

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 13, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-16803

In the Matter of

MAHER F. KARA,

Respondent.

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RESPONDENT MAHER F. KARA'S UNOPPOSED MOTION TO VACATE
INVESTMENT ADVISER, MUNICIPAL SECURITIES DEALER, AND TRANSFER
AGENT BARS, AND SUPPORTING MEMORANDUM OF LAW

George C. Harris
Su-Han Wang
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Phone: 415.268.7000
Fax: 415.268.7522
Email: gharris@mofocom
Email: swang@mofocom

Carl H. Loewenson Jr.
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019-9601
Phone: 212.468.8000
Fax: 212.468.7900
Email: cloewenson@mofocom

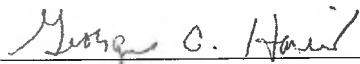
**MOTION TO VACATE INVESTMENT ADVISER, MUNICIPAL SECURITIES
DEALER, AND TRANSFER AGENT BARS**

Respondent Maher Kara hereby moves the Securities and Exchange Commission (the “Commission”) to vacate his investment adviser, municipal securities dealer, and transfer agent bars entered in the above-referenced matter. The United States Court of Appeals for the District of Columbia Circuit recently held that it is impermissibly retroactive to bar a respondent from association with investment advisers, municipal securities dealers, or transfer agents for pre-Dodd-Frank misconduct when the respondent had no association with those segments of the securities industry at the time of the misconduct. *Bartko v. SEC*, No. 14-1070, 2017 U.S. App. LEXIS 761, at *18 (D.C. Cir. Jan. 17, 2017). The holding in *Bartko* applies here, and the Commission should therefore vacate these collateral bars.

Respondent’s Motion to Vacate Investment Adviser, Municipal Securities Dealer, and Transfer Agent Bars, which is not opposed by the Enforcement Division, is supported by the accompanying memorandum of points and authorities.

Dated: February 13, 2017

Respectfully Submitted



George G. Harris
Morrison & Foerster LLP

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO VACATE

I. INTRODUCTION

Maheer Kara respectfully requests that the Securities and Exchange Commission (the “Commission”) vacate the investment adviser, municipal securities dealer, and transfer agent bars imposed by Administrative Law Judge Carol Fox Foelak in this matter. *Maheer F. Kara*, Initial Decision Release No. 979, 2016 SEC LEXIS 990, at *22 (ALJ Mar. 15, 2016) (the “Initial Decision”). The United States Court of Appeals for the District of Columbia Circuit has determined that it is impermissibly retroactive to bar a respondent from association with investment advisers, municipal securities dealers, and transfer agents for pre-Dodd-Frank misconduct when the respondent had no association with those segments of the industry at the time of the misconduct. *Bartko v. SEC*, No. 14-1070, 2017 U.S. App. LEXIS 761, at *18 (D.C. Cir. Jan. 17, 2017). Like the respondent in *Bartko*, Maheer’s conduct occurred before Dodd-Frank was enacted and Mr. Kara was associated only with a broker-dealer. In light of the D.C. Circuit’s ruling, the Commission should exercise its discretion and vacate Mr. Kara’s collateral bars. The Enforcement Division has informed counsel for Mr. Kara that it does not oppose this motion.

II. BACKGROUND

On September 10, 2015, the Commission issued an Order Instituting Proceedings against Mr. Kara. *Kara*, 2016 SEC LEXIS 990, at *1. The proceeding was a follow-on proceeding based on two cases, a civil SEC enforcement action and a criminal case. *Id.* The parties filed a joint stipulation of facts and cross-motions for summary disposition. *Id.* at *1-2.

In Mr. Kara’s motion for summary disposition, he argued against a collateral bar. Citing *Koch v. SEC*, 793 F.3d 147 (D.C. Cir. 2015), Mr. Kara argued that a collateral bar was impermissibly retroactive because his conduct “ended before the July 22, 2010, effective date of

the Dodd-Frank Act,” “he was associated with a broker-dealer only, and . . . prior to Dodd-Frank, the Exchange Act had no provision for collateral bars.” *Id.* at *8.

