UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMISSION

Administrative Proceedings
File No. 3-14676

In the Matter of

ERIC DAVID WANGER

Application under Section 203(f) of the Investment Advisers Act and Rule 193 for Consent to Associate with An Investment Adviser or Broker-Dealer

Respondent.

Pursuant to Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), and Rule 193, 17 C.F.R. §201.193, Respondent Eric David Wanger ("Wanger" or "Respondent"), through his counsel, Thomas V. Sjoblom of Washington, D.C., hereby respectfully applies for consent to re-enter the securities industry either to (1) associate with any registered or unregistered broker-dealer, investment adviser, or other entity that participates in the securities industry, or (2) establish his own entity that provides one or more of those services. Accordingly, Respondent respectfully requests an Order from the Commission granting him the right to associate with any industry participant with which he can find employment or to establish his own firm or firms.

Respondent's right to re-enter the securities industry is in the public interest for the following compelling reasons:

1. *2012 SEC Order.* Respondent, without admitting or denying any of the Commission's allegations or findings, consented to an Order Making Findings and Imposing Remedial Sanctions issued July 2, 2012 that barred Respondent, but expressly granted Respondent the right to reapply after one (1) year. ("Bar Order" or "SEC Bar Order".) [*See Attachment A*]. The fundamental basis underlying the voluntary settlement, as represented by the Commission's staff in its Chicago Regional Office ("CRO"), would be Respondent's right after one (1) year to re-enter the securities industry, including resuming his duties at the companies over which he held direct or indirect control, and his ability to regain the rights he had prior to his voluntary acceptance of the sanction. According to the Commission's CRO enforcement staff, the lifting of the sanction would be a "no brainer" and that the consequences of the sanction would be lifted through his successful "reapplication" one year later. [*See Attachment B, Wanger Affidavit, ¶¶ 2 (c) & 11(a) and (j).]* Given those representations, as well as the futility of going forward with the administrative proceedings, [*see Attachment B, Wanger Affidavit, ¶¶ 2 (b) and (c)*], Respondent settled. [*See Attachment C.*]

2. *Illegal Provisions of SEC Bar Order.* In accordance with a recent decision, Koch v. SEC, issued by the United States Court of Appeals for the District of Columbia, the SEC Enforcement Division impermissibly has sought to bar Respondent from associating with a municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating service. The Circuit Court

in Koch held that the SEC's reliance on the Dodd Frank Act provisions was an unconstitutionally retroactive application of the Dodd Frank Act. Koch v. S.E.C., 793 F.3d 147, 157 (D.C. Cir. 2015)("the Commission impermissibly applied the Dodd—Frank Act retroactively by barring Koch from associating with municipal advisors and rating organizations" because it "attache[d] new legal consequences" to his conduct). Although the Commission, relying on narrowly drawn words of the Circuit Court, has initiated a program to permit persons sanctioned after Dodd-Frank to apply to the Commission to have the sanction lifted as applied to municipal securities dealers and nationally recognized statistical rating agencies for conduct prior to July 21, 2010, a program under which Respondent has submitted his application, the Commission has not extended that program to transfer agents. Accordingly, the Bar Order should be vacated to the extent it seeks to apply that bar to municipal securities dealers, municipal advisor, transfer agents or nationally recognized statistical rating agencies.

3. *De Minimis Infraction and Unusual Sanction*. The SEC's CRO Staff commenced its investigation in February 2010. From virtually the outset of the investigation, and well before the staff had amassed much evidence, Respondent's then counsel, Ungaretti & Harris in Chicago, Illinois, contacted the staff to discuss the investigation. At that time, the SEC's CRO Staff insisted on a *bar* – even before the investigation had advanced much and well before any Wells Notice had been provided. [*Attachment B, Wanger Affidavit, ¶¶ 2(a) and (c).*]

The CRO Staff investigated for two and one-half years. From over 300 stock trades in illiquid stocks, the SEC staff selected 15 stock trades (13 of which were in

Altigen (ATGN) stock) that they claimed "marked the close." [*Attachment B, Wanger Affidavit, ¶¶ 2(a).*] However, the basis for the CRO Staff's charge and their principal theory on which the CRO staff relied was not that Respondent and his investment advisory company, Wanger Investment Management ("WIM"), had manipulated the stock market, but rather that his activities were undertaken to improve his and WIM's management fees by a total of **$2,269** over **33 months, or $69 per month,** which, according to Respondent's proposed expert, could account for no more than eighty five one-hundreds of one percent **(00.85 %)** maximum portfolio inflation. [*Attachment B, Wanger Affidavit, ¶¶ 2(b).]*

Despite the lack of materiality of the violation [*Attachment B, Wanger Affidavit, ¶¶ 2(b)*], the Commission's CRO Staff insisted on a bar with right to re-apply after one (1) year, rather than a censure, an order placing limitations on the operations of WIM, or even a suspension up to twelve (12) months, sanctions that Section 203(f) of the Investment Advisers Act of 1940 otherwise permitted. Such a harsh sanction is highly unusual and not found in similar cases. [*Attachment B, Wanger Affidavit, ¶¶ 2(a), note 1.*] Counsel can find no other case where a bar order has been entered for such minimal conduct. Indeed, Respondents in far more egregious cases – even ones where there has been evidence of *scienter* – have received lesser sanctions. *See e.g., In the Matter of Edward Brokaw*, Release No. 70883 (November 15, 2013), at 27 (one year suspension and $25,000 fine deemed not excessive or oppressive, but was consistent with FINRA's Sanctions

Guidelines); [1] *In re Richard D. Chema*, Exch. Act Release No. 40719 (November 30, 1998) (broker-dealer who aided and abetted customer's manipulative conduct – 119 wash trades and 18 marking-the-close trades – suspended for one year); *In re Sharon M. Graham and Stephen Voss*, Exch. Act Release No. 40727 (November 30, 1998) (customer's activities exhibited so many indicia of wash trades and matched orders that Graham, an experienced securities professional, should have recognized and attempted to stop it and was suspended for two months; Voss, who engaged in supervisory failures over customer's manipulative conduct, given only a three - month suspension); *In re Adrian C. Havill*, Exch. Act Release No. 40726 (November 30, 1998) (Respondent, a broker who did trades for chairman of bank who wanted to "create interest in the stock," which was thinly traded, executed 7 wash trades and matched orders as well as 30 marking-the-close trades, for which the broker received the "trivial" amount of $1,500; Commission upheld ruling of ALJ, who had found that the broker had acted "extremely reckless in not realizing that what he was doing was improper," but who rejected the Division of Enforcement's request for 6 to 9 months suspension and instead ordered him suspended for only two months, "considering his otherwise clean record and community activities."); *In re James T. Patten*, 1998 NASD Discip. LEXIS 20 (February 3, 1998) (broker/trader/options principal intentionally and/or recklessly caused his brokerage firm to enter, at or near the close of the market, 147 trade reports in the relevant securities (71 of which were fictitious and 76 of which substantive);

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[1] In the *Brokaw* case, the Commission noted that it was using the FINRA Sanctions

Respondent was censured and fined $ 175,000 ($ 125,000 for marking the close and $ 50,000 for reporting fictitious trades); *In re Carole L. Haynes*, Admin. Proc. No. 3-85051995 SEC LEXIS 3134 (November 24, 1995)(ALJ's initial decision) and Exch. Act. Release No. 34- 36692 (respondent, former NASD examiner and owner of her own NASD registered brokerage firm, who supervised compliance, financial and operational aspects of the business and who also provided accounting and tax services, engaged in directed trades (matched orders), alternating between the buy and sell side of trades, generated volume of 218,384 and 259,884 shares, respectively, in just one year for a client who had severe short term cash flow needs; in addition to a cease and desist order, Commission ordered her suspended from association with a broker-dealer for five months); *In re Richard M. Kulak*, 1995 SEC LEXIS 2481 (September 26, 1995) (broker who knew about and assisted in market manipulation of customer by executing numerous marking-the-close trades suspended for five months). Thus, the long history of far lesser sanctions in much more egregious cases calls into question the fairness and overreaching conduct exhibited by the CRO Staff in Respondent's case. [*Attachment B, Wanger Affidavit, ¶¶ 2 (a) and (c).*] [2]

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[2] In other contexts, the Second Circuit has found the Commission's sanction imposing a bar too severe and reduced it to a 12-month suspension. *See e.g., Arthur Lipper Corp. v. S.E.C.*, 547 F.2d 171, 184 (2d Cir. 1976)("We are moved also by the inordinately long time in which this proceeding has been pending, particularly the unexplained lapse of over three years from the argument to the decision of the Commission, the cloud that has hung over petitioners' heads during this period and the tremendous disparity between the sanctions invoked against petitioners and that imposed on two other brokers whose violations were perhaps more clear. *** [W]ith the choices limited to a suspension of not more than twelve months or a revocation or bar, we consider that, under the special circumstances of this case, selection of the latter was an abuse of discretion."

4. *FINRA BrokerCheck Website: "Permanent" Bar.*

To the surprise of Respondent and his former officers and employees, FINRA, in response to the SEC Bar Order, posted on its BrokerCheck website that Mr. Wanger had been *permanently* barred. [*Attachment B, Wanger Affidavit, ¶3.*] When Respondent and his counsel contacted FINRA to find out why the order was posted as a *permanent* bar, they were informed that it was FINRA's *policy* to treat all such orders as *permanent*. [*Attachment B, Wanger Affidavit, ¶3, note 7.*] The concept of "permanence," however, was a construct created by the FINRA of its own accord, out of whole cloth. The Commission has never said that a bar with right to reapply after one year creates a permanent bar. Nor was Respondent ever provided with the minimum requirements of due process (notice and opportunity for a hearing) by FINRA before its posting. Instead, FINRA took it upon itself to alter the SEC Bar Order and re-interpret the words of the SEC Bar Order that now perforce has permanently blocked Respondent's of his right to seek employment and has now also attached to Respondent's name and reputation a stigma that violates due process of law. [3]

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[3] In a companion filing, Respondent has submitted to the Commission another Application under Section 19 (e) of the 1934 Exchange Act, 15 U.S.C. §78s(e), that requests the Commission to review the actions taken by FINRA to post on its own website a different and greater sanction than the words specified in the SEC Bar Order and to review FINRA's actions permanently to block Respondent from seeking employment in the securities industry. Respondent considers FINRA's action to be excessive or oppressive in violation of Section 19(e)(2) and to have not been applied consistent with the purposes of the Exchange Act, thus requiring either cancellation or reduction of FINRA's purported sanction under Section 19(e)(2) or permitting Applicant to associate under Section 19(f). So that the timing of any appeals from the Commission's ultimate determinations may be coordinated to ensure that any appeals of both applications can occur simultaneously, Respondent

Had the Commission's CRO Staff informed Respondent that the bar with right to re-apply after one (1) year would actually mean that he would be *de facto* *permanently* barred from any employment and that he would have no right to a hearing under current SEC and FINRA regulatory interpretation to challenge that posting, Respondent would have declined to settle this proceeding and gone forward with the SEC administrative hearing, even though the administrative law judge ("ALJ") had consistently ruled against Respondent and his counsel on each and every motion filed in the administrative proceedings (including motions to dismiss, for discovery, and for use of an expert witness), and even though he had been denied a fair and impartial hearing with witnesses of his choosing. [*Attachment B, Wanger Affidavit ¶¶2(c).*] The absence of a fair and impartial hearing raises serious constitutional due process issues.

5. *Demise of The Wanger Entities*

In preparation for entry of SEC Bar Order, Respondent removed himself as an officer of any of his companies [*Attachment B, Wanger Affidavit ¶4(b)]* and had himself "firewalled" from other entities so that there would not be even the appearance of a possible violation of the SEC Bar Order. [*Attachment B, Wanger Affidavit ¶5.*] In response to comments by the CRO Staff, Respondent also was denied access to his office and his files, and he was even blocked from entering the building where his office was located. [*Attachment B, Wanger Affidavit ¶5.*]

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requests that the within Application to the Commission for consent to re-associate with a registered broker-dealer, investment advisor, or other entity , or to set up his own entity, be considered together with and at the same time as his Application under Section 19(e) for Commission's review of FINRA's enlargement of the SEC Bar Order.

Further, the effect of the Commission's Bar Order and the entry by FINRA of the *permanent* bar language on its website disrupted and ultimately caused the demise of the following Wanger entities:

(a) Wanger Investment Management.

Wanger Investment Management ("WIM"), an Illinois corporation, was a registered investment adviser with Commission until 2011 when it voluntarily sought deregistration. With the demise if the Wanger Long Term Opportunity Fund and the uncertainty of the long-term impact of the double bar orders of the Commission and FINRA on WIM's continued existence, Respondent shifted his emphasis and energies from WIM to Wanger OmniWealth, a multi-family office. Thus, WIM was reduced to a mere shell. [*Attachment B, Wanger Affidavit ¶4(b).*]

(b) Wanger Long Term Opportunity Fund

Wanger Long Term Opportunity Fund II, LP ("WLTOF"), the supposed victim of the $2,269 overcharge from the alleged conduct of Mr. Wanger, was promptly closed and all investor funds returned after entry of the Commission's Bar Order. Accordingly, Mr. Wanger dropped his campaign of shareholder activism designed to compel the Altigen management to return corporate cash (nearly $10 million) to its shareholders. As of the date of this application, that money is now entirely gone and ATGN now trades at $0.29 per share on the pink sheets, having been delisted from NASDAQ. [*Attachment B, Wanger Affidavit ¶4(a).*]

(c) Wanger OmniWealth

Wanger OmniWealth ("WOW"), a $300 million technologically sophisticated, multi-family office, which was growing at the rate of over $100 million per year,

suffered the same consequences as WIM. [*Attachment B, Wanger Affidavit ¶5.*] Even though Respondent had retained lawyers to "firewall" him from WOW and its activities, in the aftermath of the SEC investigation and Bar Order, the Commission staff engaged in new relentless onsite examinations, which all the WOW officers and employees perceived as a furtive attempt at yet another enforcement proceedings. Such pressure from the Commission staff, together with the growing realization that Respondent may never return to work under the effective double "permanent" bar orders of the Commission and FINRA, caused employees gradually to resign, one by one, until WOW could no longer efficiently services its clients. Only then, the bulk of the clients departed. After all clients left, the remaining officer(s) resigned. WOW is now defunct. [*Attachment B, Wanger Affidavit ¶5.*]

Thus, the nearly immediate and practical result of the Commission's Bar Order and the staff's conduct was the demise of three businesses, with the consequent dislocation of clients and their funds. With respect to WOW in particular, an entity that was not even a party to any of the administrative proceedings, the Commission's regulatory efforts went too far, which interfered with and deprived Respondent of WOW's economically beneficial use to himself, its officers and employees, and its clientele. This, too, raises serious constitutional issues.

6. *Inability to Obtain Employment.* Since the date of the SEC's Bar Order and FINRA's posting that he is *permanently* barred, and after the demise of his own businesses, Respondent has sought but been unable to obtain any formal employment in the securities industry. He has unsuccessfully sought employment

and association with numerous registered broker-dealers, investment advisers and asset managers. [*Attachment B, Wanger Affidavit ¶6(a).*] However, the officers, managers and compliance officers of those entities have consistently stated that his association with them – particularly in light of the "permanent" bar that appears on the FINRA BrokerCheck website – would subject them to added business and regulatory risk because of the heightened level of regulatory – and possible enforcement – scrutiny to which they would be subjected by the SEC and FINRA were they to employ Respondent, even with the requisite supervision in place. In their view, he would constitute such a business, reputational and regulatory risk for them that they cannot risk hiring him. [*Attachment B, Wanger Affidavit ¶6(a).*] Accordingly, given the inability to obtain employment, Respondent was unable to reapply immediately following expiration of the one (1) year term under the Commission's Bar Order.

Perhaps an unintended consequence, but nevertheless entirely foreseeable by the Commission and its CRO staff, Respondent has even been denied employment at universities and non-securities industry institutions, and has even been expelled from professional organizations like the CFA Institute. [*Attachment B, Wanger Affidavit ¶6(b) and (c).*]

7. *Right to Re-Association.*

Respondent seeks a full restoration of his rights to seek employment in the securities industry as those rights exited prior to the Commission's Order in July 2012. The one (1) year term of the Bar Order has run. But, the combined effect of

the SEC one-year Bar Order together with the FINRA permanent bar – in effect a *de facto* permanent and insurmountable bar – has created a set of circumstances and conditions that have made it impossible for him to gain re-employment. Moreover, because of the combined effect of the double bar orders, Respondent cannot obtain a sponsor or a supervisor. Unless the Commission removes the bar, which in turn will permit FINRA to remove its permanent bar language, Respondent's right to work in the industry and his liberty interest in his occupation have been blocked forever. Thus, Respondent should be permitted to seek meaningful employment in the securities industry without the prohibitive conditions and stigma hanging over his employment efforts. Once Respondent re-enters the industry, any firm that employs him will have a proper supervisory structure in place. [*Attachment B, Wanger Affidavit ¶9.*] Alternatively, should participants in the industry decline to employ him – whether out of fear of SEC retribution or increased regulatory scrutiny – Respondent should be permitted to start his own company to serve the securities industry.

8. *Disgorgement and CMPs*. Mr. Wanger has paid both the amount of the disgorgement ($2,269.81) and the civil monetary penalties ($75,000.00) required by the Commission's Order. [*Attachment B, Wanger Affidavit ¶1.*]

9. *Public Interest*.

(a) The Commission's Order permitted Respondent to reapply after one-year. However, FINRA's interpretation of that Order and FINRA's posting on its BrokerCheck of the Order as a "permanent" bar – without a hearing – have precluded Respondent from obtaining employment. A permanent bar was not what

Respondent agreed to, was not the intent of the sanction, and is procedurally unfair. It simply does not comport with substantial justice and fair dealing. How can it be contended that he consented to a sanction that, as it now turns out, resulted in a *de facto* permanent bar? And, why was he not so advised by the Commission's CRO staff at the time? It is no answer to contend that his counsel should have known of or foreseen such a sequence of catastrophic events.

(b) Efforts to gain employment in the securities and financial industry has been blocked by the current "Broken Windows" enforcement policy, FINRA's BrokerCheck posting that Respondent is subject to a "permanent" bar, and fear by industry participants of increased regulatory scrutiny (or enforcement) were they to employ Respondent. The last three (3) years has shown that no firm will employ someone who has been *permanently* barred.

(c) Moreover, financial institutions (banks, broker-dealers, and asset managers) have cancelled Respondent's accounts, including his credit cards, his IRA account, his SEP-Ira account, and custodial accounts. [*Attachment B, Wanger Affidavit ¶7.*] When they were questioned about their actions, the explanation offered was that Respondent is a "reputational risk." Administrative bar orders such as the one issued by the Commission against Respondent should not operate to instill fear in financial institutions to such a degree that qualified people cannot obtain and maintain bank, credit, and brokerage accounts.

(d) Professional organizations to which he was a certified member and mentor, such as the CFA Institute, gave Mr. Wanger the option to resign or be expelled. [*Attachment B, Wanger Affidavit ¶6(b).*] It is no answer to say that they

are an independent organization with their own sets of bylaws and rules over which the Commission has no oversight. Enforcement actions must take these collateral consequences into account. Regulation and enforcement by *caveat emptor* is a failure of government. It goes too far.

(e) Mr. Wanger has more than "paid his dues to society" by losing more than three (3) years of his career. [*Attachment B, Wanger affidavit ¶ 11(e), note 14 and Exhibit 7attached thereto*.]

(f) The effect of the Commission's Bar Order has been the dislocation of clients, client funds, and employees of his companies, and the cause of the collapse of three (3) companies: WIM, WLTOP Fund, and WOW, once a thriving multi-family office with over $300 million in assets under management and which was *not* the subject of the SEC Order. The clients of WOW were subjected to a host of expensive and wasteful transition costs, including the loss of the significant and comprehensive service offerings of WOW. [*Wanger Affidavit, ¶ 5.*]

(g) By barring Respondent from managing and funding WOW, the startup company he was running, the Commission virtually guaranteed its demise and ultimately interfered with and deprived Respondent of WOW's economically beneficial use to himself, its officers and employees, and its clientele.

(h) The reapplication process requires that Respondent find a sponsor or some source of supervision. Given that he have been permanently barred by FINRA, however, it has proven impossible to find such a sponsor or supervision. Therefore, the administrative remedy is fundamentally flawed and unfair, because

by definition, the Commission's Bar Order and its Rule 193 are incapable of being fulfilled and incapable of restoring rights the Bar Order has taken away.

(i) Respondent's interests in obtaining a fair adjudicatory hearing was undermined by the existence of a widely recognized biased administrative judicial system, by contact with potential witnesses by SEC staff who instilled enough fear in them that they declined to appear and testify, and by the Division of Enforcement's opposition to and the ALJ's ruling that his expert witness, Professor Joseph Grundfest, a former SEC Commissioner and well recognized law professor from Stanford Law School, could not testify, though he offered to appear *pro bono* and testify only about the "materiality" of the $2,269 alleged violations. The lack of due process, owing largely to the Division of Enforcement's virtual control over the entire process, dictated the inevitable outcome of what has proven to be an unfair settlement.

