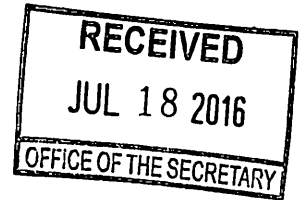


**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMISSION**

**Administrative Proceedings**
**File No. 3-17226**

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**In the Matter of Application of**

**ERIC DAVID WANGER**

**Respondent**

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**Response Brief of Respondent**

Respondent, Eric David Wanger ("Wanger"), by and through his undersigned counsel, submits this brief in response to the opening brief of FINRA ("FINRA Brief") on the preliminary issue of the Commission's jurisdiction over Respondent's Application under Section 19(e) of the Securities Exchange Act ( "Respondent's Section 19 Application").

**FACTS**

**FINRA BrokerCheck**

On the front page of BrokerCheck for Eric D. Wanger, the following words prominently appear in a golden yellow box preceded by an encircled exclamation mark:

> **! 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 advise to the public.**

The words and their impact could not be more draconian.

**FINRA's FORM U6**

FINRA's website, under "Current Uniform Registration Forms for Electronic Filing in Web CRD," states that Form U6 (Uniform Disciplinary Action Reporting Form) is used "by SROs, regulators, and jurisdictions to report disciplinary actions against broker-dealers and associated persons." FINRA points to that form as justification for the language on its BrokerCheck website, *see* FINRA Brief, at 3-4, though FINRA also states that it may – it is *permissive* whether or not to – disclose information reported on Form U6 even when the person was not registered with a FINRA member at the time of the sanction. FINRA Brief, note 8. When questioned as to the source of the information supplied on Form U6, FINRA's counsel did not know who filled out Form U6. Nor did anyone in the SEC's Chief Counsel's Office in the Division of Enforcement. A person from the Chief Counsel's Office in the Division of Trading and Markets, however, stated that *FINRA* files Form U6 on behalf of the SEC. When I contacted the person at FINRA to whom the Division of Trading and Markets referred me about the process, that person explained that **FINRA personnel** take the information from the Commission's Order Imposing Remedial Sanctions and populate the form. Thus, the words "Bar (Permanent)" are placed on FINRA Exhibit, RP 26 & 27, by **personnel at FINRA** who mark the form as having been "submitted" by the SEC . RP 23.

**Dispute Form**

On December 12, 2012, Mr. Wanger submitted a BrokerCheck Dispute Form to FINRA , but his request was rebuffed as "not eligible for investigation" because it was "properly reported." RP 129. *See also* Wanger Affidavit, Exhibit B, ¶3. Thus,

Respondent sought relief from FINRA, as FINRA acknowledges, FINRA Brief, note 10, but was told he had no recourse from FINRA.

**Settlement**

This was a settled action. After several failed attempts on numerous fronts to obtain his due process rights in a fair proceeding, Respondent was forced to relent to pressures from the CRO staff to settle. However, he did so only after being promised that his right to reapply after one year would be a "no brainer." Application, Exhibit B, Wanger Affidavit, ¶2 (pp. 2-7). The language of the settlement was precise: Without admitting or denying the "findings," [1] Respondents was "barred ... with right to apply for reentry after one (1) year ... to the Commission." Respondent's Section 19 Application, Exhibit A.

That precise language has now taken on a color of its own and, unfortunately, a highly pejorative one: "permanent." Both FINRA and SEC staff now intone that all bars are "permanent." [2] FINRA even states that it is its "policy" to "interpret" it that way. Wanger Affidavit, ¶ 3. Worse, the industry reacts to the use of the word "permanent" on BrokerCheck to mean what is says: Respondent is permanently

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[1] The so-called "findings" are not findings after a hearing where the evidence has been tested. They are *staff allegations* based on evidence the staff has gathered and presents in a one-sided fashion. It is these staff allegations that the Commission in

