

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING  
File No. 3-14676

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In the Matter of

ERIC DAVID WANGER,

Respondent.

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THE DIVISION OF ENFORCEMENT'S  
REPLY BRIEF

The Division of Enforcement ("Division"), by counsel, respectfully submits this reply brief pursuant to the Commission's scheduling Order, entered on February 28, 2017.

The Commission's February 1, 2017 Order (the "February 1<sup>st</sup> Order") requested briefing "addressing the question of whether conduct supporting imposition of NRSRO and municipal advisor bars occurred on or after July 22, 2010 and, if so, whether Eric David Wanger's request to vacate such bars should be granted." (Securities Act Release No. 10299) The February 1<sup>st</sup> Order sought briefing on that question in light of the decision in *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015). In *Koch*, the D.C. Circuit Court of Appeals held that NRSRO and municipal advisor bars cannot be applied retroactively, *i.e.*, imposed for conduct that predates the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") on July 21, 2010.

On March 1, 2017, the Division filed a brief stating that the Division did not object to Respondent Wanger's request to vacate the NRSRO and municipal advisor bars previously

imposed against him. On March 20, 2017, after having been granted additional time to respond to the February 1<sup>st</sup> Order, Wanger filed his brief.<sup>1</sup> That brief contains several misstatements that compel this short reply from the Division.

As an initial matter, Wanger's brief appears to have conflated two different dates pertinent to the Commission's request for briefing: July 22, 2010, the effective date of the Dodd-Frank Act; and July 2, 2012, the date the Commission issued its order making findings and imposing remedial sanctions (the "Bar Order") against Wanger. As a result of Wanger's presumably inadvertent conflation of those two dates, his brief opens with the incorrect suggestion that the Commission asked the parties to address "whether the conduct supporting the Bar Order entered on July 2, 2010 [*sic*] occurred on or after the date of that Bar Order." (Wanger Br. at 1) Wanger then proceeds to answer his own (not the Commission's) question, stating: "The Bar Order of July 2, 2010 [*sic*] was based solely on alleged conduct of Mr. Wanger in his capacity as investment adviser preceding the date of the Bar Order's entry." (*Id.* at 2)<sup>2</sup>

To the extent Wanger meant to say that the Bar Order was based solely on conduct that preceded the date of the Dodd-Frank Act (as opposed to the date of the Bar Order),<sup>3</sup> this too is incorrect. As the Commission recognized in the February 1<sup>st</sup> Order, the Bar Order (entered July 2, 2012) contains allegations of misconduct that extends beyond July 21, 2010 (when the Dodd-Frank Act was enacted). Nevertheless, as stated above, the Division did not object to Wanger's request to vacate the NRSRO and municipal advisor bars.

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<sup>1</sup> By order dated February 28, 2017, the Commission extended the time for briefing.

<sup>2</sup> Wanger's brief elsewhere suffers from similar date confusion—*e.g.*, referring to "the Commission's pretended Bar Order of July 2010" and claiming the Dodd-Frank Act "was adopted after the Bar Order in this case." (Wanger Br. at 3, 4)

<sup>3</sup> It goes without saying that the Bar Order was based on conduct that occurred prior to the issuance of the Order.

Wanger's brief also incorrectly suggests that the Division should have addressed whether other collateral bars imposed against Wanger in the Bar Order should be vacated in light of *Bartko v. SEC*, 845 F.3d 1217, 1223-1224 (D.C. Cir. 2017).<sup>4</sup> The February 1<sup>st</sup> Order did not ask the parties to address that subject. The Division's initial brief was filed consistent with that Order.<sup>5</sup>

Respectfully submitted,



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Dated: April 21, 2017.

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<sup>4</sup> In *Bartko*, the court vacated collateral bars imposed based entirely on conduct that predated the Dodd-Frank Act. Unlike the conduct at issue in *Bartko*, and that in *Koch*, the course of conduct at issue in this case continued after the enactment of the Dodd-Frank Act.

<sup>5</sup> On February 23, 2017, the Commission issued a "Statement Regarding Decision in *Bartko v. SEC*." (available at: <https://www.sec.gov/news/statement/commission-statement-regarding-bartko-v-sec.html>) In that statement, the Commission provided the following notice: "If you are the subject of a Commission order imposing a collateral bar from associating in any capacity in the securities industry (broker-dealer, investment adviser, municipal securities dealer, transfer agent, municipal advisor, or nationally recognized statistical rating organization) and you believe that the *Bartko* decision affects the bar(s) in your case because all of the conduct relevant to such bar(s) occurred before July 22, 2010, the Dodd-Frank Act's effective date, you may request that the Commission issue an order vacating the bar(s) by completing the [available form] and submitting the form to the Commission as the form directs." The Division is not aware that Wanger has submitted any such request.

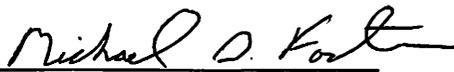
**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Reply Brief, submitted by the Division of Enforcement, was served on the following on this 21<sup>st</sup> day of April, 2017, in the manner indicated below.

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