(j) Respondent's then attorney filed a motion to dismiss the charges alleged in the OIP. He contended that "the OIP is full of exaggerations and misrepresentations that, strung together, still fail to state *prima facie* causes of action," and he contended that staff also violated Section 929U of Dodd Frank Act., 15 U.S.C. § 78d-5. [*Attachment B, Wanger Affidavit ¶ 2 (b)*.] [4] The ALJ dismissed this

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[4] Section 929U of Dodd Frank requires the Commission to institute the enforcement proceedings within 180 days after the Wells Notice. The staff complicated the proceedings by sending out new subpoenas after the Wells Notice and after Respondent's Wells Submission, creating new theories after the Wells Submission had been provided to the staff. Respondent's then attorney complained about the unfairness of the staff's tactic of adding charges under 16(a) of the Exchange Act for inadvertent filings of Forms 4 after the Wells Notice has already been issued and a Wells Submission filed—all just to obtain leverage in settlement discussions. [*See Attachment B, Wanger Affidavit ¶ 2(b), note 3 and Exhibit 2.*] Moreover, as a control

motion. If this case was so "complex" under Section 929u of the Dodd Frank Act, however, that the staff needed additional time to address these complexities before instituting administrative proceedings, then fairness required that highly qualified people – such as Professor and former SEC Commissioner Grundfest – be permitted to testify about those complexities and the staff's allegations about them.

(k) Respondent was informed through his then attorney that CRO Staff had stated that if he settled this matter, his right to re-associate after one year would be a "no brainer." [*Wanger Affidavit ¶¶ 2 (c) and 11 (a).*] He acted in good faith on those representations when settling the administrative proceedings and accepting the Bar Order.

(l) The difference between a suspension not exceeding 12 months with automatic re-entry and a bar with right to reapply after one (1) year – *i.e.,* literally the difference of only one day – should not have engendered such negative consequences that have befallen Respondent, his employees, his clients, their funds, and his three companies.

(m) The CRO Staff's new investigation, which was commenced shortly before Christmas 2015 and about which Respondent was notified on December 23, 2015, on the eve of the Christmas holiday, appears to be a reaction to requests of

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person of WIM, Respondent had previously timely and jointly filed Schedules 13D and 13G, so that disclosure had been made about those purchases. Further, Respondent had self-reported his failure to file Forms 4 to the board of Altigen. Finally, outside counsel to Altigen, Wilson Sonsini, had similarly concluded that Respondent's failure to file Forms 4 was merely inadvertent. [*See Attachment B, Wanger Affidavit ¶ 2(b), note 3 and Exhibit 3.*]

opposing counsel in a private arbitration pending in Chicago. Respondent had commenced private arbitration proceedings to seek the return of excess redemption payments over and above what certain investors were entitled to. On information and belief, attorneys representing investors in that private arbitration referred the topic of the arbitration proceedings to the Commission's CRO staff rather than litigate this matter before JAMS. In response to the Commission entry into this private arbitration, the JAMS arbitrator stopped the arbitration. The Commission has thus allowed itself to be improperly thrust into a private party arbitration and has brought those proceedings to a halt. [*Attachment B, Wanger Affidavit ¶ 10 (a).*]

10. *Supplementation with Letters from Former Clients.*

Respondent supplements this application with letters from various former clients and other individuals. [*See Attachment D.*]

Dated: April 12, 2016

[redacted]

Eric David Wanger

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9331 / July 2, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 67335 / July 2, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3427 / July 2, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30126 / July 2, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14676

In the Matter of **Eric David Wanger and Wanger Investment Management, Inc.** Respondents.	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

On December 23, 2011, the Securities and Exchange Commission ("Commission") instituted proceedings pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the

Investment Company Act of 1940 ("Investment Company Act") against Eric David Wanger ("Respondent Wanger" or "Wanger") and Wanger Investment Management, Inc. ("Respondent Wanger Investment Management" or "Wanger Investment Management").

II.

Respondent Wanger and Respondent Wanger Investment Management have submitted Offers of Settlement ("Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and over the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

Respondents

1. Eric David Wanger ("Wanger"), age 48, is a resident of Chicago, Illinois and was the owner, chief compliance officer, and president of an investment adviser, Wanger Investment Management, Inc. He is the sole managing member of the general partner to the Wanger Long Term Opportunity Fund II, LP and served as its sole portfolio manager from January 2002 into December 2011. From January 2007 through January 2009, he also served as a director of AltiGen Communications, Inc.

2. Wanger Investment Management, Inc. ("Wanger Investment Management") is an investment adviser based in Chicago, Illinois. Wanger Investment Management registered with the Commission on April 6, 2009. On November 28, 2011, Wanger Investment Management filed a Form ADV-W Notice of Withdrawal from Registration as an Investment Adviser and Wanger Investment Management's registration ceased December 31, 2011. It serves as adviser to the Wanger Long Term Opportunity Fund II, LP.

Other Relevant Entities

3. AltiGen Communications, Inc. ("AltiGen") is a Delaware corporation headquartered in San Jose, California that designs, manufactures, and markets phone systems and call center products that use the Internet and public telephone networks. During the relevant period, its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ under the symbol ATGN. On or about March 3,

2010, AltiGen announced that it would delist from the NASDAQ. On or about November 2, 2010, it filed a Form 15 Certification and Notice of Termination of Registration Under Section 12(g) of the Exchange Act or Suspension of Duty to File Reports Under Sections 13 and 15(d) of the Exchange Act.

4. The Wanger Long Term Opportunity Fund II, LP (the "Fund") is an investment fund that seeks long-term capital appreciation by investing in small and microcap companies. It is not registered with the Commission.

Background

5. Wanger formed the Fund on January 1, 2002. The initial investment in the Fund at that time amounted to approximately $2,000,000, consisting of money from family and friends. At its highest point, in April 2008, the Fund had a net asset value ("NAV") of approximately $14.5 million.

6. Beginning in November 2007, Wanger stated that he wanted to grow the Fund to $100 million, but he was only able to raise approximately $3.5 million from November 2007 through April 2008.

7. The Fund began acquiring shares of AltiGen in 2006. During the relevant period, one of the Fund's largest holdings was stock in AltiGen.

8. Wanger used one of the Fund's external brokers ("Broker") for the vast majority of the Fund's orders. Wanger relied on Broker's expertise and resources to execute orders for the Fund.

9. Wanger and Broker regularly discussed the best way for the Fund to buy shares for any particular day. Wanger and Broker exchanged instant messages regarding, among other things, their strategy to accumulate AltiGen shares given the stock's thinly-traded history.

10. Wanger instructed Broker in writing through various instant messages that he wanted "best execution," he was "price sensitive," and "not to trash the market." In response, Broker informed Wanger that he would purchase AltiGen stock for the Fund using his expertise, which was to be "stealthy" and to buy stock with "no market impact."

11. While the Fund was accumulating AltiGen shares, Wanger and Broker talked about suspicious end-of-the-day trading by others in AltiGen stock. Wanger understood that trading at the end of the day to raise the price of a thinly-traded stock was disruptive to investors and companies. He also understood that there could be a short-term benefit to the Fund's performance numbers when the price of AltiGen stock increased at the end of the day and, particularly, at the end of a month or quarter.

Wanger and Wanger Investment Management Marked
the Close on Fifteen Different Occasions

12. "Marking the close" involves the placing and execution of orders shortly before the close of trading on any given day to artificially affect the closing price of a security.

13. From January 31, 2008 through September 30, 2010, Wanger, as owner, president and chief compliance officer of Wanger Investment Management, repeatedly marked the close by placing bids in certain thinly-traded securities held by the Fund that were the last trade of the day of the final trading session of a month or quarter.

14. Specifically, Wanger marked the close on at least fourteen occasions on ten separate days, at month and quarter ends, in 2008, 2009, and 2010. He also marked the close on June 20, 2008, the date he transferred AltiGen securities from his own account to the Fund's account as part of an improper transaction as alleged in paragraphs 30-37 below. In addition, he attempted to mark the close on at least three other occasions.

15. Wanger marked the close in shares of AltiGen ("ATGN") (at least nine times), Clicksoftware Technologies Ltd., ("Clicksoftware" or "CKSW") (at least twice), Derma Sciences, Inc., ("Derma Sciences" or "DSCI") (at least twice) and Woodbridge Holdings Corp ("Woodbridge" or "WDGH") (at least once) to artificially improve the Fund's reported monthly and quarterly performance.

16. Wanger marked the close on the following dates in the following securities:

Trade Date	Security	Last Sale Prior to or During Wanger's Trade Activity	Closing Price Obtained by Wanger
01/31/08	ATGN	$1.60	$1.63
03/31/08	ATGN	$1.42	$1.65
04/30/08	ATGN	$1.44	$1.56
05/30/08	ATGN	$1.33	$1.45
06/20/08	ATGN	$1.37	$1.38
09/30/08	ATGN	$0.93	$0.99
09/30/08	DSCI	$0.54	$0.56

10/31/08	ATGN	$.68	$0.69
10/31/08	CKSW	$2.85	$2.90
02/27/09	ATGN	$0.84	$0.85
02/27/09	DSCI	$0.47	$0.54
03/31/09	CKSW	$3.68	$3.72
03/31/09	WDGH	$0.40	$0.62
05/28/10	ATGN	$0.72	$0.76
09/30/10	ATGN	$0.60	$0.75

17. Wanger did not use Broker to place the orders for the trades that marked the close. Rather, he placed the orders for the trades for the Fund himself.

18. In addition, Wanger's trading style in connection with the marking the close transactions differed from the trading style he had instructed Broker to follow.

19. Wanger's manipulative trading improperly inflated the Fund's monthly reported performance by amounts ranging from approximately 3.60% to 5,908.71%, and artificially increased the Fund's NAV by amounts ranging from approximately .24% to 2.56%.

20. From January 1, 2008 through September 30, 2010, the value of AltiGen as a share of the Fund's portfolio ranged from a low of approximately 8.99% in March 2010 to a high of approximately 14.91% in December 2008. AltiGen shares accounted for approximately 10% or more of the Fund's month-end value in thirty-one of the thirty-three months in this time period.

21. During the periods in which he marked the close in the following securities, they accounted for the following portions of the Fund's total portfolio: i.) Clicksoftware ranged from a low of approximately 7.41% to a high of approximately 11.5%; ii.) Derma Sciences ranged from a low of approximately 3% to a high of approximately 4.12%; and iii.) Woodbridge represented approximately .7% of the portfolio on March 31, 2009.

22. Wanger and Wanger Investment Management provided Fund investors and prospective investors with figures that reflected performance results and their proportionate share of the Fund's NAV that were improperly inflated as a result of Wanger's manipulative trading.

Wanger and Wanger Investment Management provided the artificially inflated results directly to investors and prospective investors through a variety of means, including the Wanger Investment Management website, mailings, e-mail, and oral presentations.

23. Wanger and Wanger Investment Management included the artificially inflated performance results in marketing materials, which they distributed to prospective and existing Fund investors in order to solicit additional investments in the Fund.

24. Wanger communicated directly with Fund investors or their representatives regarding the Fund's performance.

25. For example, Wanger responded to inquiries from Fund investors and their representatives about the Fund's performance in the spring of 2008, with statements such as "despite a truly awful market, we finished the quarter down only a bit more than 3%. . . Thanks for your continued faith in us." However, Wanger did not inform existing or prospective investors or their representatives that the Fund's performance during the first quarter of 2008 was artificially inflated due to his marking the close transactions. Among these, the orders he placed at the end of the day on March 31, 2008 artificially increased the Fund's NAV by nearly 2%, without which the reported performance for the month would have been approximately 30% lower than reported.

26. Wanger and Wanger Investment Management received $2,269.81 in additional management fees from the Fund as a result of the marking the close transactions and did not fulfill their obligations to obtain the best prices for shares purchased by the Fund.

27. Wanger also marked the close of AltiGen stock on June 20, 2008 in an attempt to obtain a higher valuation of AltiGen stock he transferred from his personal account to the Fund's account as alleged in paragraphs 30 thru 37 below.

28. By marking the closing price of certain stocks held in the Fund's portfolio to artificially inflate the Fund's performance results and by communicating the inflated performance results to existing and prospective investors, Wanger and Wanger Investment Management engaged in a scheme to defraud and engaged in a practice that operated as a fraud.

29. Wanger and Wanger Investment Management also made material misrepresentations and omissions when they reported the artificially inflated performance results to existing and potential investors.

Wanger and Wanger Investment Management Engaged in Improper Transactions with the Fund

30. Section 206(3) of the Advisers Act provides that it is unlawful for an investment adviser, "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client . . . without disclosing to such client in writing before the completion

of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

31. In 2008 and 2009, Wanger, acting through Wanger Investment Management, directed the transfer of funds from the Fund's brokerage accounts to Wanger Investment Management's bank accounts to pay investment adviser operating expenses and payroll in amounts totaling approximately $300,000 and approximately $200,000, respectively. These transfers were not specifically authorized by the Fund.

32. In June 2008 and June 2009, Wanger and Wanger Investment Management partially repaid the Fund by engaging in at least two improper principal securities transactions.

33. On or about June 20, 2008, Wanger transferred 37,344 shares of AltiGen, and other securities, from his personal account to the Fund's account.

34. Wanger marked the closing price of AltiGen stock on June 20, 2008, which could have had the effect of increasing the price the Fund paid for the securities had the AltiGen shares remained in the Fund's account with a transfer date of June 20, 2008.

35. In July 2008, these AltiGen securities and certain of the other securities were transferred back to Wanger's personal account.

36. In June 2009, Wanger transferred AltiGen stock and another security from his personal account to the Fund again. The transferred securities were 37,344 AltiGen shares valued at approximately $47,053 and 29,000 Woodbridge shares valued at approximately $33,060 (approximately $80,113 total).

37. Wanger and Wanger Investment Management did not provide the Fund with written disclosure or obtain the Fund's consent prior to engaging in the principal securities transactions with the Fund described in paragraphs 30 to 36 above, as required by Section 206(3) of the Advisers Act.

Wanger and Wanger Investment Management's Failure to Timely File Forms 4

38. Wanger served as a member of the AltiGen Board of Directors from January 2007 through January 2009.

39. The Fund was a 10% owner of AltiGen stock from at least July 2008 into December 2010.

40. During this time, Wanger failed to timely file the requisite Forms 4 with the Commission regarding at least eight personal transactions in AltiGen securities.

41. Wanger Investment Management also failed to timely file the requisite Forms 4 for the Fund regarding at least forty transactions in AltiGen securities.

42. Section 16(a) of the Exchange Act and Rule 16a-3 thereunder require directors and persons owning more than 10% of a company's stock to file a Form 4 within two business days of the acquisition or disposition of the security.

43. AltiGen filed a Form 8-K, dated January 8, 2009, stating:

> In late 2008, we were informed by Eric Wanger, a Board member, that he had failed to timely file his Forms 3, 4 and/or 5, in connection with a significant number of purchases of AltiGen common stock during the period beginning on January 23, 2007 and ending on September 30, 2008. In response, the company, with the assistance of outside counsel, reviewed Mr. Wanger's trading activities and discovered that certain of the purchases of AltiGen's common stock by Mr. Wanger, or entities affiliated with Mr. Wanger, in April of 2007, March of 2008, June of 2008 and September through November of 2008, constituting approximately 25 separate trades in the aggregate amount of approximately $100,000, violated AltiGen's blackout period set forth in our insider trading policy. The Board was informed of these matters and has carefully reviewed them.
>
> On January 8, 2009, our Board decided to not nominate Mr. Wanger for re-election to the Board.

44. Wanger resigned from the AltiGen Board on January 26, 2009.

45. In connection with the conduct described above, Respondents Wanger and Wanger Investment Management acted recklessly, or at least, negligently.

Violations

46. As a result of the conduct described above, Wanger willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

47. As a result of the conduct described above, Wanger Investment Management willfully violated Section 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

48. As a result of the conduct described above, Wanger willfully violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, which require timely and accurate filings of Forms 4 with the Commission.

49. As a result of the conduct described above, Wanger Investment Management willfully aided and abetted and caused the Fund's violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, which require timely and accurate filings of Forms 4 with the Commission.

50. As a result of the conduct described above, Wanger and Wanger Investment Management willfully violated Section 206(3) of the Advisers Act, which states that it is unlawful for an investment adviser, "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

51. As a result of the conduct described above, Wanger and Wanger Investment Management willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by an investment adviser.

52. As a result of the conduct described above, Wanger willfully aided and abetted and caused Wanger Investment Management's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by an investment adviser.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the actions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Wanger shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 16(a) of the Exchange Act and Rules 10b-5 and 16a-3 thereunder, and Sections 206(1), 206(2), 206(3), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Respondent Wanger be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent Wanger will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent Wanger, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Wanger shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of $75,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Eric David Wanger as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604.

E. Respondent Wanger Investment Management shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 16(a) of the Exchange Act and Rules 10b-5 and 16a-3 thereunder, and Sections 206(1), 206(2), 206(3), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

F. Respondent Wanger Investment Management is censured.

G. Respondent Wanger Investment Management shall, within 15 days of the entry of this Order, pay disgorgement of $2,269.81 and prejudgment interest of $121.94 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Wanger Investment Management as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMISSION

Administrative Proceedings
File No. 3-14676

In the Matter of Application Of

ERIC DAVID WANGER — **Affidavit of Eric David Wanger**

Respondent.

Pursuant to Section 203(f) of the Investment Advisers ACT of 1940, 15 U.S.C. § 80b-3(f), and Rule 193 of the SEC Rules of Practice, 17 C.F.R. § 201.193, Respondent Eric David Wanger ("Wanger') hereby respectfully submits this affidavit in support of his application for consent to re-enter the securities industry, either to associate with any registered entity that may employ me or to start my own business operations again.

The undersigned, being first duly sworn under oath, hereby states that his application for re-entry into the securities industry is based on the following compelling circumstances and reasons:

1. *2012 Administrative Order*. I have complied with the terms and conditions of the Order Making Findings and Imposing Remedial Actions ("Order"), dated July12, 2012, including payment of disgorgement ($2,269.81) and civil monetary penalties ($75,000.00). The right to re-apply after one (1) year has existed since July 2013, for almost four (4) years.

2. *The Commission Staff's Investigation and Administrative Proceedings*

(a) *The Investigation.* The enforcement staff of the Chicago Regional Office ("CRO Staff") investigated this matter for almost two and one-half years – from February 2010 until July 2012. After all that time, CRO Staff ultimately identified only fifteen (15) stock trades in illiquid stocks over the course of thirty-three (33) months, whose price moved pennies, but which the CRO Staff alleged increased my management fees by $2,269, or $69 per month, over the same period. Even though the alleged conduct arguably was *de minimis*, the CRO staff continued to insist, as they had from the very beginning, that my conduct warranted a bar with right to reapply after (1) year, and not any lesser sanction, including the lesser sanction of a suspension that permitted automatic re-entry after 12 months, even though the time period was the same and even though Section 203(f) of the Investment Advisers Act of 1940 permitted such lesser sanction. I was never informed why such a harsh sanction was warranted.[1]

(b) *The Administrative Proceedings.* Since I did not believe I had committed any acts deserving any sanction whatsoever, and certainly did not believe that the alleged conduct warranted such a harsh sanction, I chose to seek an administrative hearing before an administrative law judge ("ALJ"). That was clearly a mistake.

We first moved to dismiss the case for its failure to properly allege any violation of the law for failure to proceed within the time constraints of Section

[1] While this may not literally be the smallest dollar amount the SEC has ever

929U of the Dodd Frank Act. I and my then counsel, a former SEC Enforcement attorney from the CRO, concerned that the CRO staff had "cherry picked" through hundreds of equally relevant stock trades to find a "precious few" that arguably could point to some far-fetched notion of "marking the close," filed a motion to dismiss the charges in their entirety.[2] The motion made plain that the OIP was "full of exaggeration and misrepresentations that, strung together, still fail to state *prima facie* causes of action. Worse, the Division of Enforcement omits material fact from the OIP that demonstrate no such actions exist." The motion then went through each of the allegations and demonstrated both that the OIP did not satisfy mandatory pleading requirements, and also lacked legal support. [3] That motion fell on deaf ears at the pre-hearing conference before the ALJ and was dismissed out of hand.

The ALJ asked the parties to brief the issue of delay under Section 929U of the Dodd Frank Act, which requires the staff to proceed with the administrative

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[2] In such low priced, low volume, illiquid stocks, even trades in late morning or early afternoon could technically "mark the close." Altigen was ultimately delisted from NASDAQ over its illiquidity, something I had been pressing for myself at the board level. At any rate, the OIP failed to demonstrate any purpose to manipulate the share price, which was absent.

[3] Respondent's Motion to Dismiss is attached as *Exhibit 1,* which also addressees the other two charges made in the OIP, one of which alleged improper transactions with the WLTOPF, and the other of which alleged untimely filing of Forms 4. The latter charge, which was added after the Wells Notice, sparked considerable criticism from my then counsel, see *Exhibit 2* (letter of James Kopecky to Charles J. Kerstetter, dated October 4, 2011). My attorney, Mr. Kopecky, pointed out to the CRO Staff that this conduct had previously been addressed by Wilson Sonsini, outside counsel for Atigen. Wilson Sonsini had agreed with the conclusions reached by my then law firm that my conduct had merely been inadvertent and did not violate the federal securities laws. *See Exhibit 3 (*letter from Ungaretti & Harris to Eric Wanger, dated February 18, 2010).

hearing within 180 days of the Wells notice, [4] and at the same time reserved ruling on my request for discovery from the CRO staff as to why the 180-day period had not been complied with. The CRO staff contended that they either met the time requirement or the case was so complex that they needed the extra time, which they could obtain by delegated authority from the Director of the Division of Enforcement and whose exercise of discretion was unreviewable by any court. Once again, I lost that motion, as well. [5]

I next lost the majority of my fact witnesses because they were fearful of SEC retribution if they appeared. That list included a number of potential witnesses that were directly dependent on FINRA and SEC regulators for their livelihoods. Fearing

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[4] Section 929U of Dodd Frank Act, also known as Section 4E of the Securities Exchange Act of 1934, provides that "[n]ot later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent no to file an action." 15 U.S.C. § 78d-5(a)(1). Section 929U also allows the Direct of the Enforcement Division (or the Director's designee) to extend the 180-day deadline for an additional 180 days if the Director "determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action cannot be completed within the 180 days ... after providing notice to the Chairman of the Commission." 15 U.S.C. § 78d-5(a)(2).