[2] A review of Commission orders over the last few years shows that the Commission has used the term "permanent bar" only when it did not grant a right to reapply. When a right to reapply was granted, the word "permanent" is absent. The only exception – which *post dates* the current Application of this Respondent on April 18, 2016 – is the Commission's recent order issued May 27, 2016 – one month later – in which the Commission imposed a permanent bar with right to reapply after five years. *See In the Matter of Edge R. Page and PageOne Financial, Inc.*, Release No. 4400 (May 27, 2016).

barred from the industry, so that he is unemployable, permanently. Application, Exhibit B, Wanger Affidavit ¶6.[3]

**Denial of Right to Work and other Basic Economic Rights**

Even still worse, both the brokerage and banking industries react to the use of the word "permanent" as a means to deny credit cards and close IRA and custodial accounts. Wanger Affidavit ¶11(d). Landlords have also denied Respondent the right to lease office space because of it. *See* Companion Proceedings, Application for Consent to Associate, Wanger Supplemental Affidavit ¶ 15, dated May 23, 2016, filed in Admin. Proc. 3-14676, attached hereto as Exhibit A.

If the Commission now concludes that it lacks jurisdiction to correct this injustice, as FINRA advocates it must, to whom does Respondent appeal to regain his liberty and property interests as well as his basic economic rights?

**LAW**

Reduced to its simplest form, the thrust of FINRA's opening brief is that FINRA is simply reporting the Commission's own sanction. It's not our (FINRA's) problem. Don't blame us. It's the SEC's sanction. Accordingly, argues FINRA, Section 19 does not apply – an argument that must fail as a form of *reductio ad absurdum.* If true, it would mean that the SEC lacks jurisdiction over FINRA any time FINRA can point to some involvement, approval or oversight of its actions by the SEC. Of course, here, it was FINRA itself (not the SEC) that posted the

[3] While claiming FINRA has done nothing to impact Respondent's ability to associate with a FINRA member, at the same time FINRA now asserts that Respondent is subject to a statutory disqualification under Section 3(a)(3)(F), FINRA Brief, at 9 & note 14, a claim that Respondent disputes. He was not acting as a broker or dealer at the time of the conduct in question.

permanent bar language on its BrokerCheck website, using Form U6.

### A. Section 19 of the Securities Exchange Act of 1934

Section 19(d)(1) applies whenever an SRO "imposes any final disciplinary sanction on any member or *participant* therein,... or imposes any final disciplinary sanction on any person associated with a member or bars *any person* from becoming associated with a member." FINRA states that "[a] final regulatory action in this context *includes* any final action *by the Commission*." FINRA Brief, at 5. Moreover, WIM, the investment adviser, previously held a IARD registration, a system developed by FINRA according to the requirements of the Commission, and as FINRA notes, BrokerCheck includes information on persons currently or formerly possessing CRD/IARD registrations. FINRA Brief, at 4. Further, as noted by Respondent in his opening brief, by approving a proposed rule change to include *non-FINRA* members and their associated persons in Broker Check, the SEC has asserted and assumed jurisdiction over what FINRA publishes on its BrokerCheck. Therefore, the information published by FINRA on its Broker Check is subject to Section 19(d)(1).[4]

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[4] To support its argument that the SEC lacks jurisdiction, FINRA primarily relies on the case of *In the Matter of WD Clearing*, Release No. 75868 (September 9, 2015), and cites to a paragraph therein , § II.A. Analysis, where the staff of the Commission sought to *summarize* the possible bases for jurisdiction under Section 19(d). FINRA Brief, at 6. However, that summary effort is not a substitute for the actual language of the statute itself, which applies to any final disciplinary action imposed on a "participant" or which "bars any person from becoming associated with a member." More importantly, that case did not concern itself with an final disciplinary sanction, but rather the firm's desire to withdraw a continuing membership application after a change of control. For the same reason, FINRA's reliance on *In The Matter of Allen Douglas Sec., Inc.,* Release No. 50513 (October 12, 2004) is likewise unavailing. There, the NASD, through an interpretive letter, notified a firm that it found the firm's attempt to use subordinated loan agreements in its net

