/s/ Justin Rusk  
JUSTIN RUSK, OSB No. 175946  
HOFFMAN LAW LLC  
1000 SW Broadway, Ste. 1500  
Portland, OR 97205  
Phone: (503) 222-1125  
Email: [justinr@hoffmanlawpnw.com](mailto:justinr@hoffmanlawpnw.com)  
Attorney for Respondent

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15123**

In the Matter of

DOMINIC O'DIERNO

Respondent.

**DOMINIC O'DIERNO'S INDEX OF ATTACHMENTS**

<b><u>Attachment</u></b>	<b><u>Description</u></b>
1	Cease and Desist Order
2	Order to Vacate Collateral Bars