[5] I asked the ALJ to certify the dismissal of my motion to the Commission, but she declined, stating that her order of dismissal did not raise any controlling issue of law. I then petitioned the Commission for interlocutory review. The Commission stated, however, that petitions for interlocutory review are "disfavored" and are granted only in "extraordinary circumstances," which the Commission found lacking here. The Commission stated that determinations under Section 929 U are "mixed questions of law and fact" and not appropriate for interlocutory appeal. The Commission added that the "appropriate remedy" to any challenge to the exercise of prosecutorial discretion by the Division of Enforcement staff was to litigate the proceedings "to its final conclusion." *See In Re Eric David Wanger and Wanger Investment Management, Inc.,* Securities Exchange Act Rel. No. 34-66678 (March 29, 2012).

for their careers, they had no interest in appearing in any kind of proceeding, including some of my own employees who had knowledge of facts concerning the alleged violations.

I then lost my expert witness, Joseph Grundfest, a former SEC Commissioner and one of my professors at Stanford Law School, who had agreed to appear *pro bono* and who believed the alleged conduct was *immaterial*. Challenging the assertion of the OIP and Enforcement Division's expert that the stock trades were undertaken to "artificially inflate the Fund's performance results" that would be reported to existing and prospective investors, Professor Grundfest quite logically wrote that neither the OIP nor the Division's expert had undertaken any effort to quantify what effect the alleged stock trades had on earnings. He explained that the OIP failed to allege that I or Wanger Investment Management, the investment advisory company, in fact earned any material additional compensation from such activities. Professor Grundfest pointed out that, even taking as true the staff's assertions that the "illegal" stock trades resulted in increased management fees of $2,269, there was no basis in the record or otherwise to support the conclusion that "amounts of this magnitude would be considered material by any investors," nor that they would be material to me, or even that such amounts "would serve as a sufficient incentive to engage in the activity" in the first place. Professor Grundfest, trained as both an economist and an attorney, also engaged in a far more careful economic analysis than the CRO staff to demonstrate that using *actual* portfolio positions (rather than selecting maximum historical portfolio positions, as was done by the CRO staff) the *maximum portfolio inflation* over all fifteen (15) stock trades

could be no more than **00.85 percent**, that is, no more than eighty-five one-hundreds of one percent. [6] Obviously threatened by such careful economic analysis, the CRO Staff filed a motion to exclude the expert testimony of Professor Grundfest – not on the grounds that his economic analysis was faulty, but rather on the grounds that the case was not that complex (contrary to their position under 929U of Dodd Frank) and that, while Professor sported "impressive credentials," such credentials "are not a license to lecture this tribunal about *securities laws.*" Somehow Professor Grundfest's economic analysis on what should be deemed *material* got turned into a concern for pedantic lecturing to the ALJ about the *federal securities laws.* Given the pro-enforcement nature of these in-house proceedings, I lost that motion too. Logic, law and economics were irrelevant.

So, without witnesses, I had little evidence to present at the hearing, and my attorney had no tools with which to mount any fight to challenge this prosecution "to its final conclusion, " as the Commission had required. *See* note 5 *supra.* We would essentially have to fight "with our hands tied behind our backs." Without witnesses willing to testify at hearing (out of fear of agency retribution), without my expert witness being allowed to testify, and painfully aware of that the ALJ had ruled – and not doubt would continue to rule – in favor of the CRO Staff, at each and every turn, despite the obvious correctness of my defense and the obvious *de minimis* nature of the alleged infractions, any attempt to get a fair hearing would be futile. So I was left with no realistic choice but to settle – the biggest mistake of my life.

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[6] Professor Grundfest's analysis is attached as *Exhibit 4.*

(c) *The Settlement.* After prevailing in all their motions and feeling emboldened, the CRO Staff was insistent – as they had been from the very beginning – that I be barred. I finally relented to the CRO Staff's demands when they told my then counsel that re-entry after one (1) year would be a "no brainer." All I had to do was settle (without admitting any wrongdoing) to avoid a hearing before the ALJ and re-apply after one (1) year. It would all be very simple. I would be back to work in one (1) year – or, so at least I understood. Accordingly, I put my faith in the representations of the SEC staff.

3. *FINRA Determines the Sanction is Permanent.* Upon entry of the Commission's Bar Order, FINRA determined that my one-year voluntary sanction was, instead, a permanent bar. And thus in large red letters, FINRA prominently displayed the news that Eric Wanger had been permanently barred from the securities industry on its BrokerCheck website. My then counsel notified the CRO Staff.[7] Of course, I also filed a formal BrokerCheck Dispute Form and was given the stock answer that it was FINRA's policy to do so.[8] After being dismissed summarily and after a couple of years of rejected employment, I again in 2015 contacted the FINRA Ombudsman and explained that the SEC Order did not impose a permanent bar and only imposed a bar with the right to re-apply after one (1) year. He reiterated that it was "FINRA's policy" to interpret the one-year sanction as a

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[7] *See Exhibit 5*, email from my then counsel regarding his conversation with CRO Staff.

[8] Attached at *Exhibit 6* is the BrokerCheck Dispute Form I submitted and FNRA's response. After its submission, I was orally told by FINRA representatives that it was their "policy" to interpret such bars as permanent.

permanent bar.[9] Against all logic, FINRA representatives were insistent that FINRA is allowed to interpret the SEC order as mandating a *permanent* bar and that such designation would remain on its website unless and until the SEC granted my re-entry. Given, however, that no compliance officer would ever consider allowing his firm to hire, represent or do business with someone that has been permanently barred by FINRA, FINRA has effectively guaranteed the failure of any attempt I had made – and would continue to make – to re-enter the industry.

Had I known that by settling the SEC proceedings I was somehow agreeing to allow FINRA to permanently bar me from the industry, I would never have accepted the CRO Staff's representations and settlement terms.

4. *Destruction of the Two Wanger Entities Mentioned in the Order.* The Commission's Bar Order makes reference to two entities, one of which is now defunct and the other a mere shell.

(a) *Wanger Long Term Opportunity Fund.* Wanger Long Term Opportunity Fund II, LP ("WLTOF"), whose LP's were the supposed "victims" of the

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[9] *See Exhibit 7.* In an email to me dated April 2, 2015, FINRA's Ombudsman stated:

> "I have looked into your concern regarding your BrokerCheck disclosure. I located the SEC release (http://www.sec.gov/litigation/admin/2012/33-9331.pdf), which states in part, 'Respondent Wanger be, and hereby is: barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and prohibited from serving or acting... with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.'
>
> *"FINRA's policy* is that this type of sanction is a permanent bar, notwithstanding the right to reapply. ... " (Emphasis added.)

alleged $2,269 overcharge, was promptly closed and all investor funds returned after entry of the Commission's Bar Order. Accordingly, I dropped my campaign of shareholder activism designed to compel the Altigen (ATGN) to return nearly $10 million of cash to its shareholders. As of the date of this application, that money is now entirely gone and ATGN now trades at $0.29 per share on the pink sheets, having been delisted from NASDAQ. Since I was no longer allowed to manage the fund, it was shut down.

(b) *Wanger Investment Management*, Inc. Wanger Investment Management ("WIM"), an Illinois corporation, and one of the Respondents in the Commission's administrative proceedings, was a registered investment adviser with Commission until 2011 when it voluntarily sought deregistration. Since I was no longer allowed to operate the company I owned, it quickly failed, and with virtually no revenues, it became a mere shell.

5. *Destruction of Wanger OmniWealth, LLC*. As part of my decision to voluntarily accept a one-year sanction, I retained counsel to "firewall" myself from my various business activities, a difficult task, since I was the entrepreneur behind them. Yet, even after resigning from my own board, resigning from my own company and putting my voting rights into trust, I still had to stand and watch my third business entity (one that was not in any way a subject of the investigation or the administrative proceedings) fall victim to the Commission's processes. Wanger OmniWealth, LLC ("WOW"), a $300 million technologically sophisticated, multi-family office, which operated as a services firm and which was growing at the rate of over $100 million per year, suffered the same consequences as WTOF and WIM.

I quickly came to the realization the CRO staff intended to disrupt the operations of WOW as well. I was the person who provided the financial backing for WOW, including the payment of salaries for officers and employees. But the CRO Staff advised my then attorney that given WOW's size as a "small shop," "if Eric has any involvement or appears on the premises, we will perceive it as a violation of the Order." In reaction to such crass statements by the CRO enforcement staff, as well as a request by the Commission's examination staff that it wanted assurance that I would not be present on the premises during the existence of the Bar Order, I was not allowed to enter my own office to access my records and property – and even had to turn in my key card for the building [10] – until after WOW failed and was closed.

Thus, before the ink was even dry on the Bar Order, the Commission staff decided to engage in the relentless onsite examinations of all three of WOW's offices (despite the fact I had never even stepped inside our San Francisco or Denver offices), examinations which quickly came to be perceived as a subterfuge for yet another enforcement proceeding. The pressure and stress from the Commission staff, together with the growing realization that I would likely never return to work, forever trapped by the *de facto* "permanent" bars from the Commission and FINRA, motivated the employees gradually to resign, one by one, until WOW could no longer efficiently services its clients. Then, with no staff to provide services, the bulk of the clients departed. Clients of WOW were displeased with the Commission's actions: Not only did the Commission's actions cause the disruption of

[10] *See Exhibit 8,* ¶ 5, handwritten memorandum, entitled "Request for Additional Information" from SEC Examination Staff to Irene Moy, dated October 23, 2012.

the multi-family office services they had contracted for (which services included integrated reporting, manager selection, administrative services, custodian management and planning services) but subsequently forced them to find new providers for each and every aspect of WOW's service model, introducing a host of wasteful and expensive transition costs. Finally, the one remaining officer resigned. WOW, once a rapidly growing start-up company, is now also defunct. The Commission effectively and functionally "took" my business and my rights to my assets and property away from me. The Commission's Order and follow up examination ended up destroying WOW's economically beneficial use to me, my officers and employees, and my clients.

6. *Attempts To Gain Employment*. The Commission's Bar Order has adversely impacted my ability to find employment not only within the securities industry, but elsewhere as well.

(a) Securities Industry. Following the one-year bar with right to re-apply under the Order, I began trying in July 2013 to obtain employment and association with multiple large and small broker-dealers, registered investment advisers, hedge funds, mutual fund companies, and proprietary trading desks. Because ordinary re-application requires "sponsorship," I attempted to find a firm that would sponsor me. But the SEC's widely publicized one-year Bar Order combined with FINRA's prominently displayed permanent bar, guaranteed the failure of any and all attempts to find someone or some firm that would sponsor me.

I also tried to gain employment and association with unregistered multi-family

offices, "fintech" firms,[11] and private lenders. In all instances, I have routinely been "shown the door." [12]

I have sat through 20 or more face-to-face meetings and telephone interviews in which I have been told that, even though I am well qualified, I am "untouchable" due to my status as a "barred person." I have been referred to as a person wearing a "regulatory bulls-eye." I have been told that, in the "no broken windows" regulatory environment that currently exits, no rational person or firm would ever possibly expose himself or itself to the extra-regulatory scrutiny that would inevitably come with a person like me who is subject to a "Permanent Bar." I have been told that I am "radioactive." I have explained that it was a settled case, without admitting or denying anything. However, I have been told that, as long as the SEC continues to hold me up as a "small-time white collar criminal," even though the SEC staff never proved any of its allegations, there is no possible way I can expect to be able to work in the securities and finance industry ever again. If hired, I would place a heightened level of regulatory scrutiny on any firm and, as a sanctioned and barred person, I create too great of a regulatory, business and

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[11] "Fintech" is a name applied to technology firms that sell software and services targeted at financial services firms and their customers to support trading, investment, insurance, brokerage, private equity, lending and banking. I have been told that my regulatory status is so unfavorable that these firms fear potentially bad reactions from their customers. Accordingly, these "fintech" firms do not want to take that risk by hiring me either.

[12] The names of a few of the firms that "showed me the door" include Credit Suisse, Driehaus, Spiderrock, Millenium Securities (a local broker-dealer in Chicago), Uhlmann Price Securities, Price Asset Management, Citadel, William Blair, Talon Asset Management, Denver Investment Advisors, 221 Partners, JCR Capital, Phoenician, and EGII, to name a few.

reputational risk. Accordingly, no one will sponsor me, even with the requisite supervision in place.

(b) CFA Institute. The CFA Institute, of which I was a proud member, gave me the "option" to resign or be expelled. There would be no hearing. Take it or leave it. This was especially disturbing since the Illinois Institute of Technology CFA Research Challenge team I mentored in 2011 came in first place in the United States and won fourth place in the world competition. My reward for bringing such a trophy back to the Institute was for them to demand my resignation.

(c) Non-Securities Industry. The Commission's Bar Order has been a serious impediment for me in trying to obtain non-securities industry employment as well. The SEC's Order is prominently placed on Google (and the $2,269 figure so deeply buried in its text), and the most casual researchers quickly decide that I was found guilty of fraud by the SEC and thus, cannot be trusted. As one example, I lost the opportunity to become an adjunct professor at the Steward School of Business in Chicago teaching in its master program in the Business Computational Finance Program. [13]

7. *Accounts at Financial Institutions*. Financial institutions (banks, broker-dealers, and asset managers) also have cancelled my accounts, including my credit cards, my IRA account, and my custodial accounts. When I have questioned their actions, I have been told that I am a "reputational risk."

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[13] Other schools and universities where I have sought teaching positions (full or part-time) have included the University of Chicago, Stanford University, and Illinois Institute of Technology. I was even denied a nomination to the investment committee for the Latin School in Chicago.

8. *Right to Re-Associate*. I am applying to re-enter the industry so that I can start life over in my chosen field of work.

(a) Pursuant to Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), I request that the Commission not only permit me to associate with any investment advisor that will employ me, but also regain the right to start a new investment advisory or multi-family office business.

(b) Pursuant to Rule 193 of the SEC Rules of Practice, 17 C.F.R. § 201.193, I request that the Commission allow me to associate with any registered broker-dealer, money manager, "fintech" firm, or any other securities industry participant or financial institution that is not a member of FINRA. [14]

9. *Supervision.* The requirement of sponsorship and supervision imposed as conditions to re-entry under SEC Rule 193 is, in fact, an impossibility. I am faced with a Catch-22: The permanent bar at FINRA guarantees I cannot obtain sponsorship or supervision in the industry, and FINRA refuses to lift the permanent bar until the SEC readmits me into the industry based on a demonstration of sponsorship or supervision. Thus, I am trapped in an infinite loop.

Once I am granted the right to associate (including the right to associate with myself if I start a firm), the firm that employs me will have appropriate supervision in place; or, if I establish my won firm again, I will have the opportunity to put appropriate supervision in place.

10. *New CRO Staff Investigation (#C-8267).*

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[14] Once the Commission lifts the bar Order, I will immediately request that FINRA remove the *permanent* bar language from its BrokerCheck website and will also apply to FINRA pursuant to Rule 19h-1, 17 C.F.R. § 240.19h-1, for the right to associate with any financial services company that is registered with FINRA.

(a) I was notified on December 23, 2015 (the day before Christmas Eve while on holiday vacation) that the CRO Staff has opened another investigation (#C-8267) and was sent a document subpoena. The new investigation seems to have been improvidently opened by the SEC in response to a request from opposing counsel in a binding JAMS arbitration representing parties that were being forced to appear before a "neutral" (a retired Federal Judge) designed to recover monies that had been improperly received by their clients who had refused to return them. Yet, despite the existence of sworn affidavits from the CPA's that reviewed the transactions, the absence of any affirmative defenses by the respondents, and the failure of those respondents to appear before the arbitrator (whose procedural rules should have thus awarded a default judgement in my favor), the JAMS arbitrator suddenly did an "about face" and, after six months, determined that JAMS now lacked the jurisdiction to proceed. But the only change that had occurred was the sudden appearance on the scene of the Commission, which had allowed itself to become thrust into the midst of a confidential private party arbitration and was now being used by opposing counsel as a tool to "dismiss" the arbitration, so that their clients would not have to pay back the money due. [15] I was dismayed that the CRO Staff had allowed itself to be dragged into and disrupt that proceedings and even more troubled that the CRO Staff moved forward with a formal investigation without simply asking me or my counsel for an explanation of what the JAMS arbitration was all about.

(b) I have provided the documentation needed, including affidavits of the

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[15] *See Exhibit 9,* letter of David Klevatt, dated January 26, 2016.

accountants, to answer the core issue raised in the investigation: Whether or not there were any false statements made in pursuit of those funds.

(c) The practical effect of the investigation, of course, is that it indefinitely delays my ability effectively to seek administrative remedies before the Commission. And, as a collateral consequence, it virtually guarantees my continued unemployment not only in the securities industry, but in many other (regulated and unregulated) industries as well, as I am currently the subject of an open investigation.

11. *Public Interest*

(a) The SEC Order permitted me to reapply after one-year. The CRO Staff represented to my then lawyer that it would be a "no brainer." FINRA's interpretation and its BrokerCheck posting of the SEC Order as a "permanent" bar, however, has stopped me from obtaining employment. No firm will employ someone who has been permanently barred.

(b) Efforts to gain employment in the securities and financial industry have also been blocked by fear among industry participants of increased regulatory scrutiny by the Commission and possible retribution were they to employ me, a "barred" person.

(c) The Commission's Bar Order effectively ruined three (3) businesses: WIM, WLTOF, and WOW, the latter of which was not a party to the administrative proceedings and which the Commission had no regulatory right to take.

(d) Financial institutions (banks, broker-dealers, and asset managers) have cancelled my accounts, including my credit cards, my IRA account, and

custodial accounts. According to them, I am a "reputational risk." But, a consensual Bar Order such as mine should not operate to instill fear in financial institutions to such a degree that qualified people cannot keep their credit cards and maintain bank, IRA and custodial accounts.

(e) Notwithstanding that the charges and the administrative proceedings were dubious, I have more than paid my dues to society by sitting out for almost four (4) years, three (3) times more than what the SEC required. [16]

(f) The effect of the SEC's Bar Order has been the dislocation of clients, client funds, and employees of three (3) companies, as well as the cause of the collapse of three businesses – WIM, WLTOF Fund, and WOW – as noted above in subparagraph (c).

(g) In response to the Commission's Bar Order, professional organizations to which I was a certified member and mentor, such as the CFA Institute, gave me the option to resign or be expelled.

(h) My interests in obtaining a fair adjudicatory hearing was undermined by the existence of a widely recognized biased administrative judicial system, contact with potential witnesses by SEC staff who apparently instilled enough fear in them that they declined to appear and testify, and the Division of Enforcement's opposition to and the ALJ's ruling that my expert witness, Professor Joseph Grundfest, a former SEC Commissioner and well recognized law professor from Stanford Law School, could not appear *pro bono* to testify about the lack of

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[16] *See Exhibit 10*, Letter from Professor Grundfest to all SEC Commissioners, dated October 3, 2014 ("once a person serves his sentence, the person should have an opportunity to resume his life as a productive member of society.").

"materiality" in the alleged violations. If this case was sufficiently "complex" under Section 929u of the Dodd Frank Act , 15 U.S.C. § 78d-5(a)(2) that the staff needed additional time to address these complexities before they could institute administrative proceedings, as they argued before the ALJ, then fairness required that highly qualified people be permitted to testify about those complexities.

(i) I was informed through my attorney at the time that the SEC Staff in Chicago handling the case stated that, if I agreed to settle this matter, my right to re-associate after one year would be a "no brainer."

(j) The difference between a suspension not exceeding 12 months with automatic re-entry and a bar with right to reapply after one year (i.e., the difference of one day) should not have engendered such negative consequences that have befallen me and my companies.

* * *

State of Illinois)
County of Cook)

Affiant has personal knowledge of the foregoing and am competent to testify thereto, and certifies under penalty of perjury under the laws of Illinois that the foregoing is true and correct.

[redacted]

Dated: April 11 , 2016 ,

Eric David Wanger

Signed and sworn (or affirmed) to before me on the 11th of April, 2016 by Eric David Wanger (name of person making statement).

(Seal)

"OFFICIAL SEAL"
ANA STEFANOVIC
Notary Public - State of Illinois
My Commission Expires October 04, 2017

[redacted]

(Signature of Notary Public)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-14676

In the Matter of	:	
	:	
ERIC DAVID WANGER and WANGER INVESTMENT MANAGEMENT, INC.	:	RESPONDENTS' MOTION TO DISMISS
	:	
Respondents.	:	

Wanger Investment Management, Inc. (WIM), and Eric Wanger (Wanger) (collectively Respondents), pursuant to Rule 154 of the Commission's Rules of Practice, hereby move the Honorable Administrative Law Judge for an Order dismissing the Order Instituting Proceedings (OIP). In support thereof, Respondents state as follows:

I. Introduction

The OIP is full of exaggerations and misrepresentations that, strung together, still fail to state *prima facie* causes of action. Worse, the Division of Enforcement (Division) omits material facts from the OIP that demonstrate no such actions exist. The Division alleges that Respondents: (1) marked the close to increase management fees; (2) entered into undisclosed transactions; and (3) filed forms late. The Division purposely pleads in terms of percentages percentages to obscure the fact that the total alleged increase in management fees is $2,269.81 over 33 months. It ignores that Wanger did not profit; ignores the partnership agreement and Delaware law authorizing the alleged improper transactions; and ignores that Respondents self-reported and corrected all form filings. Finally, the Division failed to institute this action within 180 days of the Wells Notice as required by the Dodd-Frank Act. Accordingly, the OIP should be dismissed in its entirety.