Section 19(d)(2) provides that any action taken under Section 19(d)(1) is subject to review by the Commission, either on "its own motion," or "upon application by any person aggrieved thereby" [5] Therefore, the SEC has the statutory power and jurisdiction – whether based on Respondent's Application or on its *own* volition – to correct the misuse of language as well as the injustice that has befallen Respondent. [6]

It would be highly unusual – if not absurd – that the primary regulatory authority to which the public looks for information about brokers and investment advisers could publish on its internet sites anything it wanted about such persons but then can claim that no one can question what it does because there is no jurisdiction to do so.

**B. General Supervisory Oversight**

There is no question that FINRA operates in an environment of government sponsored self-regulation. True, SROs take a leadership role. But, the

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capital computation to be unacceptable. That case had nothing to do with a disciplinary sanction at all. To the same effect is *Morgan Stanley & Co., Inc.*, 53 S.E.C. 379 (1997), holding that NASD's denial of the firm's request for an exemption from MSRB G-37 is not disciplinary action. Thus, these cases are inapposite.

[5] Section 19(d)(2) states that the application must be filed within thirty days after the date such *notice was filed* with the appropriate regulatory agency , *or* within such longer period *as such appropriate regulatory agency may determine.* Although Respondent did not file his application under Section 19(d) until April 2016, FINRA never filed a notice with the SEC, and in any event, the SEC may permit "any such longer period" it wishes. Moreover, the time limit does *not* apply to action taken by the Commission "on its own motion." Therefore, nothing in Section 19(d)(2) acts as a restraint on Commission action on this application.

[6] Because the SEC can invoke jurisdiction on its own volition, any artificial and hyper-technical distinction between an application based on 19(d) or 19(e) is irrelevant. *See* FINRA Brief, note 12.

"[g]overnment would keep the shotgun, so to speak behind the door, loaded, well oiled, cleaned, ready for use ..." Wolfson, Philips & Russo, *Regulation of Brokers, Dealers and Securities Markets,* §12.01 (1977) (quoting *Silver v. NYSE,* 373 U.S. 341 (1963). The SEC has general supervisory powers over SROs, which it is free to exercise when needed.

### C. Fifth Amendment Due Process

Respondent has been denied his liberty interest in his right work by virtue of the BrokerCheck posting. As noted in his opening brief, FINRA made the posting without notice and opportunity for hearing, which was a denial of constitutional due process. Respondent's Initial Brief, at 4-5. As one leading constitutional scholar has written:

> "[A] loss of liberty should be involved where governmental actions foreclose a wide range of employment or professional opportunities. If the government's denial of a license precludes one from gaining employment in both the private and public sectors, the individual should be granted a hearing to determine the basis of the governmental action."

3 R. Rotunda & J. Nowak, *Treatise on Constitutional law: Substance and Procedure,* §17.4(d)(ii), at 96 (5th Ed.) Respondent should be afforded a hearing to correct the ongoing loss of his liberty interest and the deprivation of his basic economic rights.

## CONCLUSION

Respondent respectfully requests that the Commission exercise jurisdiction over his application and hold a hearing pursuant to Section 19(e) of the Exchange Act to rectify the injustice that is occurring.

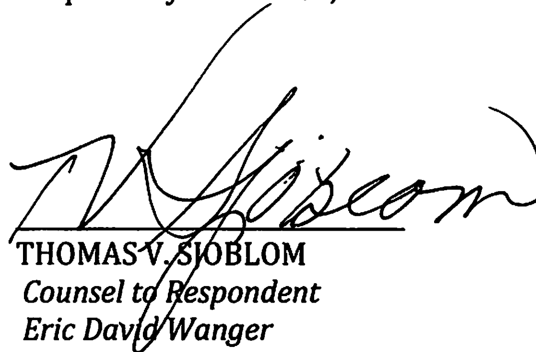
Dated: July 15, 2016 Respectfully Submitted,

**CONCLUSION**

Respondent respectfully requests that the Commission exercise jurisdiction over his application and hold a hearing pursuant to Section 19(e) of the Exchange Act to rectify the injustice that is occurring.

