

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 69967 / July 11, 2013

Admin. Proc. File No. 3-13481

In the Matter of  
  
LINUS N. NWAIGWE

ORDER VACATING BAR

Linus N. Nwaigwe seeks to vacate a Commission order barring him from associating with any broker or dealer.<sup>1</sup> The order was issued in an administrative proceeding instituted against Nwaigwe under Section 15(b) of the Securities Exchange Act of 1934 based on his conviction in 2009 for participating in a conspiracy to commit securities fraud. On August 2, 2012, the United States Court of Appeals for the Second Circuit vacated the criminal conviction.<sup>2</sup>

In seeking to vacate the bar order against him, Nwaigwe argues that the basis for the bar order was his criminal conviction and that he no longer stands convicted. The Division of Enforcement does not oppose Nwaigwe's motion.

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<sup>1</sup> *David G. Ghysels, Kenneth E. Mahaffy, Jr., and Linus N. Nwaigwe*, Initial Decision Release No. 391 (Dec. 11, 2009); Exchange Act Release No. 61581 (Feb. 25, 2010) (notice that initial decision became final with respect to Nwaigwe).

<sup>2</sup> *U.S. v. Mahaffy*, 693 F.3d 113, 119 (2d Cir. 2012) (finding, among other things, that the prosecution failed to turn over investigative transcripts required to be disclosed under *Brady v. Maryland*, 373 U.S. 83 (1963), and that this failure undermined confidence in the jury verdict). The Second Circuit also vacated the convictions of Kenneth Mahaffy and David G. Ghysels, the other respondents in the administrative proceeding. On December 18, 2012, after Mahaffy filed a motion to vacate, the Commission vacated the bars ordered against Mahaffy in the administrative proceeding. *Kenneth E. Mahaffy, Jr.*, Order Vacating Bars, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012).

We have held that administrative bar orders will remain in place in the usual case and are vacated only in compelling circumstances.<sup>3</sup> We have found such compelling circumstances where the statutory basis for the bar imposed, in this case Nwaigwe's 2009 criminal conviction, has been vacated.<sup>4</sup> Under these circumstances, it is appropriate to vacate the order.

In light of the foregoing, IT IS ORDERED that the February 25, 2010 order entered against Linus N. Nwaigwe is hereby vacated.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>3</sup> See, e.g., *Salim B. Lewis*, Order Granting and Denying in Part Petition to Vacate Administrative Bar Order, Exchange Act Release No. 51817, 58 SEC 491, 2005 SEC LEXIS 1360 (June 10, 2005).

<sup>4</sup> See, e.g., *Jimmy Dale Swink, Jr.*, Exchange Act Release No. 36042, 52 SEC 379, 1995 SEC LEXIS 2033, at \*2 (Aug 1, 1995) (vacating findings and administrative bar order when an appellate court reversed the criminal conviction that was the basis for the proceeding); cf. *Terry Harris*, Investment Advisers Act Release No. 2622, 2007 SEC LEXIS 1645, at \*7 (July 26, 2007) (ordering dismissal of administrative proceeding after finding that "none of the three bases for proceeding under Advisers Action Section 203(f) that were alleged in the [order instituting proceedings] remains valid on the record before us on appeal").