HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15823

In the Matter of

LEE HEISS

Respondents.

DIVISION OF ENFORCEMENT'S RESPONSE TO LEE HEISS'S REQUEST TO VACATE NRSRO AND MUNICIPAL ADVISOR BARS

ADMINISTRATIVE PROCEEDING
File No. 3-15823

In the Matter of

JASON MEDVIN

Respondents.

DIVISION OF ENFORCEMENT'S RESPONSE TO JASON MEDVIN'S REQUEST TO VACATE NRSRO AND MUNICIPAL ADVISOR BARS

INTRODUCTION

By Orders dated February 1, 2017, the Commission directed the parties to brief the issue of whether or not bars against Respondent Lee Heiss ("Heiss") and Respondent Jason Medvin ("Medvin" and, with Heiss, "Respondents") from association with any nationally recognized statistical rating organization ("NRSRO") or municipal advisor should be vacated. Both Respondents filed requests to vacate these collateral bars in 2016. Any such vacating of these collateral bars would be premised on whether the misconduct for which Respondent was penalized occurred before the July 21, 2010 effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). As set forth below, because a portion of the

misconduct on the part of each Respondent occurred *after* that effective date, and Respondents' conduct fully justifies this relief, there are no grounds for vacating these bars.

THE RELEVANT LEGAL STANDARD

In *Koch v. SEC*, 793 F3d 147, 158 (D.C Cir. 2015), the Court of Appeals for the D.C. Circuit ruled that Dodd-Frank's provisions allowing the imposition of collateral NRSRO and municipal advisor bars could not be imposed retroactively. That is, such bars could not be imposed unless the conduct at issue occurred after Dodd-Frank's effective date of July 21, 2010.

On October 9, 2015, the Commission issued a statement[1] stating that it would not seek further review of the *Koch* decision, and inviting persons who believed that they were "the subject of a Commission order imposing a bar from associating with a municipal advisor and/or a nationally recognized statistical rating organization *and* you believe that the *Koch* decision affects the bar(s) in your case because all of the conduct relevant to such bar(s) occurred before July 22, 2010, the effective date of the Dodd-Frank Act, you may request that the Commission issue an order vacating the bar(s)."

Thereafter, on February 1, 2017, the Commission, recognizing that, in some instances, conduct that resulted in the imposition of collateral NRSRO and municipal advisor bars had occurred beyond July 21, 2010, invited briefing on the question of whether or not the misconduct supporting imposition of the NRSRO and municipal advisor bars in this matter occurred after July 22, 2010 and, if so, whether the bars should be vacated. Because Heiss's and Medvin's misconduct continued until well after the effective date of Dodd Frank, as set forth below, the applications to vacate these bars should be denied.

[1] https://www.sec.gov/news/statement/commission-statement-regarding-koch-v-sec.html.

THE VIOLATIVE MISCONDUCT AT ISSUE IN THIS PROCEEDING

In earlier proceedings, on February 13, 2014 (for Heiss) and on February 11, 2014 (for Medvin), each Respondent submitted offers of settlement whereby they consented to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (the "Order"). The Order was instituted on April 4, 2014. In those offers of settlement, both Medvin and Heiss consented to being barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, with a right to reapply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

The Order also ordered Heiss and Medvin each to pay disgorgement of $118,601.96, plus prejudgment interest of $14,391.32, and each pay a civil money penalty of $35,000. Both Heiss and Medvin made their required payments.

The Order laid out the Commission's findings. From May 2008 through November 2011, Heiss and Medvin, with two others, operated an unregistered broker-dealer, Visionary Trading LLC ("Visionary") (*See* Order, ¶ III.A.1). Heiss and Medvin, with their colleagues, rented an office and outfitted it with computer equipment to enable securities trading. (*Id.*, ¶ III.C.11). They encouraged other traders to trade at their office. (*Id.*). Heiss, Medvin and others worked out an arrangement with a registered broker dealer through which they cleared their trades to share in the commissions generated from the trading. (*Id.*, ¶ III.C. 12). Each month, Heiss and Medvin received transaction-based compensation directly associated with the trading of the individuals who traded at their office. (*Id.*, ¶¶ III.C. 11-13). Altogether, Heiss, Medvin,

and their two partners received $474,407 in commissions generated from the trading at Visionary. (*Id.*, ¶¶ II.A.1, III.C.13).

ARGUMENT

I.
SIGNIFICANT CONDUCT POST-DATED DODD-FRANK'S EFFECTIVE DATE

The conduct outlined in the Order, and which formed the basis of the offers of settlement submitted by Heiss and Medvin occurred over the period May 2008 to November 2011, extending some sixteen months after Dodd-Frank's effective date. (*Id.*, III.A.1, III.C.12).

