

HARD COPY



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

**ADMINISTRATIVE PROCEEDING
File No. 3-15380**

**In the Matter of

JON HARVEY DEAL,

Respondent.**

**DIVISION OF ENFORCEMENT'S
RESPONSE TO FEBRUARY 1, 2017 ORDER
REQUESTING ADDITIONAL BRIEFING**

I. INTRODUCTION

The Division of Enforcement files this brief in response to the Commission's February 1, 2017 Order Requesting Additional Briefing, in which the parties were asked to address the question of whether, in light of the decision in *Koch v. SEC*, 793 F.3d 147 (D.C. Cir. 2015), there is support for the nationally recognized statistical rating organization ("NRSRO") and/or municipal advisor bars imposed on Respondent Jon Harvey Deal in 2013. Respondent's conduct supporting imposition of these bars occurred, in part, after July 22, 2010, the effective date of the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act"). Accordingly, there are no retroactivity concerns of the type set forth in *Koch*, and the Commission should deny Deal's request to vacate the NRSRO or municipal advisor bars.

II. BACKGROUND

On July 18, 2013, the Commission entered, by consent, an order making findings and imposing remedial sanctions ("Consent Order") against Deal. *Jon Harvey Deal, Advisers Act* Release No. 3630, 2013 WL 3754825 (July 18, 2013). The Consent Order, among other things,

barred Deal from association with any NRSRO and municipal advisor. *Id.* The Consent Order was based on the entry of Deal's guilty plea in a criminal action filed against him in the Middle District of Alabama. The count of the criminal information to which Deal pled guilty alleged that, "[f]rom in or about October 2008 through in or about October 2011," Deal violated 15 U.S.C. §§ 78j(b) and 78ff(a) and 17 C.F.R. § 240.10b-5 by embezzling funds of approximately \$440,000 from the account of an elderly client and using the proceeds to pay his personal expenses. *See United States v. Jon Harvey Deal*, Crim. No. 2:12-CR-155-01-MHT, Dkt. 1, (M.D. Ala. Aug. 24, 2012) (attached as Exhibit 1).

Following entry of the Consent Order, the D.C. Circuit Court of Appeals handed down the *Koch* decision, in which it found that NRSRO and municipal advisor bars based on conduct pre-dating the July 22, 2010 effective date of the Dodd Frank Act were "impermissibly retroactive." *Koch*, 793 F.3d at 158. On February 23, 2016, Deal filed a request to vacate the NRSRO and municipal advisor bars entered against him in the Consent Order.

III. ARGUMENT

The Commission should not vacate the NRSRO and municipal advisor bars against Deal because they were based, in part, on conduct that occurred after the effective date of the Dodd Frank Act. The count of information to which Deal pled guilty clearly states that the conduct giving rise to the action continued until October 2011. Ex. 1, ¶ 3. Because Respondent's unlawful conduct occurred for more than a year after the Dodd-Frank Act's enactment, he is subject to the new sanctions that the Dodd-Frank Act created. *See Koch*, 793 F.3d at 150.

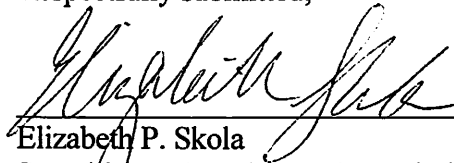
There is also no factual reason to vacate these bars. Barring Respondent from associating with municipal advisors or NRSRO is in the public interest. *See Steadman v. SEC*, 603 F.2d 1126,

1141 (5th Cir. 1979) (stating that in considering whether to issue an injunction the Commission ought to consider: “the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.”). The count of information to which Deal pled guilty makes it clear that his misconduct occurred over a period of three years and involved theft from an elderly client to whom he owed a fiduciary duty. Ex. ¶¶ 1-3. Deal used the proceeds from his fraud to pay his personal expenses, pay debts of other clients, and pay the expenses of a restaurant business in which he had an interest. *Id.* ¶ 3.¹ These facts demonstrate that Respondent’s conduct was egregious, recurrent, and involved a high degree of scienter. These facts support the continued imposition of the municipal advisor and NRSRO bars.

IV. CONCLUSION

For the reasons stated above, the Division of Enforcement respectfully requests that the Commission not vacate the municipal advisor and NRSRO bars imposed on Respondent.