II. The Allegations

The Division alleges that WIM is a registered investment adviser, and that Wanger is its chief compliance officer. *See* OIP ¶¶ 1, 2. Neither allegation is true. WIM is no longer registered, and Wanger is no longer a chief compliance officer. Nonetheless, as background, the Division alleges that WIM served as adviser to the Wanger Long Term Opportunity Fund II, LP (the Fund). *See* OIP ¶ 1. It then alleges three different courses of conduct that allegedly violate the federal securities laws.

First, it alleges that between January 31, 2008 and September 30, 2010, WIM and Wanger "marked the close" when purchasing shares of AltiGen Communications, Inc. (AltiGen) and two other securities. *See* OIP ¶¶ 15, 16. "Marking the close involves the placing and execution of orders shortly before the close of a trading day to artificially affect the close price of a security. *See* OIP ¶ 12. According to the Division, WIM and Wanger engaged in these transactions to increase management fees and report inflated performance figures. *See* OIP ¶¶ 19, 26. Although it is not clear, it appears the Division alleges that by engaging in these transactions WIM and Wanger willfully violated Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act.

The Division next alleges that WIM and Wanger borrowed funds from the Fund without first disclosing the borrowing in writing to the client. *See* OIP ¶¶ 30, 31. More specifically, the Division alleges that WIM borrowed money from the Fund's brokerage accounts to pay operating expenses and payroll. *See* OIP ¶ 31. In June, 2008, Wanger and WIM transferred securities, including shares of AltiGen, to the Fund in partial re-payment to the Fund. *See* OIP ¶ 33. Then in July, 2008, Wanger and WIM reversed that re-payment transaction. *See* OIP ¶ 35. However, in June, 2009, the Division alleges, Wanger transferred

his personal shares to the Fund again in partial re-payment of the loan. The Division alleges that WIM and Wanger violated Section 206(3) of the Investment Advisers Act by failing to disclose these transactions to clients in writing prior to their completion.

Finally, the Division alleges that Wanger and WIM failed timely to file Forms 4 disclosing acquisition of AltiGen shares. *See* OIP ¶¶ 40-41. The Division alleges that in December, 2008, Wanger reported to AltiGen's Board, and AtliGen publicly disclosed, that Wanger had discovered failures to timely file the forms. *See* OIP ¶ 42. The Division alleges that the failures to timely file violated Section 16(a) and Rule 16a-3 of the Exchange Act.

III. Motions to Dismiss Orders Instituting Proceedings

Rule 154 of the Securities and Exchange Commission's Rules of Practice, allows generally for motions made in writing. *See* 17 C.F.R. § 201.154. The Rule does not limit the scope or purpose of any such motions. Moreover, the Commission has dismissed, and allows for the dismissal of, an OIP where the Division has failed to establish a *prima facia* case. *See e.g. In the Matter of Rita Villa*, Admin. Proc. Rel. No. 1005, 1998 WL 4530 at *4 (Jan. 6, 1998) (upholding dismissal of OIP where Division failed to establish a *prima facie* case that Respondents engaged in violations alleged); *In the Matter of Information Architects Corp.*, Admin. Proc. Rel. No. 299, 2005 WL 2756712 (Oct. 25, 2005) (dismissing OIP finding that Respondents failure to file accurate reports did not violate Securities Act Section 17(a) or Exchange Act Section 10(b) and Rule 10b-5); *In the Matter of Ernst & Young*, Admin. Proc. Rel. No. 46710, 2002 WL 31769270, at * 1-2 (Oct. 23, 2002) (dismissing proceeding based on Staff's request after law judge granted Respondent's motion for summary disposition on the ground that the proceeding was not lawfully authorized).

IV. The Division Cannot Establish "Marking the Close" Violations

The OIP covers a 33 month time period - more than 600 trading days. Excluding

conclusions and improper inferences, the Divisions' alleges that on only 15 of over 600 trading days, WIM's securities purchases were the final reported purchase of the day. The Division asserts that WIM entered into these transactions to manipulate the closing price of the securities purchases and increase the Net Asset Value (NAV) of the Fund and, consequently, increase management fees.

A. The Division Does Not and Cannot Plead All Necessary Elements

The Division alleges that by engaging in marking the close purchases, WIM and Wanger violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and Sections 17(a)(1), (a)(2) and (a)(3) of the Securities Act. To prove a 10(b) violation, the SEC must show (1) material misrepresentations or materially misleading omissions, (2) in connection with the purchase or sale of securities, (3) made with scienter. 488 F.3d 747 (citing *Aaron v. SEC,* 446 U.S. 680, 695, 100 S.Ct. 1945, 1955, 64 L.Ed.2d 611 (1980)). To show a violation of section 17(a)(1), the SEC must prove (1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with scienter. *Id.* (*Aaron*, 446 U.S. at 697). Sections 17(a)(2) or 17(a)(3) require a showing of negligence. *Id.* (*Aaron*, 446 U.S. at 702). Finally, a Section 10(b) claim must meet the pleading requirements of FRCP 9(b) and state with particularity the circumstances constituting fraud. *SEC v. Simpson Capital Management*, 586 F.Supp.2d 196, 201 (S.D.N.Y. 2008) (quoting FRCP 9(b)). The Division fails to properly plead any of the elements to sustain its claims.

B. The Division Does Not Allege Enough to Plead Marking the Close

Cases based on allegations of marking the close are rare, and are nonexistent where there is no evidence of improper intent. An analysis of cases initiated in the last decade reveals that the Commission brings marking the close cases only where: (1) there also is evidence of a communication where the intent to impact the price of the security (or

securities) is communicated; (2) there is evidence of additional transactions that either (i) are expected to result in a profit based on the price change that came as a result of the transaction in question, or (ii) have no purpose other than to assist in manipulating the price of a security; or (3) there are a number of other allegations of wrongdoing in addition to the allegation of marking the close. *See e.g. In the Matter of Angelo Iannone,* Admin. Proc. Rel. No. 44678, 2001 WL 902330 (Aug. 10, 2001) (alleging marking the close based on numerous recordings of conversations showing intent); *In the Matter of Schultz Investment Adivsors, Inc.*, Admin. Proc. Rel. No. 8650, 2005 WL 3543078 (Dec. 28, 2005) (alleging Respondents made misrepresentations to investors and demonstrating intent to mark the close through recorded conversations); *In the Matter of Tony Ahn*, Admin. Proc. Rel. No. 63963, 2011 WL 674085 (Feb. 24, 2011) (alleging recorded communications revealing the intent of the scheme and marking the close that occurred at the end of 14 out of 15 months resulting in millions of dollars of profits); *In the Matter of Baron Capital, Inc.*, Admin. Proc. Rel. No. 47751, 2003 WL 1960928 (April 29, 2003) (alleging marking the close based on numerous recordings discussing the need to keep the price of the issuer's stock at a certain point for a certain time, and the efforts taken to achieve that need).

C. The Alleged Facts Are Not Enough

Here, the Division's allegations include a list of 15 securities purchases. *See* OIP ¶ 16. Similar to the other allegations in the OIP, the table is misleading. First, it ignores that WIM and the Fund use the closing price on the Fund's brokerage account statement for reporting Fund performance and calculating management fees. In a number of instances, the table does not use those prices, and is, therefore, wrong or irrelevant. Second, the Division fails to disclose that in each transaction WIM only purchased shares. It did not then sell the securities to profit from the alleged marking the close. Third, the Division fails to allege the

fact that only six of the transactions are at the end of a quarter. Consequently, only six transactions could have impacted the management fee paid to WIM. More important, there is no allegation that Wanger profited individually from the transactions.

Finally, the Division conspicuously fails to allege the undeniable fact that, taking the Division's allegations as true, marking the close resulted in increased management fees of about $2,269.81 over 33 months, less than $69 per month and less than $207 per quarter. Instead, the Division exaggerates by, for example, alleging that the Fund's NAV increased in a range from 0.24% to 2.56% when in truth, but for one month, the NAV never increased even a full 1%. The Division engages in similar exaggeration when it alleges that Respondents inflated monthly performance figures ranging from 3.6% to 5,908%. Respondents have been unable to verify the percentages, but no doubt the actual numbers are not material.

Moreover, the Division ignores WIM's and Wanger's public activist shareholder position with respect to AltiGen. WIM and Wanger began acquiring AltiGen shares in 2006, and continued to purchase shares through 2010, in an effort to change management and provide shareholder value. AltiGen itself and Wanger acknowledged as much in public filings in 2009. *See* Wanger December 12, 2008 SEC Filing attached as Exhibit 1; *see also* AltiGen SEC Filing January, 2009, attached as Exhibit 2. The alleged "marking the close" purchases of AltiGen were just 11 of more than 100 purchases of AltiGen by the Fund and Wanger.

Ultimately, the alleged marking the close had no material impact on the management fees; no material impact on the Fund's NAV; and no impact on any investor's decision to invest. The Division does not allege, and the facts are, that Wanger and WIM never sold and profited from the alleged marking the close. The Division makes no other allegations that

could constitute scienter on the part of WIM or Wanger. Accordingly, the Division did not, and cannot, plead a material misrepresentation in connection with the offer or sale of securities, and cannot, therefore, maintain a cause of action against WIM and Wanger.

V. WIM and Wanger Did Not Engage In Unauthorized Transactions

A. The Client is the Fund and the Fund had Notice

The Division alleges two improper principal securities transactions in violation of the Advisers Act, but ignores the relationship of the parties, the partnership agreement, and Delaware law. WIM complied with Section 206(3) of the Advisers Act in all transactions. Section 206(3) requires a principal acting for his own account that sells a security to, or purchases a security from, a client to first disclose to the client the capacity in which the principal is acting and obtain the client's consent. *See* 15 U.S.C. § 80b-6. The sole client here is the Fund, a Delaware limited partnership. Under the Investment Advisers Act, a limited partnership is deemed to be a single client of an investment adviser. Rule 203(b)(3)-1a.2.ii.

Under Delaware Code, "[a] partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership." 72 Del. Laws, c. 151, § 15-102(f). Further, knowledge and conduct of corporate officials acting within the scope of their duties are imputed to a corporation. *Allard v. Arthur Andersen & Co. (USA),* 924 F.Supp. 488 (S.D.N.Y. 1996). This is true even if the agent has a conflict of interest or is not acting primarily for his principal. *Center v. Hampton Affiliates, Inc.,* 66 N.Y.2d 782, 784, 497 N.Y.S.2d 898, 899, 488 N.E.2d 828, 829 (1985).

As President of WIM, Wanger's prior knowledge and notice of the transactions at issue is imputed to WIM. As the investment manager to the client Fund, WIM's prior knowledge and notice of the transactions is imputed to the Fund. For the same reasons,

Wanger and WIM's consent to the transactions at issue is imputed to the Fund.

B. The Fund Authorized the Transactions at Issue Pursuant to the Partnership Agreement and Delaware Code

The Fund authorized the transactions at issue. WIM acted in all of the transactions at issue within its authority under both the Partnership Agreement and Delaware Code. The Fund's Partnership Agreement vests management authority in the General Partner, which retained WIM to provide services. WLTOF P.A. Sect. 2.01. WIM, accordingly, has the "power on behalf of and in the name of the Partnership [Fund] to carry out any and all objects of and purposes of the Partnership" and "to perform all acts and enter into and perform all contracts or other undertakings it may deem necessary, advisable or incidental thereto." *Id.* at 2.02(a). The Fund's purpose specifically includes "engaging in all activities and transactions as the General Partner or Investment Manager may deem necessary or advisable in connection with such investing, including without limitation [] to possess, Transfer or otherwise deal in, and to exercise all rights, powers, privilege and other incidents of ownership or possession with respect to, Investments and other property and funds held or owned by the Partnership." WLTOF P.A. Section 1.06(c).

Further, under Delaware Code "a partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with, the partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner." 72 Del. Laws, c. 151 § 15-119. The Partnership Agreement also empowers the General Partner to hire investment advisors and such other persons as the General Partner or Investment Manager deems "necessary or advisable, whether or not such service-provider or counter parties are Affiliates of the General Partner or an Investment Manager." WLTOF P.A. Section 1.06(g).

The Division's allegations ignore the structures of the Fund, its investment advisers, and its investment manager. The Division's allegations also ignore the definition of "client" under the Investment Advisers Act. The allegations ignore the law.

C. The June, 2008, Transaction Did Not Actually Happen

The Division first alleges that Wanger and WIM entered into a transaction in June, 2008, that "could have had" the effect of increasing the price the Fund paid for certain securities. *See* OIP ¶ 34. Ultimately, however, the June, 2008, transaction did not have and "could not have had" any effect on the Fund. In essence, the transaction never happened. In July, 2008, WIM and Wanger reversed the June, 2008, transaction. *See* OIP ¶ 35. By definition, therefore, the June, 2008, non-transaction is not actionable. Moreover, the Division alleges that Wanger marked the closing price of AltiGen stock on June 20, 2008, resulting in a penny ($0.01) per share increase in the valuation. *See* OIP ¶ 34. The alleged increase in value is less than $375, which is insufficient to warrant consideration of such action by Wanger.

D. There Are No Allegations of Improper Valuations in the June 2009

The Division next alleges that in June, 2009, Wanger used shares to re-pay a loan. The June 2009 transfer of securities by Wanger to the Fund represents less than half (40%) of the approximately $200,000 loan. Wanger settled the rest with cash. More important, this time the Division does not, because it cannot, allege that WIM or Wanger "marked the close" to increase the value of those shares. In fact, the Division does not, and cannot, allege that WIM and Wanger improperly valued the shares; or that the Fund paid an increased price for the shares. The Division simply wrongfully alleges that WIM and Wanger did not disclose the transactions in writing to the Fund.

E. The Investors Benefited from the Alleged Improper Transactions

Wanger and WIM made the loan repayments to the Fund with proper authority under both the Partnership Agreement and Delaware Code. The Fund had prior knowledge of the principal securities transactions at issue and consented to such transactions, as required by Section 206(3) of the Advisers Act. Wanger's knowledge and consent is attributed to WIM, which as the general partner of the Fund is attributed to the Fund. Notice and consent were deemed given when WIM, as agent, acted in the interests of the Fund, the principal. 72 Del. Laws, c. 151, § 15-102 (f) Knowledge and notice; *Allard v. Arthur Andersen & Co.* (USA), 924 F.Supp. 488 (S.D.N.Y. 1996); *Center v. Hampton Affiliates, Inc.,* 66 N.Y.2d 782, 784, 497 N.Y.S.2d 898, 899, 488 N.E.2d 828, 829 (1985) (allegations insufficient to negate imputed knowledge to the corporation, even if the agent has a conflict of interest or is not acting primarily for his principal).

Moreover, the Division is fully aware of, but does not allege, a number of facts material to understanding these transactions. WIM both borrowed money from, and loaned money to, the Fund. At various times throughout 2008 and 2009, WIM loaned more than $40,000 to the WLTOF to sustain the partnership and allow it to pay its expenses. WIM did not charge interest on those loans. Those loans are unquestionably legal and allowed under the partnership agreement and Delaware law. Those loans provided a benefit to the Fund.

Similarly, WIM borrowed funds from the Fund during 2008 and 2009. The total receivable from WIM to the Fund, however, never exceeded $242,000 at any given time. WIM deemed each loan from the Fund necessary to the continued operation of the Fund and, accordingly, a benefit to the Fund. The Division does not allege that either WIM or Wanger dishonestly applied the funds for personal use. In fact, WIM returned the funds with interest payments in excess of the Treasury rates. Therefore, the WLTOF profited from its loans to WIM. Each loan and re-payment is detailed on the spreadsheet attached as Exhibit 3.

Finally, as demonstrated on the attached Exhibit 3, the total due from WIM to the Fund never exceeded $242,000 at any time, while Wanger's trust's investment totaled more than $900,000 at that time. *See* Exhibit 3. Consequently, no investors could have faced a risk of loss, and certainly Eric Wanger himself, as an investor, would be a loser if WIM did not repay the loan.

The Division's allegations do not include facts sufficient to allege unauthorized, undisclosed transactions in violation of the Investment Advisers Act and its claim should be dismissed.

VI. The Division Does Not Properly Allege a Violation of Section 16(a)

To establish that WIM and Wanger violated Section 16(a) the Division must plead and show: (1) Respondents were subject to the disclosure requirements; (2) a change in Respondents' beneficial ownership; (3) a failure to file Form 4; and that (4) Respondents failure to file was not inadvertent. *See SEC v. Blackwell*, 477 F.Supp.2d 891, 905 (S.D. Ohio 2007).

Here, the Division alleges the unsupported conclusion that "Wanger and Wanger Management acted recklessly, or at least, negligently, in failing timely to file Forms 3, 4 and 5. *See* OIP ¶ 45. The Division does not dispute that Wanger and WIM filed the proper forms. It does not dispute, and cannot dispute, that Wanger and WIM publicly announced the filings and self-reported the Forms filings. In fact, the Division's allegations include the fact that Wanger informed AltiGen of the timeliness issue with respect to the filings. Indeed, but for Wanger's own disclosure, the issue would not have come to light. Moreover, in December 2008, Respondents made all appropriate filings—prior to any involvement by the Division. *See* Exhibit 1. AltiGen also stated that all relevant filings were current in a public proxy statement. *See* Statement in Proxy, Exhibit 4.

In addition, Respondents retained a law firm to review compliance issues and specifically review the circumstances surrounding the filings. Counsel worked with Respondents and with AltiGen's counsel and concluded that the filings deficiencies were merely inadvertent. The Division is fully aware of, but omits, these relevant facts.

Finally, the Commission created Form 5 to allow the reporting of transactions that should have been reported on Forms 3 and 4. The existence of the Form 5 contemplates "untimely" form filings. *See e.g.* Form 5. Consequently, the Division's conclusion that the filing deficiencies were reckless or negligent is not enough to plead a *prima facie* violation of Section 16(a), and the OIP should be dismissed.

VII. The OIP Does Not Comply with Federal Statutory Deadlines

The Division failed to institute this action within the 180-day time limit established in Section 929U of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), at 15 U.S.C. § 78d-5. Further, the Division could not have properly extended the time limit because this matter is not a "complex case," and the Director of the Division, or the Director's designee, could not have properly classified it as complex, to obtain an extension under Section 929U.

A. The OIP Does Not Comply with Federal Statutory Deadlines and This Action is Not Complex

Section 929U is entitled "Deadline for Completing Examinations, Investigations and Compliance Examinations and Inspections." It provides the following time limitation on Commission action:

> (a) Enforcement Investigations
>
> (1) In general
>
> Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division

of Enforcement of its intent to not file an action.

15 U.S.C. § 78d-5(a)(1).

It also provides an exception to the deadline discussed above for "certain complex actions," as follows:

> (2) Exceptions for certain complex actions
> Notwithstanding paragraph (1), if the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.

15 U.S.C. § 78d-5(a)(2).

This action is not complex, and the Division makes no allegation that it is. The Staff provided Respondents with the written Wells notification alleging violations of Section 17(a)(1), 17(a)(2) and 17(a)3 of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, on June 7, 2011.[1] The Commission did not issue the OIP against Respondents on those alleged violations until December 23, 2011. The Division, therefore, failed to institute within the 180 day deadline imposed by Section 929U.

Congress does not make compliance with Section 929U optional, or subject to the discretion of the Commission or the staff; instead, the statute states that the Commission staff "*shall*" do one of the two things within 180 days: initiate the action or inform the Director of its intent not to do so. Filing late is not an option. The Commission is not above the law. Whatever power it has is granted to it by Congress, and is subject to whatever limitations imposed upon it by Congress. Here, Congress has limited the authority of the Commission by

[1] The Staff later submitted a second Wells Notice to Respondents asserting violations of Section 16(a) relating to late forms filings. The Division instituted this proceeding within 180 days of that Wells Notice, and, accordingly, this section does not apply to the alleged Section 16 violations.

requiring the Division to act within 180 days. Where an agency is required to act within a particular time period, it must do it. *See Bustamante v. Napolitano*, 582 F.3d 403, 409 (2d Cir. 2009) (holding that the agency's failure to act within the statutory deadline barred the agency from doing so thereafter.) Therefore, the Division has no power to act regarding the allegations included in its June 7, 2011 Wells Notice as it failed to institute a proceeding against Respondents within the 180 day deadline.

Moreover, the complexity exception does not apply to this action. First, the Division makes no such allegation of complexity. Second, the Director of the Division of Enforcement of the Commission (or his designee) did not make a determination within the 180-day period that this "enforcement investigation is sufficiently complex," nor was such determination the basis for a proper extension request and notice under the rule. Indeed, ny such finding by the Director of his designee would be arbitrary and capricious on its face.

In fact, Counsel for Respondents requested that the Division provide Respondents with the request for an extension and the notice to the Chairman. Division Staff refused to provide Respondents with such information. There is, therefore, no evidence that Division Staff made a finding of complexity, complied with the statutory extension provision, or met the notice requirements. Nor does the OIP make any such allegations. Dodd-Frank does not give the Division the blanket authority to give itself an extension, and the OIP should be dismissed.

Finally, even if the Director did make a finding of complexity, and communicated that finding to the Chairman in a timely manner, the exception applies only to cases that are actually complex. This case is far from complex, and again, any such finding would be arbitrary and capricious. This action involves 15 reported purchases over 33 months from 2008-2010; one alleged loan transaction; and forms filings that Wanger corrected and self-

reported in December, 2008. The Staff had every piece of information necessary to investigate this matter, and the Commission issued a Formal Order, by February, 2010. Wanger testified in September and November, 2010. The Staff issued a Well Notice in June, 2011. There is just nothing sufficiently complex about the case to justify an exception to the 180 day deadline.

Consequently, the Administrative Law Judge should dismiss the OIP with prejudice.

WHEREFORE, Wanger Investment Management, Inc. and Eric Wanger pray for an Order in its favor dismissing the Order Instituting Proceedings, and for such and further relief as the Honorable Administrative Law Judge deems fair and appropriate.

Respectfully submitted,

[redacted]

Attorney for Respondents

James L. Kopecky
Howard J. Rosenburg
Brooke E. Conner
Kopecky Schumacher Bleakley Rosenburg, P.C.
203 N. LaSalle St. Ste 1620
Chicago, Illinois 60601
(312) 380-6552
Firm No. 46624

KSB | Kopecky, Schumacher & Bleakley, P.C.

October 4, 2011

Via E-Mail

Charles J. Kerstetter
Assistant Regional Director
U.S. Securities and Exchange Commission
175 W. Jackson, Suite 900
Chicago, IL 60603

Re: In re Wanger Investment Management, Inc., C-07628

Dear Mr. Kerstetter,

In June, 2011, the Staff informed counsel that it was considering recommending that the United States Securities and Exchange Commission ("Commission") institute a public administrative and cease-and-desist proceeding against Eric Wanger ("Wanger") and Wanger Investment Management, LLC ("Wanger Management"). In July, counsel sent a Wells Submission outlining the reasons the Staff should not make its intended recommendations. Now the Staff has indicated that it intends to add allegations that Wanger violated Section 16(a) of the Exchange Act.

In accordance with Rule 5(c) of the Commission's rules on informal and other procedures, we respectfully request that the Staff and the Commission consider the following:

I. Any Alleged Failures to Timely File Forms Was Self-Reported and Corrected

Wanger Management retained the law firm Ungaretti & Harris LLP in November, 2008, in connection with Wanger's and Wanger Management's investments in AltiGen and securities compliance matters generally.[1] As a specific part of the retention, Ungaretti & Harris conducted a review of Wanger's and Wanger Management's compliance history. During its

[1] Ungaretti & Harris has confirmed in writing the facts and opinions in this section. Ultimately, Wanger Management will consider waiving attorney-client privilege to provide the written support for these statements.

review, Ungaretti & Harris noted deficiencies in the Section 16 (director and 10% shareholder share transaction reports) and Rule 13D (5%± owner shareholdings and intentions reports) previously made by Wanger regarding AltiGen. Ungaretti & Harris and Wanger addressed the issue with AltiGen and its counsel and made remedial filings with the SEC on December 12, 2008, with AltiGen's blessing. After reviewing Wanger Management's internal procedures and discussing the matter with Wanger and several Wanger Management employees, Ungaretti & Harris concluded that the filing deficiencies were merely inadvertent and did not constitute evidence of misconduct. AltiGen's subsequent proxy statement acknowledged that all relevant filings were brought current.

AltiGen's counsel, Wilson Sonsini, one of the country's leading securities law firms, conducted its own independent review of the reporting issues and agreed with Ungaretti & Harris's conclusions. Wilson Sonsini did so in spite of Wanger's then-ongoing dispute with AltiGen's management over the company's direction, when it would doubtless have preferred to highlight any real or perceived illegality, however slight, to discredit Wanger.

Ungaretti & Harris also assisted Wanger and Wanger Management's new investment advisor compliance consultant in implementing improved compliance procedures, including pre-clearance with a consultant, of all trades in shares carrying SEC reporting obligations. No further compliance issues have arisen since then. No investor has complained, and, in fact, very few have redeemed shares in Wanger Management's funds.

Just as important, as a general rule, the investors in funds managed or advised by Wanger Management are sophisticated, accredited investors capable of understanding risks and evaluating Wanger Management's conduct without the input of the Staff. In fact, many will testify on his behalf at any proceeding against him.

There is no rational basis for the Commission to proceed with an action based on self-reported, self-corrected form filings issues that were resolved in 2008.

II. The Staff's Settlement Leverage

After the first Wells Submission, counsel engaged in settlement discussions with the Staff. Ultimately, Respondents rejected what we believe to be an unreasonable settlement demand. The demand included sanctions outside all reasonable comparable matters. Now, the Staff informs us that it intends to add additional recommended charges arising out of self-reported, corrected form filings. It is difficult to view this as anything other than the Staff trying to pile on charges in an apparent attempt to obtain leverage to pressure Wanger into a greater settlement. That does not further the mission of the Commission, and the Staff should not recommend any additional charges.

III. After Issuing two Well's Notices the Staff Continues to Issue Subpoenas

Incredibly, while preparing this Wells Submission, counsel received yet another subpoena from the Staff requesting Wanger Management documents. The Staff apparently has not completed its investigation, yet intends to recommend that the Commission pursue an action against Wanger Management anyway. The fact that it continues to issue subpoenas while issuing Wells Notices, to the same individuals and entities, is an abuse of process and certainly undermines the credibility of the Staff's recommendation.

Given the prominence of the name Wanger in Chicago, it is understandable that it is tempting to bring the case to generate headlines. Nonetheless, the Staff and the Commission should focus on reasonable, worthy proceedings with solid legal and factual violations of the securities laws.

* * *

For the reasons of policy, fact and law stated herein, Eric Wanger and Wanger Management respectfully request that the Staff determine not to recommend an action against them.

If you have any questions or concerns or require further information, please feel free to call.

Sincerely and Respectfully Submitted,

Eric Wanger and Wanger Investment Management, LLC.

[redacted]

By counsel,
James L. Kopecky

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Sincerely and Respectfully Submitted,

Eric Wanger and Wanger Investment Management, LLC.

[redacted]

By counsel,
James L. Kopecky

UNGARETTI & HARRIS

Three First National Plaza
70 West Madison – Suite 3500
Chicago, Illinois 60602.4224
Telephone: 312.977.4400
Fax: 312.977.4405
www.uhlaw.com

UNGARETTI & HARRIS LLP
CHICAGO, ILLINOIS
SPRINGFIELD, ILLINOIS
WASHINGTON, D.C.

GARY I. LEVENSTEIN
312.977.4108
gilevenstein@uhlaw.com

PRIVILEGED AND CONFIDENTIAL

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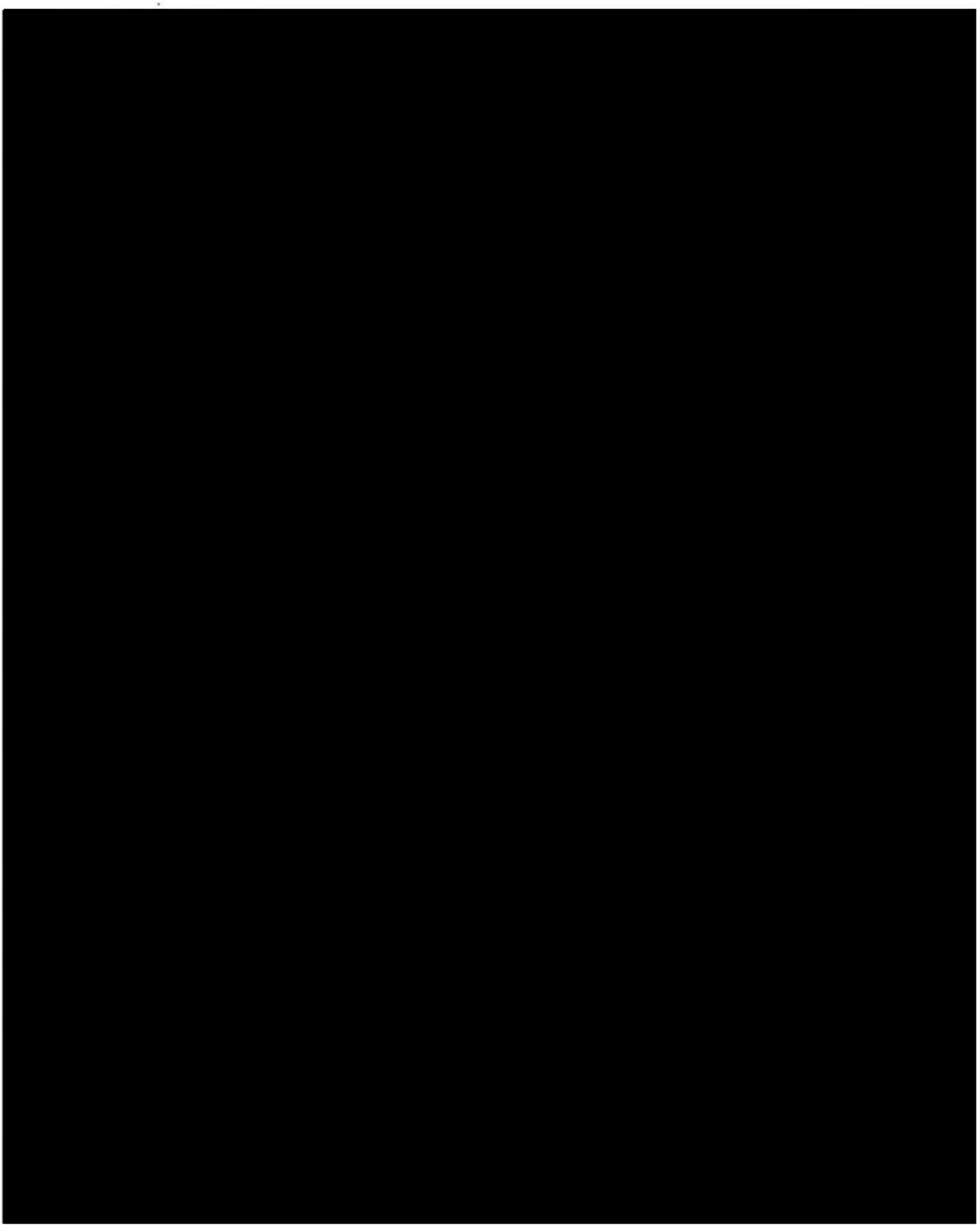


UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING **File No. 3-146767** **In the Matter of** : : **ERIC DAVID WANGER and** : **WANGER INVESTMENT MANAGEMENT, INC.,** : **Respondents.** :	**Expert Report of** **Professor Joseph A. Grundfest**

I am the William A. Franke Professor of Law and Business at Stanford Law School, and served as a Commissioner of the United States Securities and Exchange Commission from 1985 to 1990. I am also Senior Faculty at the Rock Center on Corporate Governance at Stanford University, and am the founder and co-director of Stanford Law School's executive education programs, including Stanford Directors' College. I am trained as an economist and attorney, and my scholarship has appeared in the Harvard, Yale and Stanford law reviews, as well as in refereed economic journals. I have taught courses on securities regulation, corporate governance, and finance. I have been named as among the nation's 100 most influential attorneys and among the 100 most influential in the field of corporate governance. My biography is attached as Appendix A.

I am receiving no compensation for my services in this matter, other than the reimbursement of usual and customary business expenses. As of the date of this Report, I have incurred no such expenses.

I am personally familiar with Mr. Wanger. He is a xxxx graduate of Stanford Law School. We have remained in intermittent contact since Mr. Wanger graduated from law school.

The documents I have reviewed in preparing this statement are listed in Appendix B.

I. Marking the Close

The Division's allegations regarding marking the close focus on fifteen transactions enumerated in the chart presented at paragraph 16 of the Division's Order Instituting Proceedings ("OIP"). The OIP alleges that the motive animating these marks was "to artificially inflate the Fund's performance results and by communicating the inflated performance results to existing and prospective investors, Wanger and Wanger Management engaged in a scheme to defraud and engaged in a practice that operated as a fraud." OIP, para. 28. The complaint further alleges that "Wanger and Wanger Management also made

material misrepresentations and omissions when they reported the artificially inflated performance numbers to existing and potential investors." Id. at para. 29. The complaint does not allege that Wanger engaged in the alleged activities in order to manipulate the markets in the traded securities by later selling the securities that he acquired, or by engaging in any activities designed to influence or affect any persons other than actual or potential investors in his fund.

The OIP and the Expert Report of James M. Cangiano (Cangiano Report) are both, however, critically deficient in their examination, analysis, and pleading of the materiality of the allegedly violative marks. In particular, both documents fail to address the materiality of the alleged marks either as they relate to Wanger's incentives, or as they relate to information provided to actual or potential investors in the fund.

A. Materiality of Wanger's Incentives and Compensation.

Significantly, the OIP and the Cangiano Report both fail to quantify the effect of the alleged marks on the earnings that Wanger would have made as a consequence of those marks. The OIP and the Cangiano Report nowhere allege or prove that Wanger earned any material additional compensation as a consequence of allegedly fraudulent acts.

In contrast to the Division's and expert's silence as to this quantifiable question, Respondents document that even if all the Division's allegations are accepted as true, then the alleged marking conduct "resulted in increased management fees of about $2,269.81 over 33 months" or "less than $69 per month, and less than $207 per quarter." Respondent's Motion to Dismiss, at 6. The OIP and the Cangiano Report do not challenge that calculation.

There is no basis in the record that would support the conclusion that amounts of this magnitude would be considered material by any investors. Nor is there any showing that amounts of this magnitude would be considered material to Mr. Wanger, or that amounts of this magnitude would serve as a sufficiently material incentive to cause the activity alleged in the complaint.

The Cangiano Report states that in the expert's opinion, "Wanger stood to benefit substantially from a favorable outcome, particularly in ATGN stock, and also the other securities in question." Cangiano Report at 9. To the extent that this opinion relates to the simple observation that an increase in the price of securities held in the Fund portfolio could benefit Mr. Wanger, this observation is entirely unremarkable and wholly unrelated to the gravamen of the violations alleged in the OIP. However, to the extent that this opinion purports to be related to the substance of the alleged marking conduct, the opinion is entirely unsubstantiated by even the most rudimentary form of quantitative analysis. It provides no empirical foundation for the assertion that any benefit resulting from the alleged marking behavior was "substantial." To the contrary, the available data of record indicates that, even accepting the OIP's data as correct, the effect of the alleged marking conduct on Wanger's financial returns was trivial.

B. Materiality of Information Provided to Investors.

The data presented in the OIP at paras. 16, 20, and 21, call into question the materiality of the Division's own allegations. Table 1 below is based entirely on information contained in the OIP.

The first four columns of Table 1 replicate the information presented in the table contained in para. 16 of the OIP. Column 5 describes the amount of "inflation" attributable to the closing price obtained by Wanger expressed as a percentage of the alleged pre-mark price. Column 6 describes the maximum percentage of Wanger's portfolio attributable to the corresponding stock, as stated in paragraphs 20 and 21 of the OIP. Column 7 calculates the maximum increase in the value of the portfolio that could have been caused by the trading as described in the OIP. It bears emphasis that the estimates in column 7 are over-statements because they are based on historical maximum portfolio positions rather than the actual portfolio positions as of the dates of the trade.

Table 1

(1) Trade Date	(2) Security	(3) Last Sale Prior to or During Wanger's Trade Activity	(4) Closing Price Obtained by Wanger	(5) "Inflation" Attributable to Closing Price	(6) Maximum Percentage of Portfolio as Alleged by Complaint	(7) Maximum Portfolio "Inflation" Alleged by Complaint
1/31/08	ATGN	$1.60	$1.63	1.88%	14.91%	0.28%
3/31/08	ATGN	$1.42	$1.65	16.20%	14.91%	2.415%
4/30/08	ATGN	$1.44	$1.56	8.33%	14.91%	1.24%
5/30/08	ATGN	$1.33	$1.45	9.02%	14.91%	1.35%
6/20/08	ATGN	$1.37	$1.38	0.73%	14.91%	0.11%
9/30/08	ATGN	$0.93	$0.99	6.45%	14.91%	0.96%
9/30/08	DSCI	$0.54	$0.56	3.70%	4.12%	0.15%
10/31/08	ATGN	$0.68	$0.69	1.47%	14.91%	0.22%
10/31/08	CKSW	$2.85	$2.90	1.75%	11.50%	0.20%
2/27/09	ATGN	$0.84	$0.85	1.19%	14.91%	0.18%
2/27/09	DSCI	$0.47	$0.54	14.89%	4.12%	0.61%
3/31/09	CKSW	$3.68	$3.72	1.09%	11.50%	0.125%
3/31/09	WDGH	$0.40	$0.62	55.00%	0.70%	0.39%
5/28/10	ATGN	$0.72	$0.76	5.56%	14.91%	0.83%
9/30/10	ATGN	$0.60	$0.75	25.00%	14.91%	3.73%

The average maximum portfolio inflation over all fifteen of these alleged marks is approximately 00.85 percent - - eighty five one-hundredths of one percent. Accordingly, the materiality of the course of conduct alleged in this complaint rests ineluctably on the assertion that these alleged marks, which have an average effect of 00.85 percent of NAV, would be viewed as material by actual or potential investors. Neither the Division nor their expert presents any evidentiary or precedential support for such an assertion.

Indeed, the OIP and the Cangiano Report are devoid of any explanation as to how marking that leads to a maximum alleged inflation averaging eighty five hundredths of a percent of portfolio value would be considered material by investors, or would be material to Wanger as an individual. The OIP and the Cangiano Report are also bereft of any support for the proposition that this maximum possible degree of inflation would be considered material to investors, given that the "total mix" of information available to investors at that time included information regarding the volatility of broader market conditions, reasonable expectations regarding the volatility of small cap securities, the fund's activist strategy, anticipated holding periods for the securities held in the fund, and anticipated holding periods for investments in the fund, among many other factors.

Further, as is evident from the data presented in Table 1, in eight of these fifteen instances, the maximum inflation of the portfolio attributable to the alleged marking behavior was less than one half of one percent of the portfolio's value. In three instances the alleged inflation was between 0.5 percent and 1.0 percent of the portfolio's value. In two instances, the alleged inflation was between 1.0 percent and 1.5 percent of the portfolio's value. And, in two instances, the alleged inflation was between 2 and 2.56 percent of the portfolio's value. Again, viewed as part of the total mix of information available in the market, together with the average alleged valuation effect of eighty five hundredths of one percent, it is far from evident that these alleged marks would have been viewed as having a material effect.

The Cangiano Report concludes that "Wanger's actions were serious and had the effect of distorting the actual market for the securities in question and misinforming shareholders and prospective shareholders of the fund as to the fund's performance." (Cangiano Report at 23) This conclusion is empirically unsubstantiated and raises a range of collateral questions. First, the federal securities laws consider the materiality of a broad range of events, and do not consider the "seriousness" of those events as elements of a cause of action. Viewed in this context, the meaning of the term "serious" is undefined and of indeterminate relevance, particularly because it is not described in a manner related to the substance of the alleged fraud. Second, the Cangiano Report nowhere quantifies the actual effect of the alleged marking activity on the portfolio and therefore lacks any empirical foundation for any conclusion regarding the potential significance of the alleged marking activity on any actual or potential investor. Third, because the Cangiano Report nowhere quantifies the actual effect of the alleged marking behavior on Wanger's actual compensation, it also lacks any empirical foundation for any conclusion regarding the financial incentives that the alleged marking behavior had on Wanger's incentives.

II. Wanger's Transactions With the Fund

The OIP alleges that on June 20,2008, "Wanger transferred 37,344 shares of AltiGen, and other securities from his personal account to the Fund's account" and that "Wanger marked the closing price of AltiGen stock on June 28, 2008, which could have had the effect of increasing the price the Fund paid for the securities had the AltiGen share remained in the Fund's account with a transfer date of June 20,

2008." OIP, para. 33-34. These allegations fail, however, to note that the closing price obtained by Wanger on that day was only one cent higher than the last sale prior to Wanger's closing transaction - - hardly an amount that would support an inference of an intent to engage in material self dealing. Moreover, the OIP itself explains that these transactions "were transferred back to Wanger's personal account" in July of 2008, about a month later, thereby effectively reversing the transaction.

III. Form 4 Filings

The OIP alleges that the failure to file Forms 4 on a timely basis was either reckless or negligent, OIP, para. 45, but alleges no facts that would support an inference of recklessness or negligence on the part of Mr. Wanger. The record is, instead, clear that Mr. Wanger self-reported the failures to file, and the OIP recognizes that fact by quoting from the AltiGen Form 8-K dated January 8, 2009, which explains the circumstances of Mr. Wanger's self-reporting. OIP, para. 43.