Dated: July 15, 2016

Respectfully Submitted,



THOMAS V. SJOBLOM
*Counsel to Respondent*
*Eric David Wanger*

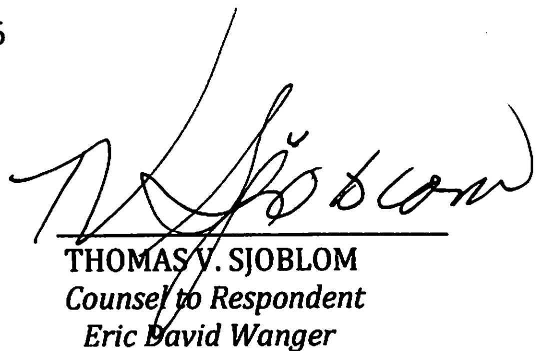
## CERTIFICATE OF SERVICE

The undersigned certifies that on July 15, 2016, he caused a copy of Respondent's Response Brief to be delivered to Federal Express for delivery to:

Brent Fields, Secretary
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

And, he caused the same to be delivered to Federal Express for delivery on:

Gary Dernelle
Associate General Counsel FINRA
17356 K Street, N.W.
Washington, D.C. 20006



THOMAS V. SJOBLOM
*Counsel to Respondent*
*Eric David Wanger*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**UNITED STATES OF AMERICA**

**Before the**

**SECURITIES AND EXCHANGE COMISSION**

**Administrative Proceedings**
**File No. 3-14676**

-------------------------------------------

**In the Matter of Application**

**ERIC DAVID WANGER**

**Supplemental Affidavit of**
**Eric David Wanger**

**Respondent.**

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I, Eric David Wanger, submit this supplemental affidavit in support of my application 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, 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 my own entity that provides one or more of those services.

I make this supplemental affidavit to address recent conversations between my counsel, Thomas V. Sjoblom of Washington, D.C., and the staff of the Chief Counsel's Office in the Division of Enforcement ("Staff") on May 2 and 3, 2016.

The Need For Sponsorship and Supervision

1. In conversations with my current counsel, the Staff has pressed the need to comply with "all of the factors" under Rule 193, including especially the need for supervision under Rule 193 (d), 17 C.F.R. §201.193(d).

2. The Staff has recognized that persons subject to a *de facto* permanent bar, such as me, are unlikely to find adequate "supervision" (via employment) given that this would require a regulated firm to first hire a "barred" person. The Staff has suggested, instead, that I somehow find a prospective employer who would be willing to "sponsor" me, *i.e.*, to promise to employ me "if and when" the bar is lifted, and to have that prospective employer propose and describe what supervisory structure would be in place over me were the bar to be lifted and they employed me. The Staff suggested to my counsel that such sponsorship would be a way for me to meet the supervisory requirements of Rule 193.

3. The Staff and the Commission need to be aware that I have already broadly pursued and attempted such conditional sponsorship; and, I have consistently failed. On almost every occasion, after employment or partnership was summarily dismissed as an impossibility (generally due to FINRA's assertion that I have been permanently barred), I would suggest a conditional arrangement, *i.e,* sponsorship, as a possible alternative. Unfortunately, to a regulated firm, there is no practical difference between supervision (via employment) and sponsorship (via conditional employment). The fear of unwanted regulatory scrutiny is the source of the issue, not the details of its implementation. So pervasive is the fear of negative regulatory

scrutiny stemming from my "permanent(?!)" bar, that it has caused all my attempts to re-enter the industry, no matter how creative, to be nullities.

To reiterate: "Sponsorship" (a promise of conditional employment rather than actual employment) has proven just as unattainable as employment, and thus is also only an empty fiction vis-à-vis Rule 193. As I stressed in paragraph 6 of my original affidavit:

> *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 exists, 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."*

*Initial Affadavit of Eric David Wanger, ¶ 6 (April 11, 2016).*

Let me reiterate that everything I stated in paragraph 6 of my initial affidavit applies to both "supervision" and "sponsorship." The simple truth is that in today's regulatory environment, no regulated firm is going to touch a barred person "with a ten foot pole." Prospective employers repeatedly told me that in this regulatory environment – especially the current Broken Windows enforcement environment– they are unwilling to take on the added regulatory scrutiny, monitoring and SEC

oversight such a structure would entail. The ever-present threat of SEC – and FINRA – enforcement is enough. These firms said that they do not need any further regulatory attention.

4. The Staff has admitted that this form of conditional employment, *i.e.*, sponsorship, typically has not been granted by the Commission. Indeed, according to the Staff, the Commission has approved it in no more than one dozen cases since 2000. Nevertheless, the Staff is not blind to the possibility that conditional sponsorship may be just as unattainable as employment.

5. My prior counsel and I discussed the Commission's orders in such cases as *In Re Bruce Lieberman*, Release No. 3631 (July 18, 2013), *In Re Timothy Miller*, Release No. 2702 (February 11, 2008), and *In re William M. Ennis*, Release No. 2853 (March 17, 2009), all of which granted relief on a conditional basis. In *Lieberman*, the proposed employer agreed to require advance approval by its chief financial officer ("CFO") of all equity trades, to engage in a daily review of all profits and losses from trading, and to provide an independent monitoring program for Mr. Lieberman by an outside firm for two years. In *Miller*, the applicant represented that he would be closely supervised by the chief investment officer ("CIO") of the investment adviser, including daily oversight of fund activities as well as weekly and monthly meetings to review his trading in the funds he managed; the firm would subject the applicant to added supervision by the chief compliance officer ("CCO"), including monthly and quarterly meetings, as well as reports of any unusual trading activity; require general oversight by the Boards of Directors of the respective funds; and require the

applicant to undergo comprehensive training in funds management. In *Ennis,* the respondent was the former president of the investment adviser of the Evergreen Fund family. The Commission alleged that the respondent market timed in violation of the fund's internal policy. The Commission granted relief because respondent's new employer is not an adviser to investment companies, respondent would be employed to over see business strategy and not engage in trading, would not provide investment advise and would be supervised by the portfolio managers. The Commission noted that additional relief would be required were his employer to become an adviser to investment companies.

6. The types of "thinking outside of the box" solutions suggested by the above cases have fallen flat and proven to be of little practical use in my case. As noted above, any and all attempts to suggest similar procedures to prospective employers (or conditional sponsors) were non-starters. It cannot be stressed enough that the fear of added regulatory scrutiny and SEC oversight in the current environment is so pervasive that I have never even been able to broach suggested solutions to the (putative) concerns of added expense (*e.g.,* outside compliance monitors) or the added duties imposed on the firms' CFOs, CIOs and CCOs. I even sought to retain an outside consulting firm to serve in a supervisory capacity for me. The company declined.

<u>"Permanent" Bar</u>

7. During the Staff's conversation with my current counsel, the Staff stated that bar orders, even those with the right to reapply after one year, are considered permanent. However, at the time the topic of a consent settlement was being aired by the staff of the Chicago Regional Office ("CRO staff") and at which time the CRO staff told my then counsel that my right to re-associate with my companies under a bar order with right to reapply would be a "no brainer," no one on the CRO staff told me or even suggested that the bar would be considered permanent. Despite the fact that I was led to believe on many occasions, both verbally and in writing, that my sanction is not, would not, and should not, be considered permanent, it apparently has become just that: a *de facto* permanent bar. In other words, the things I must theoretically do to reenter the industry have been made practically impossible by the SEC and FINRA. I have yet to meet a compliance officer who would even allow a barred individual to set foot in the firm's file room, let alone allow the firm to offer up some promise of present or future employment. My sanction is, in every practical sense, permanent, and no set of activities I have taken or can currently imagine being able to take will lift it.

8. Had the mere possibility of permanence been broached at the time I and my counsel were persuaded by the CRO staff to agree to the proposed settlement, there is absolutely no way I would have accepted it. Let me state clearly: There is no way I would have accepted any settlement that even entertained the possibility of a bar with righty to reapply becoming a permanent bar from the securities industry.

9. The profound unfairness of this entire process, culminating in the unjust (and self-actualizing) declaration by both FINRA and the Staff that the sanction is permanent, has been well-articulated and need not be reiterated here. Let me simply encourage the Staff and the Commission to read and acknowledge the number of former investors, a former SEC Commissioner (*pro bono*) and others who have protested against what was done to me. *See* Supplemental Letters attached to my Initial Affidavit and to this Supplemental Affidavit.

Regulatory Prophylaxis

10. The Staff also contended to my current counsel that bar orders have a prophylactic purpose to protect investors. Such an assertion clearly depends on the belief that I have done something to harm investors in the first place, an assertion that is groundless. The Staff, in its zeal to "protect" the investing public, must not forget that my entire case has never been based on more than a set of poorly articulated exaggerated , *de minimis* allegations which, even in the aggregate, represent little more than hair-splitting.[1] After more than two years of investigation, the most serious allegations the staff was able to muster were that my acts resulted in slightly more than $2200 in management fees spread over a 33 month period: **$2,200 in the aggregate over 33 months!** The fact that I was

[1] Indeed, as my 2012 motion to dismiss clearly stated, "the OIP is full of exaggerations and misrepresentations that, strung together, still fail to state *prima facie* causes of action." [Attachment B, Wanger Initial Affidavit ¶ 2 (b)]. Such hyperbolic allegations hardly constitute proof of anything, let alone actual proof of injury to public investors for which a prophylactic sanction is needed.

successfully pressured into accepting a one-year bar after being subjected to an impossible set of circumstances, carefully engineered to be just so by the CRO staff, the ALJ and the Commission, cannot and must not be interpreted as proof or admission of anything. No one denies the raw power of the SEC. However, the idea that a sanction, accepted under such duress, could somehow be interpreted as demonstrating a need for "regulatory prophylaxis" defies all logic.

Prophylaxis, as typically understood, means taking preemptive steps to prevent the possibility of future harm. While it is certainly true that permanent bar orders, by definition, forestall the possibility of future harm to the investing public, the threat of future harm would seemingly need to be grounded on some evidence that there was harm in the first place. Thus far, no one has ever shown or admitted that the alleged acts harmed my investors or the investing public in any way.

Moreover, the justification for a permanent bar as prophylaxis requires some proof of reasonable likelihood that the harm will be repeated in the future. Just as there was no showing of actual past harm, there was no showing of likelihood of future repetition. Indeed, absent such proof, a notion of prophylaxis is tantamount to saying that all criminals, regardless of how small the infraction, should be kept in prison indefinitely – or permanently - as prophylaxis designed to protect the public against the possibility that they might commit some future crime. Such a permanent

sanction would defy even the most basic tests of Due Process and Equal Protection. Yet no one has proven or admitted any such harm – in the past or in the future. [2]

11. How is it possible to justify the arbitrary and extra-judicial imposition of a self-actualizing permanent bar by FINRA and, now by the Staff as well? FINRA has clearly stated the bar is permanent, creating that reality by asserting it. And the SEC appears to support FINRA in that assertion. Proof or not, the bar has become permanent. The acts in question took place six or more years ago! But I am still barred, and the businesses that were destroyed are only a fond memory.

12. Bar orders must be viewed for what they are, *to wit*: punishment. A bar order is a total prohibition of conduct – present and future. This is only prophylaxis in the sense that euthanasia is medical treatment.