Respectfully submitted,


Elizabeth P. Skola
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Atlanta Regional Office
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Dated: March 1, 2017.

¹ The Division of Enforcement received additional information from the United States Secret Service demonstrating that, between August 2010 and October 2011, Deal wrote twelve separate checks worth approximately \$107,000 from his client’s account.

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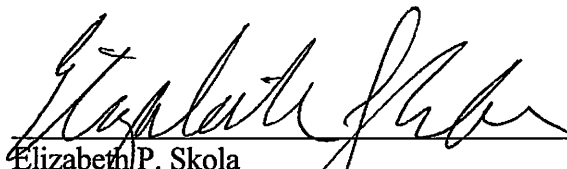
Counsel for the Division of Enforcement

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of March, 2017, with respect to In the Matter of Jon Harvey Deal, Administrative Proceeding File No. 3-15380, I caused a true and correct copy of the this filing to be served upon the following by first class mail:

Brent J. Fields
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Mr. Jon Harvey Deal
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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA
v.

JON HARVEY DEAL

HACKETT, CLIF
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

CR. NO. 2:12 cr 155-MHT
[15 U.S.C. §§ 78j(b) and 78ff(a)
17 C.F.R. § 240.10b-5]

INFORMATION

The United States of America charges:

COUNT 1

1. At all times relevant to this Information:

a. Wilson, Price, Barranco, Blankenship & Billingsley, P.C. ("Wilson Price") was an accounting firm in Montgomery, Alabama.

b. Wilson Price Wealth Management, LLC ("WPWM"), an entity affiliated with Wilson Price, was an Investment Adviser registered with the United States Securities and Exchange Commission.

c. The defendant JON HARVEY DEAL was a partner in Wilson Price and an Investment Adviser Representative registered with WPWM.

d. Charles Schwab & Co., Inc. ("Schwab") was a brokerage firm headquartered in California that engaged in interstate commerce.

e. Regions Bank, N.A. ("Regions") was a bank headquartered in Alabama that engaged in interstate commerce.

f. PNC Bank, N.A. ("PNC") was a bank headquartered in Pennsylvania that engaged in interstate commerce.

g. An individual identified herein as “Client,” a Montgomery resident, was a woman in her mid-80’s whose finances were managed by DEAL.

h. Client held substantial assets in an account at Schwab (the “Schwab Account”). Client’s cash balance in the Schwab Account was invested in Schwab Advisor Cash Reserves—Premier Sweep Shares (“Schwab Cash Shares”). The Schwab Cash Shares were “securities” within the meaning of Title 15, United States Code, Section 78c(a)(10).

i. The Schwab Account had a feature whereby checks (the “Schwab Checks”) could be written against funds in the Schwab Account. Deal was an authorized signatory on the Schwab Account and had access to the Schwab Checks, which were cleared through PNC. When a Schwab Check was presented for payment, Schwab would sell sufficient shares in Schwab Cash Shares to cover the amount of the check.

2. From in or about October 2008 through in or about October 2011, in Montgomery County, Alabama, in the Middle District of Alabama, and elsewhere, the defendant

JON HARVEY DEAL

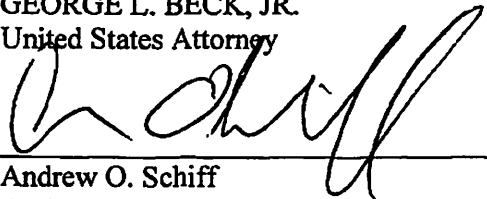
directly and indirectly, by the use of means and instrumentalities of interstate commerce, did willfully employ a device, scheme, and artifice to defraud in connection with the sale of securities, as described below.

3. From in or about October 2008 through in or about October 2011, unbeknownst to Client, Deal embezzled funds from the Schwab Account in the total amount of approximately \$440,000. Deal embezzled the money by writing Schwab Checks, and he used the proceeds to pay personal expenses, to pay debts owing to Wilson Price by other clients, and to pay the expenses of a restaurant business in which he had an interest.

4. The scheme to defraud involved the use of means and instrumentalities of interstate commerce, including the deposit of funds in a Montgomery, Alabama branch of Regions, the clearing of checks and transfer of funds between Regions and PNC, and the sale of securities by Schwab.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5.

GEORGE L. BECK, JR.
United States Attorney



Andrew O. Schiff
Assistant U.S. Attorney