In my experience as a director of three publicly traded corporations, and having dealt with hundreds of directors in the course of more than fifteen years running Stanford's Directors College, and having dealt with a large number of corporate general counsel and secretaries on matters relating to compliance with Form 4 filing requirements, the common standard of practice in the profession is for directors to delegate to third parties the responsibility for assuring compliance with the Form 4 filing requirements. More specifically, the standard practice is for the director to provide the necessary information to a person either on the corporation's staff or to a person on the staff of the entity with which the person is affiliated, and then to rely on that person properly to file the information with the Securities and Exchange Commission. Failures to file can then arise either as a consequence of a failure to provide sufficient information on a timely basis to the person delegated with the responsibility to file with the Commission, or as a consequence of an error by the person to whom the responsibility was delegated. The OIP does not preclude the possibility that there was a failure to file on the part of the person to whom responsibility was delegated and that the failure to file was noted by Mr. Wanger and then self-reported. Under those circumstances, Mr. Wanger would have been neither reckless nor negligent, given the standard of care among directors of publicly traded corporations.

IV. Dodd-Frank Section 929U

Section 702 of the Administrative Procedure Act provides that "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." [citation]

Here, Respondents have suffered a legal wrong because the Division has failed properly to comply with the provisions of Section 929U of the Dodd-Frank Wall Street Reform and Consumer Protection Act , which adds Section 4E to the Securities and Exchange Act.

New Section 4E provides that enforcement proceedings must be initiated within 180 days of "the date on which Commission staff provide a written Wells notification." However, if the Director of the Division of Enforcement or his designee determines that "a particular enforcement investigation is sufficiently complex that a determination regarding the filing of an action against a person cannot be completed with the 180 day deadline," then the Director or his designee "may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period."

Additional 180-day extensions are also available, contingent on determinations of sufficient complexity.

In the instant action, more than 180 days elapsed between xxxxx [insert], the date of the initial Wells notice and the filing of the instant proceedings, which clearly constitute "agency action" for purposes of Section 702 of the APA.

For purposes of this statement, I assume that the Commission's staff has complied with the formal requirements of Section 4E and that there has been an internal determination of complexity upon which the staff relied in initiating action more than 180 days after providing a Wells notice. I further assume that the staff has appropriately adopted internal procedures regarding factors to be taken into consideration with respect to the determination of complexity, and that these factors have been properly applied to the facts of this case.

The difficulty, however, is that there is nothing complex about this matter that could support a rational finding that an extension of the statutory 180-day trigger period was at all warranted. The determination of complexity places no time limit on the period that the Division can use to analyze and investigate wrongdoing prior to the issuance of a Wells notice. Indeed,staff can take all the time it wants to investigate even the simplest of matters - - constrained only by considerations related to the running of any relevant statutes of limitations.

The 180-day clock starts running only once the Wells notice has issued. Here, the staff has alleged plain vanilla marking (often in trivial amounts), a simple set of allegedly self-dealing transactions, and a simple set of late filings. There is nothing deep or complex about any of these allegations, or about any of the legal issues raised by the Wells notice or the response thereto, that would rationally warrant an extension of the 180-day trigger period in order to consider whether to bring an action. Indeed, if the instant case qualifies as sufficiently complex to warrant a legitimate extension of the 180-day trigger period, then the overwhelming majority of cases brought by the Division will qualify for such an extension and the statutory mandate will, *de facto*, be rendered a nullity. Put another way, if this case is sufficiently complex, it would be hard to define a material set of proceedings that would not qualify as being complex. The operation of Section 4E would thus be a sham.

Inasmuch as Respondent here has "suffered a legal wrong as a result of an agency action" Respondent has a right to legal review of such action. Further, inasmuch as the plain language of Section 4E contemplates that an action will be brought within 180 days of a Wells notice, or not at all, the naturally implied statutory remedy is that a proceeding may not be brought at all if the staff violates the 180-day trigger period by, for example, improperly determining that a simple matter is actually complex in order to avoid the strictures of the 180-day rule. Section 4E thus provides an independent basis for dismissal of this action.

Respectfully submitted,

Joseph A. Grundfest

From: Eric Wanger [mailto:eric@edw.com]
Sent: Saturday, August 04, 2012 5:07 PM
To: James L. Kopecky
Cc: Washburn, John A.
Subject: Re: atty client

she should be happy. she wanted the press to chew me up

Sent from my iPhone

On Aug 2, 2012, at 2:49 PM, "James L. Kopecky" <jKOPECKY@ksblegal.com> wrote:

John and Eric, I spoke to Nicole at the SEC today. She wrote the News Digest the SEC put out, and she has no knowledge whatsoever about the disclosure to FINRA. She had never heard of reporting to FINRA, and did not know that such disclosures occurred. It may be the FINRA reviews the SEC releases and updates its public records on its own. Otherwise, it is done from the SEC's office in Washington, D.C. and she has no idea who we should contact.

I'm researching the mechanics of completing and placing the disclosure form.

Thanks,

Jim

312-380-6552

From: Eric Wanger [mailto:eric@edw.com]
Sent: Tuesday, July 31, 2012 6:53 PM
To: Washburn, John A.; James Kopecky
Subject: atty client

John---

I never heard back from Jim Kopecky regarding this disaster. The Barron's article is already being passed out and held up everywhere we go. As I told Jim---unless he can get the SEC to retract the characterization of my settlement as a "permanent bar," we are going back to court.

Since my career in finance is now over, I have nothing to lose.

Eric D. Wanger

FINRA

Financial Industry Regulatory Authority

BrokerCheck® Dispute Form

Complete this form if you wish to update or dispute information that is disclosed in your BrokerCheck report. Further information regarding the BrokerCheck dispute process, including the requirements that must be met for FINRA to investigate a dispute, is available on FINRA's website.

Once FINRA receives your submission, you will be notified in writing as to whether the dispute is eligible for investigation and, if eligible, the outcome of the investigation.

This form must be completed in its entirety and accompanied by all available supporting documentation. FINRA will not process any BrokerCheck Dispute Form that is incomplete, unsigned or submitted by a person or firm that is not the subject of the BrokerCheck report in question.

PART I – GENERAL INFORMATION

First Name: Eric	**Last Name:** Wanger
Title (if dispute is be	
[redacted]	**State:** [redacted] **Zip Code:** [redacted]
Phone Number: [redacted]	**Individual/Firm CRD Number:** [redacted]

PART II – INFORMATION ABOUT THE DISPUTE

Provide a statement identifying the information that you allege is inaccurate, including the location that such information appears in a BrokerCheck report (section and page number), and the reason you believe the information to be inaccurate.

On pages 7 and 8 of the public CRD BrokerCheck Report, in the section titled Disclosure Event Titles, under "Regulatory-Final" the Regulator reporting falsely describes the sanction ordered as "Bar(permanent). That is not accurate. On July 2, 2012, Eric Wanger agreed to entry of an order, without admitting or denying the allegations, that resulted in a "one year industry bar." The SEC issued a News Digest the day the Commission entered the order. The News Digest that Eric Wanger agreed to a "one year industry bar," not a "permanent bar." The News Digest is attached to this Dispute Form as Exhibit A. It demonstrates that the description of bar on the BrokerCheck is wrong and must be corrected.

FINRA

Financial Industry Regulatory Authority

BrokerCheck® Dispute Form

Complete this form if you wish to update or dispute information that is disclosed in your BrokerCheck report. Further information regarding the BrokerCheck dispute process, including the requirements that must be met for FINRA to investigate a dispute, is available on FINRA's website.

Once FINRA receives your submission, you will be notified in writing as to whether the dispute is eligible for investigation and, if eligible, the outcome of the investigation.

This form must be completed in its entirety and accompanied by all available supporting documentation. FINRA will not process any BrokerCheck Dispute Form that is incomplete, unsigned or submitted by a person or firm that is not the subject of the BrokerCheck report in question.

PART I – GENERAL INFORMATION

First Name:	Middle Initial:	Last Name:	
Eric	D.	Wanger	
Title (if dispute is being brought on firm's behalf):			
Address:	**City:**	**State:**	**Zip Code:**
[redacted]	[redacted]	[redacted]	[redacted]
Phone Number:		**Individual/Firm CRD Number:**	
[redacted]		[redacted]	

PART II – INFORMATION ABOUT THE DISPUTE

Provide a statement identifying the information that you allege is inaccurate, including the location that such information appears in a BrokerCheck report (section and page number), and the reason you believe the information to be inaccurate.

On pages 7 and 8 of the public CRD BrokerCheck Report, in the section titled Disclosure Event Titles, under "Regulatory-Final" the Regulator reporting falsely describes the sanction ordered as "Bar(permanent). That is not accurate. On July 2, 2012, Eric Wanger agreed to entry of an order, without admitting or denying the allegations, that resulted in a "one year industry bar." The SEC issued a News Digest the day the Commission entered the order. The News Digest that Eric Wanger agreed to a "one year industry bar," not a "permanent bar." The News Digest is attached to this Dispute Form as Exhibit A. It demonstrates that the description of bar on the BrokerCheck is wrong and must be corrected.

PART III - ACKNOWLEDGEMENTS

I understand that FINRA will consider any BrokerCheck Dispute Form submitted to be a communication to FINRA and, as such, to be conduct covered by FINRA Rule 2010, which requires members to observe just and equitable principles of trade and high standards of commercial honor. Accordingly, FINRA will consider disciplinary or other appropriate action against an individual or firm that, for example, willfully makes a false or misleading statement in a BrokerCheck Dispute Form.

I further understand that any information or documentation submitted in connection with this dispute may be provided to the entity that reported the information under dispute to the Central Registration Depository®.

If submitting this dispute on behalf of a firm, I acknowledge that I am authorized to do so.

I have read the above statements and all of the information I have provided is true and accurate to the best of my knowledge. I understand that I may be subject to administrative or civil penalties if I provide false or misleading information.

Signature: [redacted]

Date: Dec 2, 2012

BrokerCheck Dispute Checklist:

To ensure timely processing of your dispute, please check the following:

- ☑ All parts of this form are complete.
- ☑ The applicable section(s) and page(s) of the BrokerCheck report where the disputed information is located have been identified. If you wish, you may provide a copy of the BrokerCheck report with the disputed information circled or highlighted.
- ☑ All available supporting documentation has been attached to this form.

Please mail this signed form along with all supporting documentation to:

Registration and Disclosure—Regulatory Review and Disclosure (RR&D)
FINRA
9509 Key West Avenue
Rockville, Maryland 20850-3329

FINRA will not accept requests sent via facsimile.

Questions: Call FINRA's Gateway Call Center at (301) 590-6500.

EXHIBIT A

In the Matter of Eric David Wanger and Wanger Investment Management Inc.

On July 2, 2012, the Commission issued an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Section 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act) and Section 9(b) of the Investment Company Act of 1940 (Order) against Eric David Wanger (Wanger) and Wanger Investment Management Inc. (Wanger Management).

In the Order, the Commission finds that Wanger and Wanger Management repeatedly marked the closing price of certain stocks held by the Wanger Long Term Opportunity Fund II, LP (Fund) to artificially inflate the Fund's performance results in an attempt to attract new investors and keep current investors. The Commission also finds that Wanger and Wanger Management engaged in wrongful principal securities transactions with the Fund to repay unauthorized transfers of funds from the Fund's account to Wanger Management's account. The Commission further finds that Wanger and Wanger Management failed to timely file required forms with the Commission reporting purchases of securities as required by Section 16(a) of the Securities Exchange Act of 1934 and Rule 16a-3 thereunder.

Based on the conduct described above, the Commission finds that: (1) Wanger willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, Sections 10(b) and 16(a) of the Exchange Act and Rules 10b-5 and 16a-3 thereunder and Sections 206(1), 206(2), 206(3), and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder, and willfully aided and abetted and caused Wanger Management's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8, and (2) that Wanger Management willfully violated Section 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1), 206(2), 206(3), and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder and willfully aided and abetted and caused the Fund's violations of Section 16 of the Exchange Act and Rule 16a-3.

Without admitting or denying the Commission's findings, Wanger has consented to the entry of a cease-and-desist order, a one year industry bar, and a $75,000 civil penalty. Wanger Management consented to the entry of a cease-and-desist order, a censure, and disgorgement of management fees totaling $2,269.81, plus prejudgment interest. (Rels. 33-9331; 34-67335; IA-3427; IA-30126; File No. 3-14676)

Gmail by Google

Eric Wanger <eric@wangerinvestments.com>

RE: incorrect statements about me on finra website

1 message

Ombudsman's Office <Ombuds@finra.org> Thu, Apr 2, 2015 at 11:52 AM
To: Eric Wanger <eric@edw.com>

Dear Mr. Wanger,

Thank you for contacting FINRA's Office of the Ombudsman. The Ombudsman's Office provides a neutral and confidential forum for member firms and their employees, public investors, and any other business or individual who interacts with FINRA to voice their concerns about operations, enforcement, or other FINRA activities or staff. Individuals who are unsure of the proper channel for addressing a concern or feel that the issue cannot be resolved through other channels may also contact the Ombudsman's Office. Additional information can be found online at: http://www.finra.org/about/office-ombudsman.

I have looked into your concern regarding your BrokerCheck disclosure. I located the SEC release (http://www.sec.gov/litigation/admin/2012/33-9331.pdf), which states in part, "Respondent Wanger be, and hereby is: barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and prohibited from serving or acting... with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission."

FINRA's policy is that this type of sanction is a permanent bar, notwithstanding the right to reapply. One thing to keep in mind: in addition to the specific conditions stated in the SEC Release, you might also be considered to be "statutorily disqualified" as set forth in Section 3(a)(39) of the Exchange Act. You can view the rule here – the pertinent portion of the rule starts on page 22: http://www.sec.gov/about/laws/sea34.pdf.

Please call me if you would like to discuss this matter.

Upon conclusion of your contact with FINRA's Office of the Ombudsman, if you have feedback on your interaction, please take our brief, **anonymous** survey at https://www.surveymonkey.com/s/FINRAOmbudsman. All information you provide is strictly confidential and will not be attributed to you in any way.

Regards,

Christopher Cook

Associate Director

FINRA - Office of the Ombudsman

9509 Key West Avenue

Rockville, MD 20850

Telephone: (888) 700-0028 or (240) 386-6270

Fax: (240) 386-6271

-----Original Message-----
From: eric wanger [mailto:eric@edw.com]
Sent: Wednesday, April 01, 2015 5:31 PM
To: Ombudsman's Office
Subject: incorrect statements about me on finra website

FINRA states that: The SEC has permanently barred this individual from acting as a broker and investment adviser, or otherwise associating with firms that sell securities or provide investment advice to the public.

That is not correct. I received a one year bar from July of 2012 to July of 2013 with the right to reapply.

please advise me how to have this corrected.

Thank you,

Eric Wanger

312 342-1542

eric@edw.com

Request for Additional Information

Date: 10/23/12 Entity Name: Wanger Omni Wealth.

Time: Submitted To: Irene May.

Item #: SK- 1 Examiner Name: Sarah Kuhn

Instructions: When possible and applicable, furnish responses on entity's letterhead. & electronically - if possible

1. Internal instructions to suspend account(s) of Fay Stern.

2. List of clients who utilize bill paying services.

3. Agreement w/ 1) Bill Andersen, 2) ACA Compliance Group, 3) Asset Consulting Group, & 4) Greenwich Prime Trading Group, LLC.

4. Transition of key positions, including but not limited to, CEO, CIO, CCO, CFO. Please include date of transition & identify persons holding the position before & after date of transition.

5. communication/ Instructions removing Eric Wanger's access to the following:
   - Building management
   - IT vendor
   - Custodians
   - Banks. &
   - any other service providers.

6. For the preferred Equity holders & the promissory note holders — please provide the dates they became clients &/or Limited partners.

KLEVATT
&
ASSOCIATES, LLC
ATTORNEYS AT LAW

33 North LaSalle Street, Suite 2100
Chicago, Illinois 60602-2619

312-782-9090 (telephone)
312-896-9298 (facsimile)

www.chicagolaw.biz

David S. Klevatt, Esq.

January 26, 2016

THOMAS V. SJOBLOM
Attorney At Law
International Square
1875 I Street, N.W. Suite 500
Washington D.C. 20006
Email: tvsjoblom@tvs-law.com

RE: Wanger OmniWealth Alternative Fixed Income Access Fund, LP (the "Partnership") v. Saslow Martial Trust c/o: Fay S. Stern, Trustee ("Saslow"); Florence Grinker ("Grinker"), Jonathon Miller and Jennifer, ("Miller") and Sue F. McGowen Revocable Living Trust c/o: Jonathan and Jennifer Miller, Trustees ("McGowen"). JAMS Arbitration Reference Nos #1340012167, #1340012168, #1340012165, and #13400121787

Dear Mr. Sjoblom:

As we have discussed, we were retained by the Partnership to recover $174,918.84 in overpayments that the Partnership inadvertently issued in 2013 and 2014 to a number of limited partners of the Partnership supported by and based upon an accounting reconciliation prepared by the Partnership's accountants.

BACKGROUND ON THE OVERPAYMENTS

As you may know, in late 2012 management of the Partnership was taken over by John Washburn of the law firm of Gould & Ratner. More precisely, Mr. Washburn became the sole manager of Wanger Omniwealth LLC, which in turn managed the Partnership. We have attached three documents that evidence that transition. Mr. Washburn's management has raised a number of questions concerning things that occurred during the time he was managing the Partnership, including how Partnership monies were being processed through Gould &

Ratner's client trust account and how the accounting was being prepared by Liccar & Co. at Gould & Ratner's direction. In this regard, an extensive legal malpractice claim was prepared by Barnes & Thornburg concerning Mr. Washburn and Gould & Ratner's actions, mismanagement and redemption issues. We have attached a copy of that action. In addition, after months of pressing Gould & Ratner, it turned over to our firm client trust documents that show that, during the time of Mr. Washburn's management, Gould & Ratner improperly and incorrectly disbursed through its client trust account certain Partnership funds not only to incorrect parties but also in incorrect amounts to other parties.

Mr. Eric Wanger was not responsible for any of the above incorrect application of funds as he was not involved with or in charge of the Partnership during the relevant time period and, likewise, he did not handle the proceeds, did not disburse them or have the legal authority to direct Gould & Ratner to disburse them.

After Mr. Washburn and Gould & Ratner surrendered control of the Partnership, Liccar & Co. was again retained and instructed to prepare an accounting to the Partnership to reconcile the inadvertent overpayments that were made to the limited partners. See Mr. Wanger's attached email dated November 11, 2014. Liccar & Co. then sent demand letters with accounting support to all of the limited partners affected. (See attached examples.) A number of accounts were corrected by the limited partners voluntarily returning the overpayments, however, a number of limited partners resisted returning the overpayments.

EFFORTS TO OBTAIN RETURN OF OVERPAYMENTS

Once we became involved, we successfully obtained recovery of $95,044.46 of the $174,918.84 in overpayments that the Partnership inadvertently issued in 2013 and 2014 to certain limited partners. However, despite repeated demands, four parties refused to return to Partnership the remaining $79,874.38 in overpayments. On June 5, 2015, we initiated four private party arbitrations with JAMS in Chicago to recover the overpayments. The arbitration demands were verified by the sworn testimony of the Partnership's accountant. We have attached the arbitration demands and the accountant's statements.

In the Grinker, Miller and McGowen arbitrations, the parties simply refused to return the money and refused to participate in the arbitration. We therefore moved for a default judgment in those actions, which we have attached. In the Saslow arbitration, the parties were involved in active proceedings and a neutral had been appointed. However, recently and unexpectedly the general manager of the Chicago JAMS reversed the position he has been taking for at least the last six months and against all logic advised that JAMS would not proceed with the Grinker, Miller and McGowen arbitrations. I have attached a copy of the JAMS general manager's letter. Since JAMS had determined that it now (despite the neutral's contrary opinion) lacked jurisdiction, it was futile to continue in the Saslow proceeding as the respondents would have been able to successfully assert that JAMS lacked the authority to issue an award. Accordingly, we were required to dismiss the parallel Saslow Trust arbitration.

CONCLUSION

Mr. Wanger has informed us that these JAMS arbitrations were mentioned by name in the subpoena he received from the Securities and Exchange Commission ("SEC") in late December 2015. We are very disturbed by this fact. The only intervening factor in the arbitrations to my knowledge is this recent subpoena issued by the SEC. Three weeks later JAMS refused to proceed with these arbitrations.

We are now left with the option of proceeding in court to try and recover the overpayments, but given the costs incurred to date, are not certain if we can recommend this approach as a cost effective course of action. In addition, the Partnership is left to contemplate whether it would be cost effective to proceed with legal and accounting malpractice actions. We do wish to reiterate, that the mis-payments at issue are in no way related to the conduct of Mr. Wanger, but rather concern the actions of others during the time that the Partnership was being managed by them. In addition, in our opinion, the Partnership has acted properly pursuant to the Partnership Agreement and pursued a diligent and proper course of action to obtain the return of the overpayments.

If you have any questions or concerns about the foregoing or the attached documents, please do not hesitate to contact me.

Sincerely,

Klevatt & Associates, LLC

/s/ David S. Klevatt

By: David S. Klevatt, Esq.

Stanford Law School

Joseph A. Grundfest
W. A. Franke Professor
of Law and Business
Co-Director, Rock Center for
Corporate Governance

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 723-0458
Fax 650 723-8229
grundfest@stanford.edu
www.law.stanford.edu

October 3, 2014

The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
100 F Street, NE
Washington, DC 20549

Re: Petition of Eric David Wanger for Re-Admission

Dear Ladies and Gentleman:

I am the William A. Franke Professor of Law and Business at Stanford Law School, and served as a Commissioner of the United States Securities and Exchange Commission from 1985 to 1990. I am also Senior Faculty at the Rock Center on Corporate Governance at Stanford University, and am the founder and co-director of Stanford Law School's executive education programs, including Stanford Directors' College. I am trained as an economist and attorney, and my scholarship has appeared in the Harvard, Yale and Stanford law reviews, as well as in refereed economic journals. I have taught courses on securities regulation, corporate governance, and finance. I have been named as among the nation's 100 most influential attorneys and among the 100 most influential in the field of corporate governance.

