

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9288 / December 23, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 66053 / December 23, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3342 / December 23 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29893 / December 23, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14676

In the Matter of

**Eric David Wanger and
Wanger Investment
Management, Inc.**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS 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.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and 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 and Wanger Investment Management, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Eric David Wanger (“Wanger”), age 48, is a resident of Chicago, Illinois and is the owner, chief compliance officer, and president of a registered 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 serves as its sole portfolio manager. From January 2007 through January 2009, he also served as a director of AltiGen Communications, Inc.

2. Wanger Investment Management, Inc. (“Wanger Management”) is a registered investment adviser based in Chicago, Illinois. Wanger Management registered with the Commission effective April 6, 2009. It serves as adviser to the Wanger Long Term Opportunity Fund II, LP.

B. 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 a hedge fund that claims to seek long-term capital appreciation by investing in small and microcap companies. It is not registered with the Commission.

C. 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 the Fund’s external broker (“Broker”) for approximately 90% 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.

D. WANGER AND WANGER 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 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:

| <u>Trade Date</u> | <u>Security</u> | <u>Last Sale Prior to or During Wanger's Trade Activity</u> | <u>Closing Price Obtained by Wanger</u> |
|-------------------|-----------------|---|---|
| 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 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 Management provided the artificially inflated results directly to investors and prospective investors through a variety of means, including the Wanger Management website, mailings, e-mail, and oral presentations.

23. Wanger and Wanger 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 Management received more 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 Management engaged in a scheme to defraud and engaged in a practice that operated as a fraud.

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

E. WANGER AND WANGER 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 Management, directed the transfer of funds from the Fund's brokerage accounts to Wanger 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 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 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.

F. WANGER AND WANGER 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 through 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 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 Management acted recklessly, or at least, negligently.

G. 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 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 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 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 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 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.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 203(e) and (f) of the Advisers Act and Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties

pursuant to Sections 9(e) and 9(d) of the Investment Company Act and Sections 203(i) and (j) of the Advisers Act; and

C. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of 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, whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, Section 9(d) of the Investment Company Act, and Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, and Section 203(j) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary