

INSIGHTS

SEC Announces Expedited Program to Vacate pre-Dodd Frank Collateral Bars from Non-Associated Industries

February 27, 2017

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On January 17, 2017, the U.S. Court of Appeals for the D.C. Circuit vacated in part a Securities and Exchange Commission (SEC) order that imposed a collateral bar against Gregory Bartko, the former CEO and chief compliance officer of a registered broker-dealer, who was convicted by a jury of criminal conspiracy, selling unregistered securities, and mail fraud for using fraudulent and deceptive sales tactics to recruit investors for private equity funds. The conduct at issue occurred between 2004 and 2006. Following the criminal conviction, the Commission, pursuant to its authority under the 2010 Dodd-Frank Act, issued an order barring him from acting as or associating with a broker-dealer, investment adviser, municipal securities dealer, transfer agent, municipal adviser, or nationally recognized statistical rating organization (NRSRO). The D.C. Circuit found that the SEC order improperly applied Dodd-Frank retroactively insofar as it barred Bartko from associating with classes with which he had never been or sought to be registered (specifically, an investment adviser, municipal securities dealer, transfer agent, municipal adviser, and NRSRO), as the SEC's authority to bar a market participant from such classes stems from Dodd-Frank, which was effective July 22, 2010. The court therefore vacated the portion of the SEC order that barred Bartko from association with investment advisers, municipal securities dealers, transfer agents, municipal advisors, and NRSROs, and affirmed the order insofar as it barred him from association with a broker-dealer. Thus, while Bartko obtained a partial victory, he remains barred from future employment with a registered broker-dealer.

On February 23, 2017, the Commission issued a [public statement](#) recognizing that *Bartko* may impact other individuals who are subject to Commission orders imposing collateral bars from associating in any capacity in the securities industry due to pre-Dodd Frank conduct and provided a [form](#) by which parties named in such orders may request that the Commission vacate such collateral bars. The form also notes that in the case that an individual attempts to associate in a new capacity in the securities industry in the future, the Commission may bring a separate follow-on proceeding to determine whether to impose any remedial sanctions under existing law. Thus, while *Bartko* limited the Commission's ability to bar individuals from broad classes of employment for pre-Dodd Frank conduct, the Commission retains the ability to bring proceedings that can prevent or limit future employment.

For questions about *Bartko* and whether it may permit an individual to request that the SEC vacate a prior order limiting his or her employment, as well as assistance with the SEC's form and following process, please contact Paul Maco, Phil Bezanson, Glen Kopp, or Britt Steckman

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