I am receiving no compensation in this matter.

I am personally familiar with Mr. Wanger. He is a 1999 graduate of Stanford Law School. I have known him personally and professionally since that time. I am familiar with the facts of this case and believe that, whatever may have occurred in the years 2008-2010, Mr. Wanger has been amply sanctioned. It is, in my view, time to allow Mr. Wanger to resume his professional and economic life.

I strongly urge the Commission to grant Mr. Wanger's petition for readmission. To the best of my knowledge:

A. Mr. Wanger has complied with the Order in every respect;
B. The 1-year suspension period passed in July, 2013, more than a year ago;
C. Mr. Wanger's individual circumstances require that he direct his reapplication directly to the Commission rather than to a self-regulatory organization; and
D. The failure to grant Mr. Wanger's petition would, in effect, constitute a *de facto* lifetime bar, a sanction that appears never to have been contemplated by anyone involved in this proceeding, and that would be disproportionate to the alleged violations.

The Commission's Order speaks for itself. The Order sanctions Mr. Wanger because of conduct that allegedly generated profits of $2,269.81 over a 33 month period. This constitutes less than $69 per month, and less than $207 per quarter. The Order also suggests that Mr. Wanger "Marked the Close" to inflate his profits, and alleges an average maximum portfolio inflation over all alleged marks of approximately 00.85 percent - - eighty five one-hundredths of one percent. The effect of the bar is quite significant when measured against both the amounts and percentages alleged in Order.

It is a fundamental tenet of criminal law that, once a person serves his sentence, the person should have an opportunity to resume his life as a productive member of society. As a society, we believe in an opportunity for redemption. The same opportunity should, I believe, in these circumstances, be offered to Mr. Wanger.

I respectfully request that the Commission accept Mr. Wanger's application for readmission.

With best regards,

Sincerely,

[redacted]

Professor Joseph A. Grundfest
The William A. Franke
Professor of Law and Business
Stanford Law School

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-14676

In the Matter of **Eric David Wanger and Wanger Investment Management, Inc.** Respondents.	**OFFER OF SETTLEMENT OF ERIC DAVID WANGER**

I.

Eric David Wanger ("Respondent Wanger" or "Wanger"), pursuant to Rule 240(a) of the Rules of Practice of the Securities and Exchange Commission ("Commission") [17 C.F.R. § 201.240(a)] submits this Offer of Settlement ("Offer") in the public administrative and cease-and-desist proceedings instituted against it by the Commission pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act").

II.

This Offer is submitted solely for the purpose of settling these proceedings, with the express understanding that it will not be used in any way in these or any other proceedings, unless the Offer is accepted by the Commission. If the Offer is not accepted by the Commission, the Offer is withdrawn without prejudice to Respondent Wanger and shall not become a part of the record in these or any other proceedings, except for the waiver expressed in Section V. with respect to Rule 240(c)(5) of the Commission's Rules of Practice [17 C.F.R. § 201.240(c)(5)].

III.

On the basis of the foregoing, Respondent Wanger hereby:

A. Admits the jurisdiction of the Commission over him and over the matters set forth in the Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) of the Investment Company Act of 1940 ("Order");

B. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. § 201.100 et seq., and without admitting or denying the findings contained in the Order, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, consents to the entry of an Order by the Commission containing the following findings and remedial sanctions set forth below:

Respondents

1. Eric David Wanger ("Wanger"), age 48, is a resident of Chicago, Illinois and was the owner, chief compliance officer, and president of an investment adviser, Wanger Investment Management, Inc. He is the sole managing member of the general partner to the Wanger Long Term Opportunity Fund II, LP and served as its sole portfolio manager from January 2002 into December 2011. From January 2007 through January 2009, he also served as a director of AltiGen Communications, Inc.

2. Wanger Investment Management, Inc. ("Wanger Investment Management") is an investment adviser based in Chicago, Illinois. Wanger Investment Management registered with the Commission on April 6, 2009. On November 28, 2011, Wanger Investment Management filed a Form ADV-W Notice of Withdrawal from Registration as an Investment Adviser and Wanger Investment Management's registration ceased December 31, 2011. It serves as adviser to the Wanger Long Term Opportunity Fund II, LP.

Other Relevant Entities

3. AltiGen Communications, Inc. ("AltiGen") is a Delaware corporation headquartered in San Jose, California that designs, manufactures, and markets phone systems and call center products that use the Internet and public telephone networks. During the relevant period, its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ under the symbol ATGN. On or about March 3, 2010, AltiGen announced that it would delist from the NASDAQ. On or about November 2, 2010, it filed a Form 15 Certification and Notice of Termination of Registration Under Section 12(g) of the Exchange Act or Suspension of Duty to File Reports Under Sections 13 and 15(d) of the Exchange Act.

4. The Wanger Long Term Opportunity Fund II, LP (the "Fund") is an investment fund that seeks long-term capital appreciation by investing in small and microcap companies. It is not registered with the Commission.

Background

5. Wanger formed the Fund on January 1, 2002. The initial investment in the Fund at that time amounted to approximately $2,000,000, consisting of money from family and friends. At its highest point, in April 2008, the Fund had a net asset value ("NAV") of approximately $14.5 million.

6. Beginning in November 2007, Wanger stated that he wanted to grow the Fund to $100 million, but he was only able to raise approximately $3.5 million from November 2007 through April 2008.

7. The Fund began acquiring shares of AltiGen in 2006. During the relevant period, one of the Fund's largest holdings was stock in AltiGen.

8. Wanger used one of the Fund's external brokers ("Broker") for the vast majority of the Fund's orders. Wanger relied on Broker's expertise and resources to execute orders for the Fund.

9. Wanger and Broker regularly discussed the best way for the Fund to buy shares for any particular day. Wanger and Broker exchanged instant messages regarding, among other things, their strategy to accumulate AltiGen shares given the stock's thinly-traded history.

10. Wanger instructed Broker in writing through various instant messages that he wanted "best execution," he was "price sensitive," and "not to trash the market." In response, Broker informed Wanger that he would purchase AltiGen stock for the Fund using his expertise, which was to be "stealthy" and to buy stock with "no market impact."

11. While the Fund was accumulating AltiGen shares, Wanger and Broker talked about suspicious end-of-the-day trading by others in AltiGen stock. Wanger understood that trading at the end of the day to raise the price of a thinly-traded stock was disruptive to investors and companies. He also understood that there could be a short-term benefit to the Fund's performance numbers when the price of AltiGen stock increased at the end of the day and, particularly, at the end of a month or quarter.

Wanger and Wanger Investment Management Marked the Close on Fifteen Different Occasions

12. "Marking the close" involves the placing and execution of orders shortly before the close of trading on any given day to artificially affect the closing price of a security.

13. From January 31, 2008 through September 30, 2010, Wanger, as owner, president and chief compliance officer of Wanger Investment Management, repeatedly marked the close by placing bids in certain thinly-traded securities held by the Fund that were the last trade of the day of the final trading session of a month or quarter.

14. Specifically, Wanger marked the close on at least fourteen occasions on ten separate days, at month and quarter ends, in 2008, 2009, and 2010. He also marked the close on June 20, 2008, the date he transferred AltiGen securities from his own account to the Fund's account as part of an improper transaction as alleged in paragraphs 30-37 below. In addition, he attempted to mark the close on at least three other occasions.

15. Wanger marked the close in shares of AltiGen ("ATGN") (at least nine times), Clicksoftware Technologies Ltd., ("Clicksoftware" or "CKSW") (at least twice), Derma Sciences, Inc., ("Derma Sciences" or "DSCI") (at least twice) and Woodbridge Holdings Corp ("Woodbridge" or "WDGH") (at least once) to artificially improve the Fund's reported monthly and quarterly performance.

16. Wanger marked the close on the following dates in the following securities:

Trade Date	Security	Last Sale Prior to or During Wanger's Trade Activity	Closing Price Obtained by Wanger
01/31/08	ATGN	$1.60	$1.63
03/31/08	ATGN	$1.42	$1.65
04/30/08	ATGN	$1.44	$1.56
05/30/08	ATGN	$1.33	$1.45
06/20/08	ATGN	$1.37	$1.38
09/30/08	ATGN	$0.93	$0.99
09/30/08	DSCI	$0.54	$0.56
10/31/08	ATGN	$.68	$0.69
10/31/08	CKSW	$2.85	$2.90
02/27/09	ATGN	$0.84	$0.85

Trade Date	Security	Last Sale Prior to or During Wanger's Trade Activity	Closing Price Obtained by Wanger
01/31/08	ATGN	$1.60	$1.63
02/27/09	DSCI	$0.47	$0.54
03/31/09	CKSW	$3.68	$3.72
03/31/09	WDGH	$0.40	$0.62
05/28/10	ATGN	$0.72	$0.76
09/30/10	ATGN	$0.60	$0.75

17. Wanger did not use Broker to place the orders for the trades that marked the close. Rather, he placed the orders for the trades for the Fund himself.

18. In addition, Wanger's trading style in connection with the marking the close transactions differed from the trading style he had instructed Broker to follow.

19. Wanger's manipulative trading improperly inflated the Fund's monthly reported performance by amounts ranging from approximately 3.60% to 5,908.71%, and artificially increased the Fund's NAV by amounts ranging from approximately .24% to 2.56%.

20. From January 1, 2008 through September 30, 2010, the value of AltiGen as a share of the Fund's portfolio ranged from a low of approximately 8.99% in March 2010 to a high of approximately 14.91% in December 2008. AltiGen shares accounted for approximately 10% or more of the Fund's month-end value in thirty-one of the thirty-three months in this time period.

21. During the periods in which he marked the close in the following securities, they accounted for the following portions of the Fund's total portfolio: i.) Clicksoftware ranged from a low of approximately 7.41% to a high of approximately 11.5%; ii.) Derma Sciences ranged from a low of approximately 3% to a high of approximately 4.12%; and iii.) Woodbridge represented approximately .7% of the portfolio on March 31, 2009.

22. Wanger and Wanger Investment Management provided Fund investors and prospective investors with figures that reflected performance results and their proportionate share of the Fund's NAV that were improperly inflated as a result of Wanger's manipulative trading. Wanger and Wanger Investment Management provided the artificially inflated results directly to

investors and prospective investors through a variety of means, including the Wanger Investment Management website, mailings, e-mail, and oral presentations.

23. Wanger and Wanger Investment Management included the artificially inflated performance results in marketing materials, which they distributed to prospective and existing Fund investors in order to solicit additional investments in the Fund.

24. Wanger communicated directly with Fund investors or their representatives regarding the Fund's performance.

25. For example, Wanger responded to inquiries from Fund investors and their representatives about the Fund's performance in the spring of 2008, with statements such as "despite a truly awful market, we finished the quarter down only a bit more than 3%. . . Thanks for your continued faith in us." However, Wanger did not inform existing or prospective investors or their representatives that the Fund's performance during the first quarter of 2008 was artificially inflated due to his marking the close transactions. Among these, the orders he placed at the end of the day on March 31, 2008 artificially increased the Fund's NAV by nearly 2%, without which the reported performance for the month would have been approximately 30% lower than reported.

26. Wanger and Wanger Investment Management received $2,269.81 in additional management fees from the Fund as a result of the marking the close transactions and did not fulfill their obligations to obtain the best prices for shares purchased by the Fund.

27. Wanger also marked the close of AltiGen stock on June 20, 2008 in an attempt to obtain a higher valuation of AltiGen stock he transferred from his personal account to the Fund's account as alleged in paragraphs 30 thru 37 below.

28. By marking the closing price of certain stocks held in the Fund's portfolio to artificially inflate the Fund's performance results and by communicating the inflated performance results to existing and prospective investors, Wanger and Wanger Investment Management engaged in a scheme to defraud and engaged in a practice that operated as a fraud.

29. Wanger and Wanger Investment Management also made material misrepresentations and omissions when they reported the artificially inflated performance results to existing and potential investors.

Wanger and Wanger Investment Management Engaged in Improper Transactions with the Fund

30. Section 206(3) of the Advisers Act provides that it is unlawful for an investment adviser, "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

31. In 2008 and 2009, Wanger, acting through Wanger Investment Management, directed the transfer of funds from the Fund's brokerage accounts to Wanger Investment Management's bank accounts to pay investment adviser operating expenses and payroll in amounts totaling approximately $300,000 and approximately $200,000, respectively. These transfers were not specifically authorized by the Fund.

32. In June 2008 and June 2009, Wanger and Wanger Investment Management partially repaid the Fund by engaging in at least two improper principal securities transactions.

33. On or about June 20, 2008, Wanger transferred 37,344 shares of AltiGen, and other securities, from his personal account to the Fund's account.

34. Wanger marked the closing price of AltiGen stock on June 20, 2008, which could have had the effect of increasing the price the Fund paid for the securities had the AltiGen shares remained in the Fund's account with a transfer date of June 20, 2008.

35. In July 2008, these AltiGen securities and certain of the other securities were transferred back to Wanger's personal account.

36. In June 2009, Wanger transferred AltiGen stock and another security from his personal account to the Fund again. The transferred securities were 37,344 AltiGen shares valued at approximately $47,053 and 29,000 Woodbridge shares valued at approximately $33,060 (approximately $80,113 total).

37. Wanger and Wanger Investment Management did not provide the Fund with written disclosure or obtain the Fund's consent prior to engaging in the principal securities transactions with the Fund described in paragraphs 30 to 36 above, as required by Section 206(3) of the Advisers Act.

Wanger and Wanger Investment Management's Failure to Timely File Forms 4

38. Wanger served as a member of the AltiGen Board of Directors from January 2007 through January 2009.

39. The Fund was a 10% owner of AltiGen stock from at least July 2008 into December 2010.

40. During this time, Wanger failed to timely file the requisite Forms 4 with the Commission regarding at least eight personal transactions in AltiGen securities.

41. Wanger Investment Management also failed to timely file the requisite Forms 4 for the Fund regarding at least forty transactions in AltiGen securities.

42. Section 16(a) of the Exchange Act and Rule 16a-3 thereunder require directors and persons owning more than 10% of a company's stock to file a Form 4 within two business days of the acquisition or disposition of the security.

43. AltiGen filed a Form 8-K, dated January 8, 2009, stating:

> In late 2008, we were informed by Eric Wanger, a Board member, that he had failed to timely file his Forms 3, 4 and/or 5, in connection with a significant number of purchases of AltiGen common stock during the period beginning on January 23, 2007 and ending on September 30, 2008. In response, the company, with the assistance of outside counsel, reviewed Mr. Wanger's trading activities and discovered that certain of the purchases of AltiGen's common stock by Mr. Wanger, or entities affiliated with Mr. Wanger, in April of 2007, March of 2008, June of 2008 and September through November of 2008, constituting approximately 25 separate trades in the aggregate amount of approximately $100,000, violated AltiGen's blackout period set forth in our insider trading policy. The Board was informed of these matters and has carefully reviewed them.
>
> On January 8, 2009, our Board decided to not nominate Mr. Wanger for re-election to the Board.

44. Wanger resigned from the AltiGen Board on January 26, 2009.

45. In connection with the conduct described above, Respondents Wanger and Wanger Investment Management acted recklessly, or at least, negligently.

Violations

46. As a result of the conduct described above, Wanger willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

47. As a result of the conduct described above, Wanger Investment Management willfully violated Section 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

48. As a result of the conduct described above, Wanger willfully violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, which require timely and accurate filings of Forms 4 with the Commission.

49. As a result of the conduct described above, Wanger Investment Management willfully aided and abetted and caused the Fund's violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, which require timely and accurate filings of Forms 4 with the Commission.

50. As a result of the conduct described above, Wanger and Wanger Investment Management willfully violated Section 206(3) of the Advisers Act, which states that it is unlawful for an investment adviser, "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

51. As a result of the conduct described above, Wanger and Wanger Investment Management willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by an investment adviser.

52. As a result of the conduct described above, Wanger willfully aided and abetted and caused Wanger Investment Management's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by an investment adviser.

IV.

On the basis of the foregoing, Respondent Wanger hereby consents to the entry of an Order by the Commission imposing the following sanctions pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act:

A. Respondent Wanger shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 16(a) of the Exchange Act and Rules 10b-5 and 16a-3 thereunder, and Sections 206(1), 206(2), 206(3), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Respondent Wanger be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent Wanger will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent Wanger, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Wanger shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of $75,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Eric David Wanger as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604.

V.

By submitting this Offer, Respondent Wanger hereby acknowledges his waiver of those rights specified in Rules 240(c)(4) and (5) [17 C.F.R. §201.240(c)(4) and (5)] of the Commission's Rules of Practice. Respondent also hereby waives service of the Order.

VI.

Respondent Wanger understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings" (17 C.F.R. §202.5(e)). In compliance with this policy, Respondent Wanger agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Order or creating the impression that the Order is without factual basis; and (ii) that upon the filing of this Offer of Settlement, Respondent Wanger hereby withdraws any papers previously filed in this proceeding to the extent that they deny, directly or indirectly, any finding in the Order. If Respondent Wanger breaches this agreement, the Division of Enforcement may petition the Commission to vacate the Order and restore this proceeding to its active docket.

Nothing in this provision affects Respondent Wanger's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

VII.

Consistent with the provisions of 17 C.F.R. § 202.5(f), Respondent Wanger waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

VIII.

Respondent Wanger hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Respondent Wanger to defend against this action. For these purposes, Respondent Wanger agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

IX.

Respondent Wanger understands that by settling to a bar with the right to reapply as specified in the Commission's Order, Respondent Wanger will be able to make an application to reapply after the specified time period. This application, however, does not guarantee reentry. Rather, Respondent Wanger's application will be subject to the applicable law governing the reentry process and Respondent Wanger's reentry will be subject to the discretion of the Commission. An application made to a self-regulatory organization will be reviewed by the self-regulatory organization and the Commission pursuant to Rule 19h-1 [17 C.F.R. 240.19h.1] and applicable rules of the self-regulatory organization. An application made directly to the Commission will be reviewed under the processes specified in Rule 193 of the Commission's Rules of Practice [17 C.F.R. 201.193], or as specified in the order in this proceeding. To the extent a state licensing authority may require reapplication for a state license, state law may apply.

X.

Respondent Wanger agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source including, but not limited to, payment made pursuant to any insurance policy, with regard to any penalty amounts that Respondent Wanger shall pay pursuant to this Order, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Respondent Wanger further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state or local tax for any penalty amounts that Respondent Wanger

shall pay pursuant to this Order, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

XI.

Respondent Wanger states that he has read and understands the foregoing Offer, that this Offer is made voluntarily, and that no promises, offers, threats, or inducements of any kind or nature whatsoever have been made by the Commission or any member, officer, employee, agent, or representative of the Commission in consideration of this Offer or otherwise to induce him to submit to this Offer.

[redacted]

11 Day of May

Eric David Wanger

[redacted]

STATE OF ILLINOIS }
} SS:
COUNTY OF COOK }

The foregoing instrument was acknowledged before me this 11 day of May, 2012, by Eric David Wanger, who X is personally known to me or ___ who has produced an Illinois driver's license as identification and who did take an oath.

Notary Public
State of Illinois
Commission Number : 724374
Commission Expiration : 11/24/13

OFFICIAL SEAL
I MOY
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/24/13

APPLICATION OF ERIC DAVID WANGER

LETTERS

OF

SUPPLEMENTATION

ATTACHMENT D

Thomas A. Gilson

8010 N. 6th Street • Phoenix, AZ 85020• 602-538-7964
tomgilson@post.harvard.edu

March 28, 2016

United States Securities & Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington DC

RE: In re: Application of Eric David Wanger

Dear Secretary:

I understand that Eric Wanger has asked the Commission to allow him to participate in the securities industry, following a period of suspension. I am writing to strongly support Eric's Application.

I have known Eric since we were classmates in elementary school forty years ago, and we have been close friends ever since. As such, I am in a unique position to speak to his character and his integrity.

When we were growing up, Eric would often use the phrase, "think about it" -- an invitation to go below the surface of whatever we were discussing. Eric has always been like that, trying to understand how the world works, and refusing to accept conventional wisdom at face value. Since childhood, Eric has continued to ask serious questions, challenging himself and those around him.

Eric has always used his considerable analytical skills in an effort to do the right thing. During all the years that I have known Eric, he has never talked about skirting the rules for some improper purpose. Eric absolutely turns square corners. He plays by the rules, and is not afraid to speak up if he sees that someone else is breaking them. I am confident that Eric has always placed the interests of his investors above his own, and that he will continue to do so if the Commission grants his Application.

I know that the Commission raised certain charges against Eric. Knowing Eric as I do, I can't accept that he intentionally violated any rule or regulation. In any event, he has been suspended from the industry for nearly four years – a punishment that is already disproportional to what the Commission alleged.

Eric is a scrupulously honest person with the highest degree of integrity. He is a good man who deserves a second chance. I urge the Commission to grant Eric's Application.

If you have any questions about Eric, please don't hesitate to contact me. (As background, I'm a graduate of Harvard College and Northwestern University Law School. I have been practicing law since 1993, and I am currently a Member of the Beus Gilbert firm in Phoenix, Arizona.)

Sincerely,

[redacted]

Thomas A. Gilson

11 April 2016

United States Securities and Exchange Commission
Office of the Secretary
100 F Street, NE
Washington DC 20549-2001

RE: Re-application of Eric David Wanger

Dear Secretary:

I am writing in support of the pending applications of Eric David Wanger for consent to re-associate with broker-dealers, investment advisers, investment banks, money managers, or any other participants in the securities industry or to establish his own such entities.