II.
COLLATERAL BARS ARE WARRANTED

Both Heiss and Medvin previously agreed, in their offers of settlement, to the imposition of the collateral bars. However, even absent any offers of settlement, the bars are in the public interest.

Whether a bar is in the public interest depends on the egregiousness of the respondents' conduct; the isolated or recurrent nature of the infraction; the degree of scienter involved; the respondent's recognition of the wrongful nature of his conduct; the sincerity of any assurances against future violations; and the likelihood that the respondent's occupation will present opportunities for future violations. These criteria are often referred to as the "*Steadman* factors" owing to the Fifth Circuit's recitation of them in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). *See also In the Matter of George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (January 30, 2017); *In the Matter of Harding Advisory LLC and Wing F. Chau*, Advisers Act Release No. 4600, 2017 WL 66592, at *13-14 (January 6, 2017); *In the Matter of J.S. Oliver Capital Mgmt.*, Advisers Act Release No. 4431, 2016 WL 3361166, at *10-11 (June 17, 2016).

The egregiousness of Respondents' conduct is beyond dispute. As set forth above, for over three years, including over a year after the effective date of Dodd-Frank, Heiss and Medvin (neither of whom was registered as a broker or was associated with the broker dealer from whom the commissions were transferred) received transaction-based compensation from traders who traded through Visionary, an entity not registered with the Commission in any capacity. Further, this was not isolated conduct, but a planned, intentional business. As the Order outlines, Heiss, Medvin and their partners set up their business in 2003. They rented an office, and outfitted that office with the equipment necessary to have a trading business. And they negotiated commission rates with the traders who traded from Visionary's office space. The Visionary partners, including Heiss and Medvin received, in total, $474,407 in commissions over the entire period of the misconduct.

While the securities law violation that resulted in the Order did not require a showing that Heiss and Medvin acted with scienter, their actions suggest that they engaged in the conduct knowingly. Both assisted with starting the business, arranged for the equipment, welcomed the traders, and accepted the transaction-based compensation for approximately three years, including for some sixteen months after the effective date of Dodd-Frank. In short, Heiss and Medvin had to affirmatively and knowingly act to make their trading business work.

Despite the egregious nature of their violations, other than consenting to a settlement (in which neither admitted nor denied wrongdoing) neither Heiss nor Medvin has taken any action to acknowledge their wrongful conduct or otherwise provided assurances that they would not commit future violations.

To the contrary; the fact that each filed the instant petitions to vacate the NRSRO and municipal advisor bars at least implies that they intend to practice in the financial industry in

some capacity. Vacating of these bars would only present opportunities for future violations. *See Harding Advisory LLC at *14* (the securities industry presents many opportunities for future violations, and continued employment in it in any capacity would pose a risk to investors.)

CONCLUSION

As noted above, while Heiss's and Medvin's violative conduct began before the effective date of Dodd-Frank, that conduct continued long after adoption of Dodd-Frank, until November 2011. The conduct directly enriched each; but they were entitled to those funds only if they associated themselves with a registered broker-dealer. To vacate the NRSRO and municipal advisor bars here would be a perverse result – reinstating the ability of these individuals to associate with certain types of entities after they were barred for failing, when required, to associate with a regulated entity. Therefore, the NRSRO and municipal advisor bars should not be vacated and any request to do so should be rejected.

Dated: February 28, 2017
New York, New York

DIVISION OF ENFORCEMENT

By: _____

Thomas P. Smith, Jr. (212) 336-0171
Securities and Exchange Commission
Division of Enforcement
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281-1022
smiththth@sec.gov

Jason J. Burt (303) 844-1038
Securities and Exchange Commission
Division of Enforcement
Denver Regional Office
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
burtja@sec.gov

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15823

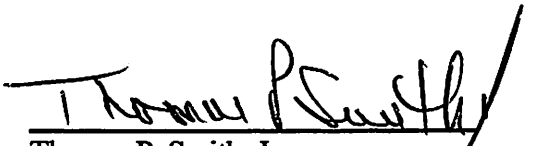
In the Matters of **LEE HEISS and JASON MEDVIN,** **Respondents.**	**Certificate of Service**

I, Thomas P. Smith, Jr., certify that on the 28th day of February, 2017, I caused true and correct copies of the Division of Enforcement's Response to Lee Heiss's and Jason Medvin's Request to Vacate NRSRO and Municipal Advisor Bars to be filed and served by UPS on:

Brent J. Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 1090
Washington, DC 20549
(original plus three copies)

and by electronic mail on:

Jenice Malecki
Malecki Law
11 Broadway, Suite 715
New York, NY 10004
(212) 943-1233
Jenice@MaleckiLaw.com



Thomas P. Smith, Jr.
Securities and Exchange Commission
New York Regional Office
Brookfield Plaza, 200 Vesey Street, Suite 400
New York, NY 10281
Tel: 212.336.0171