ALJ Foelak disagreed and held that *Koch* did not prohibit collateral bars from association with investment advisers, municipal securities dealers, and transfer agents for pre-Dodd-Frank conduct. *Id.* at *8. ALJ Foelak’s sanction, however, did “not include a bar from association with a municipal advisor or nationally recognized statistical rating organization in light of *Koch v. SEC*, 793 F.3d at 157-58, and the date of Kara’s violative conduct.” *Id.* at *16 n.8.

The Initial Decision became final on April 27, 2016. *Maher F. Kara*, Exchange Act Release No. 77731, 2016 SEC LEXIS 1555, at *1 (Apr. 27, 2016). Mr. Kara was barred from associating with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent, subject to a right to reapply after three years. *Id.*

III. ARGUMENT

When the Initial Decision was issued, the D.C. Circuit had not yet explicitly addressed collateral bars on association with investment advisers, municipal securities dealers, or transfer agents for pre-Dodd Frank conduct. It has now held that such collateral bars are impermissibly retroactive penalties. Accordingly, the Commission should vacate Mr. Kara’s collateral bars.

The respondent in *Bartko*, like Mr. Kara, “had no cognizable association with the investment adviser, municipal securities dealer or transfer agent classes when his misconduct occurred.” *Bartko*, 2017 U.S. App. LEXIS 761, at *12. Because Congress “did not expressly authorize retrospective application of Dodd-Frank,” applying these “post-Dodd-Frank penalties to pre-Dodd-Frank misconduct constitutes a quintessential example of ‘attach[ing] new legal consequences to events completed before [Dodd-Frank’s] enactment.’” *Id.* (citation omitted). The D.C. Circuit held that it was an abuse of discretion to bar Bartko from association with

investment advisers, municipal securities dealers, and transfer agents because “those bars are impermissibly retroactive.” *Id.* at *18.

The reasoning in *Bartko* applies here, where Mr. Kara received collateral bars for conduct that occurred before Dodd-Frank was enacted. These types of collateral bars have now been held to be impermissibly retroactive and should be vacated. The Commission can exercise its discretion to do so here, as it did after the D.C. Circuit issued the *Koch* order. After *Koch*, the Commission vacated collateral bars from association with municipal advisors and national recognized statistical rating organizations for conduct that occurred prior to July 22, 2010. *See, e.g.*, Phillips Dennis Murphy, Exchange Act Release No. 76702, 2015 SEC LEXIS 5178, at *1 (Dec. 21, 2015); Corey Ribotsky, Investment Advisers Act Release No. 4396, 2016 SEC LEXIS 1888, at *1 (May 26, 2016); Michael Antonio Zurita, Exchange Act Release No. 78467, 2016 SEC LEXIS 2678, at *1 (Aug. 2, 2016). The Commission even provided a form document to assist individuals seeking to vacate their municipal advisor or national recognized statistical rating organization bars and expedite the process.¹ The Commission should exercise its discretion here and vacate Mr. Kara’s collateral bars.

IV. CONCLUSION

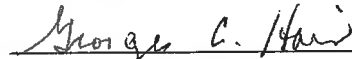
For the reasons stated above, Maher Kara respectfully requests that the Commission vacate

¹ *See* The Commission, *Commission Statement Regarding Decision in Koch v. SEC* (Oct. 9, 2015), available at <https://www.sec.gov/news/statement/commission-statement-regarding-koch-v-sec.html>.

the bars prohibiting his association with investment advisers, municipal securities dealers, and transfer agents.

Dated: February 13, 2017

Respectfully submitted,



George C. Harris
MORRISON & FOERSTER LLP

CERTIFICATE OF SERVICE

I, Noanoa L. Pan, hereby certify that on February 13, 2017, the foregoing
**Respondent Maher F. Kara's Unopposed Motion to Vacate Investment Adviser, Municipal
Securities Dealer, and Transfer Agent Bars, and Supporting Memorandum of Law** was
filed with the Securities and Exchange Commission, as follows:

By overnight mail (original and three copies)

Office of the Secretary
Attn: Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington, DC 20549-2557
Phone: 202-551-5400
Facsimile: 202-772-9324


and that a true and correct copy of the foregoing has been served on the following persons entitled
to notice:

By overnight mail

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

By email-delivery (by agreement)

E. Barrett Atwood, Esq.
San Francisco Regional Office
Securities and Exchange Commission
44 Montgomery Street, Suite 2800
San Francisco, CA 94104-4802
atwoode@sec.gov



Noanoa L. Pan