I am a Chicago resident and friend of Eric since our high school days 35 years ago. I watched him venture into the business world from his modest dining room table. He put his heart and soul into his work, ultimately selling the company he created. He subsequently migrated to the financial industry. I like to support my friends in their various endeavors—I buy the books they write, contribute to the arts organizations on whose boards they sit, and occasionally invest in their businesses. Because of my confidence in Eric's integrity and smarts, I had no qualms about investing in the Wanger Long-Term Opportunity Fund. After decades of knowing Eric, my confidence remains unscathed by whatever transpired between him and the Securities and Exchange Commission. I would have no hesitation to invest again with him or the company he represents.

I know that the Commission undertook a lengthy investigation that resulted in a signed agreement that Eric would refrain from participating in the securities industry. I have always cheered when I read in the paper about the Commission's work tackling the titans of greed and corruption. It is inconceivable to me that Eric did anything intentionally wrong or crooked, and I do not understand how he could have commanded so much Commission time and attention. He is like a dog with a bone when it comes to honoring commitments to clients and fulfilling technical and regulatory obligations. He does not shrink from doing the right thing even when it is a hard thing. If the Commission discovered any wrongdoing on his part, I would have to conclude that Eric misunderstood or overlooked something minor among the myriad details, where the devil frequently resides.

My field is higher education, and people in that environment frequently speak about "a teachable moment." While I do not for a minute pretend to know the financial or securities realm, if indeed, Eric did anything amiss through inadvertence or misinterpretation, I fully believe that providing him with the specifics about the Commission's concern would clarify and resolve the matter to the Commission's satisfaction. Eric has always been an avid learner.

Thank you for reading to the end of a letter from a childhood friend of Eric. He now has three children of his own and would benefit from being able to work again in his chosen profession after an almost-four-year hiatus.

Yours sincerely,

[redacted]

Ingrid Gould

Stanford Law School

Joseph A. Grundfest
W. A. Franke Professor
of Law and Business
Co-Director, Rock Center for
Corporate Governance

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 723-0458
Fax 650 723-8229
grundfest@stanford.edu
www.law.stanford.edu

October 3, 2014

The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
100 F Street, NE
Washington, DC 20549

Re: Petition of Eric David Wanger for Re-Admission

Dear Ladies and Gentleman:

I am the William A. Franke Professor of Law and Business at Stanford Law School, and served as a Commissioner of the United States Securities and Exchange Commission from 1985 to 1990. I am also Senior Faculty at the Rock Center on Corporate Governance at Stanford University, and am the founder and co-director of Stanford Law School's executive education programs, including Stanford Directors' College. I am trained as an economist and attorney, and my scholarship has appeared in the Harvard, Yale and Stanford law reviews, as well as in refereed economic journals. I have taught courses on securities regulation, corporate governance, and finance. I have been named as among the nation's 100 most influential attorneys and among the 100 most influential in the field of corporate governance.

I am receiving no compensation in this matter.

I am personally familiar with Mr. Wanger. He is a 1999 graduate of Stanford Law School. I have known him personally and professionally since that time. I am familiar with the facts of this case and believe that, whatever may have occurred in the years 2008-2010, Mr. Wanger has been amply sanctioned. It is, in my view, time to allow Mr. Wanger to resume his professional and economic life.

I strongly urge the Commission to grant Mr. Wanger's petition for readmission. To the best of my knowledge:

A. Mr. Wanger has complied with the Order in every respect;
B. The 1-year suspension period passed in July, 2013, more than a year ago;
C. Mr. Wanger's individual circumstances require that he direct his reapplication directly to the Commission rather than to a self-regulatory organization; and
D. The failure to grant Mr. Wanger's petition would, in effect, constitute a *de facto* lifetime bar, a sanction that appears never to have been contemplated by anyone involved in this proceeding, and that would be disproportionate to the alleged violations.

The Commission's Order speaks for itself. The Order sanctions Mr. Wanger because of conduct that allegedly generated profits of $2,269.81 over a 33 month period. This constitutes less than $69 per month, and less than $207 per quarter. The Order also suggests that Mr. Wanger "Marked the Close" to inflate his profits, and alleges an average maximum portfolio inflation over all alleged marks of approximately 00.85 percent - - eighty five one-hundredths of one percent. The effect of the bar is quite significant when measured against both the amounts and percentages alleged in Order.

It is a fundamental tenet of criminal law that, once a person serves his sentence, the person should have an opportunity to resume his life as a productive member of society. As a society, we believe in an opportunity for redemption. The same opportunity should, I believe, in these circumstances, be offered to Mr. Wanger.

I respectfully request that the Commission accept Mr. Wanger's application for readmission.

With best regards,

Sincerely,

[redacted]

Professor Joseph A. Grundfest
The William A. Franke
Professor of Law and Business
Stanford Law School

March 12, 2016

To whom it may concern,

I am writing in support of the pending application by Eric David Wanger to re-enter the securities industry. I am a portfolio manager based in San Francisco, and have known Eric personally for over twenty five years. I have had many opportunities to spend time with him socially, especially during the 1990's when I lived in Chicago. After I moved away, we kept in touch and even have been on vacations together, and I consider him a friend. I was also an investor in the Wanger Long Term Opportunity Fund.

Over the years, I have come to know Eric, and I feel that I can attest to his character. I think he is an intelligent and motivated individual who is professional and knowledgeable. He is a good person, and hard working, and dedicated to his family. As an indication of my level of trust in him, if I got hit by a bus and someone in heaven told me Eric was now in charge of my children, my mind would be at ease.

Please consider this letter when reviewing his application to re-enter the securities industry.

Marcel Houtzager

Lachman Goldman Ventures
3140 Whisperwoods Ct.
Northbrook, IL 60062

April 4, 2016

United States Securities & Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington DC

RE: In (re)Application of Eric David Wanger

Dear Secretary:

I am writing in support of the pending applications by Eric D Wanger for consent to (re)associate with broker-dealers, investment advisers, investment banks, money mangers, or any other participants in the securities industry or to establish his own such entities.

I believe that Eric is both trustworthy and would be an asset to the securities marketplace. But he needs to be allowed back into the securities marketplace!

My name is Ronald Lachman. I'm 59 years old. I'm an investor in many technology companies and I have held board seats on dozens of companies, both public and private (mostly private).

I have known Eric both professionally and personally for approximately 12 years, as an investor in his fund and as a co-investor with him and his firm in other deals. I was a limited partner in the Wanger Long Term Opportunity Fund. I have always found Eric to be of outstanding character and of the highest integrity. Let me be clear: I have worked with him in a wide variety of contexts, including securities analysis, manager selection, portfolio construction, term sheet negotiation and shareholder activism. With respect to honesty, ethics, hard work and knowledge of his business affairs, I consider him to be among the best I've ever worked with. Let me repeat: He was as outstanding at his job as anyone I've ever met. He structures deals excellently, and has ethically gotten me great returns as an investor.

Please allow him back in the securities business. It is (in my opinion) wrong that you and FINRA continue to ban him. To my knowledge, you never proved he broke a single law nor did he ever admit to breaking any. Once it was obvious he

was not going to get justice from you, he accepted a one-year bar to make the pain go away.

I can also tell you, you never alleged anything material enough to justify even a slap on the wrist, let alone the destruction of his entire firm and the trashing of his reputation. I would gladly invest with him again.

I can't understand how, after all this time, FINRA and the Commission have not allowed Eric Wanger to re-enter the securities industry. The bar was for one year. So why is he still being punished for things that happened in 2009 and 2010?

As much as anyone, I understand the importance of the SEC and its mission to protect investors, however, destroying little guys over immaterial nonsense, while allowing the real bad guys to continue defrauding us is beyond the pale. Enough politics! It's time for some justice.

Sincerely,

[redacted]

Ronald Lachman [redacted]
Lachman Goldman Ventures

James R. Loewenberg
225 N. Columbus Dr.
Chicago, IL 60601

March 24, 2016

United States Securities & Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington, DC
March 23, 2016

Dear Secretary:

This is a letter of recommendation for Eric Wanger. Eric is a person of great talent and has acted very professionally during the last 6 years of extremely trying times where he was accused of something that he had nothing to do with. My relationship with Eric goes back many years. As an old family friend I know both his parents. I have watched him mature and was an early investor in his businesses. Both before the period of his difficulties with the SEC and during the last 6 years, Eric has exhibited the highest standards of integrity and professionalism. I was an early investor in both Wanger Investment Management and Wanger Long Term Equity Fund. I seriously considered using Wanger Omni Wealth at the time it was founded, but decided to run my own family office and not use and outside consultants.

I am a real estate developer, located in Chicago, Illinois and who develops projects in the $150 million range and up throughout the United States. The largest project that I have under development is the 2,000,000 square foot Vista Tower, Chicago, Illinois a 94 story condominium and hotel located at Lake Shore East. I consider myself a sophisticated investor. In addition to my real estate activities, my investment portfolio includes stocks, municipal bonds, equities and other financial instruments.

My knowledge of Eric's problem with the SEC are limited but it is clear that a miscarriage of justice took place on the basis of the facts that I know. It appears that arbitrary judgements were made against Eric with no due process. That seems patently un-American. It is my understanding that an administrative trial was held and that the judge and jury were the SEC. From what I understand there was no independent judiciary involved in the proceedings that rendered the judgement against Eric.

Eric has persevered during this trying time and he should be re-admitted to the securities industry. He is a man of the highest integrity and exhibited the sound judgement of a true professional. As a sophisticated investor, I have complete confidence in his performance and would again be an investor in Eric's venture if that is what he wants to do in the future.

Sincerely,

March 23, 2016

To Whom It May Concern:

I have known Eric both professionally and personally for fifteen years having worked with him, having provided research services to him at Wanger Investment Management, as well as having invested with his Firm through being a limited partner in the Wanger Long Term Opportunity Fund.

Through my fifteen years of being associated with Eric I can attest to his extremely high moral character, honesty, superior level of investment expertise and knowledge of the investment industry. I was a highly satisfied Limited Partner in the Wanger Opportunity Fund. Even after being made aware of everything the Security and Exchange Commission alleged that Eric did wrong, I still have no reason to doubt his integrity and would gladly invest with him again.

Sincerely

[redacted]

Gary Prestopino
Managing Director
Barrington Research Associates

To whom it may concern:

I have known Eric Wanger for over 20 years since when both of us were studying for the CFA exam. He is a person with strong integrity and professionalism. He is also an engaging person and a good parent.

In addition, to knowing Eric Wanger as a friend, I was also a client of his wealth management firm, Wanger Omniwealth, until it was shut down due to his settlement with the SEC. His firm provided excellent service to me and I would consider becoming a client again if he were able to restart his business.

From public filings I am familiar with his settlement agreement and with the purported illegal activities that Eric was accused of by the SEC. I am a Certified Financial Analyst and have spent the past twenty years managing equity portfolios for others. I do not believe that the trades cited by the SEC were either illegal on their own or were intended to defraud. The pattern identified by the SEC could easily have been caused by chance as by a sinister scheme.

Best regards,

[redacted]

Jason B. Selch CFA

[redacted]

[redacted]

Michael Spertus
558 W Webster Ave Apt 502
Chicago, IL 60614
March 30, 2016

United States Securities & Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington, DC

Dear Secretary:

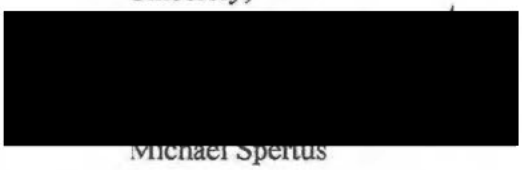
I am writing in support of the pending applications by Eric David Wanger for consent to (re)associate with broker-dealers, investment advisers, investment banks, money mangers, or any other participants in the securities industry or to establish his own such entities. By way of background, I am a 54 years old Computer Science professor and software architect residing in Chicago.

I have known Eric since high school in 1977 and more recently was a client of Wanger Investment Management and a limited partner in the Wanger Long-Term Opportunity Fund. For the last 40 years, I have had the highest regard for him as both a personal friend and as a professional advisor. Whenever I have needed advice about financial as well as personal matters, I have gone to him as a trusted mentor. I have always found his knowledge, insight, integrity, and judgment to be impeccable.

I was very happy with his performance while I was his client, and I would be thrilled to invest with Eric again if this application is accepted. Nothing that I have seen in the allegations described by the Security and Exchange Commission investigation raises any doubt in me on this point or overrides the years of experience I have spent witnessing his expertise and integrity. I wholeheartedly believe that any violations could not have anything other than an inadvertent and accidental without any malicious or selfish intent to elevate his own interests over his investors or the integrity of the financial markets.

While I fully respect the SEC's process and believe wholeheartedly in the important role that it plays in ensuring the integrity of the financial markets, my understanding is that Eric is now eligible for a much-deserved reinstatement. He has more than paid for any unintentional and immaterial infractions of which he has been accused. I would kindly request that you reinstate Eric as he is now eligible. The financial world needs as many people of excellence and integrity like Eric that it can get.

Sincerely,



Michael Spertus

1100 S Lamar Blvd, #1502 Austin, Texas 78704
TEL 512-329-6374 EMAIL ps@psper.com

PHILIP SPERTUS

United States Securities & Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington DC

March 24, 2016

Dear Secretary

I have known Eric Wanger for more than 30 years and am writing in support of his pending application to reestablish his career in the security industry.

Although this message will be mainly about him I'd like to begin by briefly describing my own background and investment experience.

From the beginning of my adult life to the present time (I am 81 years old) I have been an entrepreneur and investor. Some highlights of my activities:

- I was Chairman, CEO and the primary builder of Intercraft Industries Corporation - an international manufacturing company that reached the Fortune 1000 list in 1981.
- I was co-founder, 50% owner and VP of Northfield Trading, LP - a CTA that operated from 1990 to 2014 and managed as much as $300 million.
- As a board member I have been actively involved in the investment activities of the endowment funds of the Spertus Institute of Jewish Studies in Chicago and of Austin Opera in Austin Texas.

Throughout my entire career the operating principle that I have followed and shared with my associates has been "Do it Right". As I write this, there is a "Do it Right" plaque at the side of my desk. We make a point of working with professionals, money managers and venture partners who operate at the highest level of integrity.

With this background in mind I was very much surprised to learn a few years ago of the SEC charges that had been leveled against Mr Wanger. I have never before or since that time had any indication of anything that would support such allegations or such action. On the contrary, I was an investor in his Long Term Opportunity Fund and found that he conducted his activities at the highest level of integrity. If I had occasion to establish a blind trust I would not have any hesitation in putting it into his custody.

For whatever my opinion is worth I encourage you to remove any restrictions that have been placed upon his entitlement to re-enter the security industry.

Yours very truly,

[redacted]

Phoebe S. Telser
159 Mexicali Ct.
Solana Beach, CA 92075

March 25, 2016

United States Securities & Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington DC

RE: In (re)Application of Eric David Wanger

Dear Secretary:

This letter is in support of the pending applications by Eric David Wanger for consent to (re)associate with participants in the securities industry or to establish his own such entities.

I am Phoebe S. Telser, age 79, living in San Diego, CA. I am a retired writer/editor and publication designer. I had years of experience in public education and communications, as a family caseworker and as an advocate for women's, family, and mental health issues. Currently I am dependent on my investments for my livelihood.

I have had a long personal and business relationship with Eric Wanger as a fund manager and investment advisor. I am or was an investor in Wanger OmniWealth and a limited partner in the both the Wanger Income and Growth Fund and the Wanger Long Term Opportunity Fund. I have always found him to be very honest and ethical, with a high level of knowledge and understanding of the investment industry and always striving for the best interests of his clients.

Eric is very intelligent and has excellent analytical skills. He studies general business data and trends as well as innovative and growing companies. In addition to being a Chartered Financial Analyst, he has a law degree and long experience in the computer business, which all contribute to his business research and judgments.

In his personal life, Eric has been both a caring, devoted father, friend and son, Family is extremely important to him and he has always been helpful and supportive.

I am aware of the SEC's investigation and the resulting destruction of Eric's professional reputation, the Wanger Long Term Opportunity Fund, and other business ventures. I know he agreed to a settlement with the SEC, paid a large fine and accepted a one-year ban on participating in the industry. The allegations were very minor and I have not seen convincing evidence of misconduct. If mistakes were made, they were undoubtedly inadvertent, he never profited from them, and no one was harmed.

It is now almost four years since the settlement and it seems grossly unfair that the ban has not been lifted. Once Eric Wanger is allowed to participate in the securities industry again, I would definitely invest with or through him, whether through an established firm or his own business.

Thank you for your prompt attention to this matter.

Sincerely,

[redacted]

Phoebe S. Telser

CC: Eric Wanger

Jon Tesseo
[redacted]

April 7, 2019

Office of the Secretary
US Securities and Exchange Commission
100 F Street N.E.
Washington DC
RE: In support Of Eric David Wanger

Dear Secretary,

I am writing in support of Eric David Wanger's pending application to re-associate with all forms of financial firms be they broker dealers, investment managers, or banks.

I have been in the industry since 1990, as a research analyst, portfolio manager, and currently as the Managing Director of Quant Research, for Signal Analytics Inc. I have known Eric both personally and professional since 1999. I became an investor in Wanger Long Term Opportunity Fund in 2005. I was satisfied with the funds objectives, and its performance and would not hesitate to work with Mr. Wanger again weather he was associated with firm, or in charge of his own independent firm.

In my opinion Eric has always acted in good faith and as a fiduciary for his clients. I am aware that the SEC's staff undertook a protracted multi-year investigation and, the agency able to convince Eric to "consent" to a one-year bar. I have not seen anything to suggest that the Commission's staff proved that Eric Wanger engaged in any wrong doing. But even if anything untoward happened, I am sure that it was coincidental and not deliberate, and I am sure that Mr. Wanger never meant harm to his clients or profited from those actions.

Mr Wanger's consent decree, was for a one-year bar. It troublesome that over 3 years later, in 2016 and the Commission has still not allowed Eric Wanger to re-enter the securities industry. I respect the SEC and its mission, however, enforcement actions that destroy the small guy over immaterial acts and omissions, while allowing large scale fraud and bad behavior to go unchecked give regulators a bad name.

Sincerely,

Jon Tesseo

[redacted]

Leonard Wanger
[redacted]
[redacted]
March 24, 2016

Secretary
Office of the Secretary
100 F Street, N.E.
Washington DC 20002

Re: In (re)Application of Eric David Wanger

Dear Secretary:

I am writing in support of the pending application by Eric David Wanger for consent to associate with: broker-dealers, investment advisors, investment bankers, money manager, and any other participants in the securities industry.

I am an Illinois resident, entrepreneur, and former hedge fund manager. I am Eric Wanger's brother, and in addition to having known him since childhood, am a former investor in several of Wanger Investment Management funds, and have worked with him on several family related investment vehicle throughout the years. Eric is an experienced analyst and portfolio manager and has conducted himself professionally throughout my experience with him. He is hard working, bright, and focused on producing good results for his investors.

I have read the SEC filings in this case, and the behavior alleged does not reflect the behavior that I have seen from Eric. I have serious doubts that he engaged in the improper conduct alleged by the SEC. Regardless, his settlement with the SEC was for a one-year bar from the industry, which should have expired 3 years ago.

I find it deeply disturbing that the SEC has turned a one-year bar into a four-year bar, and if swift action is not taken will have effectively turned it into a lifetime ban. Mr. Wanger has met the conditions in the settlement, so I believe it is time for the SEC to do its part. I am asking you to approve his application to once again be allowed to be a participant in the financial industry.

Thank you for your attention to this matter,

[redacted]

Leonard Wanger

Ralph Wanger
RW Investments, 191 N. Wacker Dr. -- Ste. 1500, Chicago, IL 60607

April 7, 2016

Securities and Exchange Commission
Office of the Secretary

Eric is my son. We have been close all of Eric's life, and I think that Eric wanted to be an investment manager largely due to my success in the field. When he started Wanger Investment Management (WIM), I was the first client.

I entered the investment business in 1960, working in a family office in Chicago. That office became Harris Associates, still a leading investment management firm in Chicago.

In 1970, we started the Acorn Fund (now Columbia Acorn Fund), and I managed Acorn from 1970 to 2003. The fund had top-rated performance consistently over that period. Acorn was started with $7 million in assets, and is now a fund family with $25 billion under management. The management company is Columbia Wanger Asset Management. I retired in 2005. I still live in Chicago.

Eric is very intelligent and highly educated. (University of Illinois B.S. in Mathematics, and Stanford Law School). He is a first-class software engineer. He treated computer work, law, and investment management as true professions, with codes of ethics that were all based on skill, honesty and diligence. Eric became a CFA, and coached the CFA college competition team for Illinois Institute of Technology. The team finished very high in the competition.

He started WIM with the same intelligence, enthusiasm, and ethical standards that he has had all his life. His record-keeping and client contact work was state-of-the-art, and his clients received entirely satisfactory returns. He hired a good group of associates, and the business seemed in fine shape.

The SEC investigation hit Eric like a lightning bolt. He had no idea that there was a problem. Once caught in the ALJ system, he did not have the time or money to survive, so settled for what he thought was a one-year suspension. After it was reported as a permanent ban, he has been depressed but determined to get reinstated.

Our industry can use people like Eric Wanger, and your ban should be lifted.

[redacted]

Ralph Wanger