

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 10301 / February 3, 2017

SECURITIES EXCHANGE ACT OF 1934  
Release No. 79954 / February 3, 2017

INVESTMENT COMPANY ACT OF 1940  
Release No. 32467 / February 3, 2017

ADMINISTRATIVE PROCEEDING  
File No. 3-16875

In the Matter of  
  
BRIAN J. MULKEEN

ORDER REQUESTING  
ADDITIONAL  
BRIEFING

On September 30, 2015, the Commission issued an order making findings and imposing remedial sanctions (the "Order") against Brian J. Mulkeen. The Order, among other things, barred Mulkeen from association in a supervisory capacity with any nationally recognized statistical rating organization ("NRSRO") or municipal advisor.<sup>1</sup> Subsequent to the Order, the Commission issued a statement regarding *Koch v. SEC*<sup>2</sup>—where the court vacated NRSRO and municipal advisor bars because the conduct that served as the basis for the bars predated the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act on July 21, 2010—and invited persons who had been barred from such associations to request that the bars be vacated if "all of the conduct relevant to such bar(s) occurred before July 22, 2010."<sup>3</sup>

On May 4, 2016, Mulkeen filed a request to vacate the NRSRO and municipal advisor bars entered against him. The Order appears, however, to contain allegations of misconduct supporting the bars that extends beyond July 21, 2010. As a result, the Commission's consideration of Mulkeen's request to vacate would be assisted by briefing on the question of

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<sup>1</sup> See *Edward T. Borg and Brian J. Mulkeen*, Securities Act Release No. 9957, 2015 WL 5718219 (Sept. 30, 2015).

<sup>2</sup> *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015) (finding "impermissibly retroactive" NRSRO and municipal advisor bars imposed based on conduct pre-dating Dodd-Frank).

<sup>3</sup> The Commission's statement is available at <http://www.sec.gov/news/statement/commission-statement-regarding-koch-v-sec.html>.

whether relevant misconduct continued past July 21, 2010 and, if it did, whether the bars should be vacated notwithstanding such post Dodd-Frank misconduct.

Accordingly, it is ORDERED that Brian J. Mulkeen and the Division of Enforcement are requested, by March 3, 2017 each to file a brief, not to exceed 5000 words, 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 Brian J. Mulkeen's request to vacate such bars should be granted. Each party shall also be permitted to file, by April 3, 2017, an opposition brief, not to exceed 2500 words.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields  
Secretary