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[2] What Chief Justice Burger said and warned in *Aaron v. SEC* about injunctions applies equally to bar orders:

> "It bears mention that this dispute [*i.e.*, whether the SEC is required to establish scienter as an element of an action to enjoin violations of antifraud provisions under the 1933 and 1934 Acts], though pressed vigorously by both sides, may be much ado about nothing. This is so because of the requirement in injunctive proceedings of a showing that "there is a reasonable **likelihood** that the wrong will be **repeated**." *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1100 (2nd Cir. 1975). *Accord, SEC v. Keller Corp.*, 323 F.2d 397, 402 (7th Cir. 1963). To make such a showing, it will almost always be necessary for the Commission to **demonstrate** that the defendant's past sins have been the result of more than negligence. Because **the Commission must show some likelihood of a future violation,** defendants whose past actions have been in good faith are not likely to be enjoined. See opinion of the Court, ante, at 701. That is as it should be. **An injunction is a drastic remedy, not a mild prophylactic, and should not be obtained against one acting in good faith."**

*Aaron v. SEC*, 446 U.S. 680, 703, 100 S. Ct. 1945, 64 L. Ed. 2d 611 (1980)(concurring)(emphasis added).

Denial of Basic Economic and Property Rights

13. A bar order that denies a person basic economic and property rights goes way too far. This one continues to do exactly that.

14. This is not the place to reiterate my previous complaints about how the sanction caused Chase to cancel my credit cards over "reputational risk," Merrill to arbitrarily cancel my retirement accounts, or the refusal by Schwab and Fidelity to allow me access my funds, etc. *See Wanger Initial Affidavit,* ¶¶ 7 & 11(d) (April 11, 2016).

15. Yet, the harm continues actively to this very moment. On May 18, 2016, I was informed that, because of an outstanding bar order against me, which showed up on a background check, I could not lease and sublet office space on 111 W. Wacker Drive in my home town of Chicago, Illinois.

Supplemental Letters

16. The Staff and the Commission may not appreciate the degree to which the fear of agency harassment and retribution drive the actions of its regulated participants. I have presented a number of letters of supplementation from former investors and even former regulators. I have attached two more here. *See* Exhibit 1. However, my concerted efforts to obtain letters of supplementation from individuals employed in the securities industry have generally failed. Many of these people enjoy prominent jobs in the industry. Out of fear of unwanted scrutiny and possible SEC retribution against themselves or their firms, many declined, even after I

offered to present them as "John Doe" letters, with their real names protected from the Commission's view. These are some of the same people who were too afraid of the SEC to testify in my defense at the administrative hearing that was supposed to have occurred in 2012.

* * *

State of Illinois )
County of Cook )

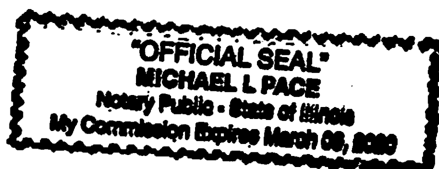
Affiant has personal knowledge of the foregoing, is competent to testify thereto, and certifies under penalty of perjury under the laws of Illinois that the foregoing is true and correct.

Dated: May 23, 2016,

Eric David Wanger

Signed and sworn (or affirmed) to before me on the 23rd of May, 2016 by Eric David Wanger (name of person making statement).

(Seal)

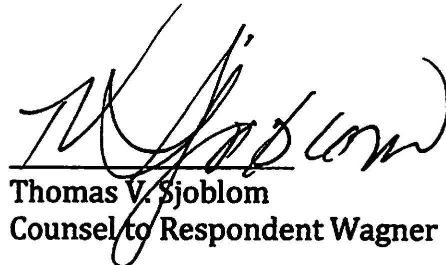


(Signature of Notary Public)

## CERTIFICATE OF SERVICE

The undersigned certifies that, on May 25, 2016, he caused to be served on the following person a Supplemental Affidavit of Eric David Wanger, by depositing the same in the United States Post Office for delivery by priority US Mail to:

Office of the Secretary
Unites States Securities & Exchange Commission
101 F Street, N.E.
Washington D.C. 20549



Thomas V. Sjoblom
Counsel to Respondent Wagner