

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1270/February 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15628

In the Matter of

DANIEL IMPERATO

ORDER DENYING RESPONDENT'S
SUBPOENA REQUEST AND REGARDING
RESPONDENT'S CLARIFICATION REQUEST

On November 27, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Daniel Imperato (Imperato), pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). In his Motion for Summary Disposition filed February 19, 2014, Imperato, among raising other issues, (1) requests the minutes of Commission meetings concerning the approval of a settlement with Charles Fiscina and the refusal of a settlement with Imperato (Commission Minutes Request or the request); and (2) seeks clarification of Exchange Act Section 15(b), stating that "this charge" did not appear in the "original case" and asking whether this is "a new false charge" (Clarification Request). Motion at 1-2.

I construe Imperato's Commission Minutes Request as a subpoena request under Commission Rule of Practice (Rule) 232, and, so construed, it is ORDERED that Imperato's Commission Minutes Request is DENIED.¹

Rule 232 governs the issuance of subpoenas and permits the hearing officer to refuse to issue subpoenas that are "unreasonable, oppressive, excessive in scope, or unduly burdensome." 17 C.F.R. § 201.232(b). Imperato's Commission Minutes Request is unreasonable and would be unduly burdensome to the Commission. The information sought—Commission minutes of its internal, nonpublic deliberations whether to accept or refuse certain settlement proposals—is subject to the deliberative process privilege, and there has been no showing to overcome the privilege. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150-52 (1975); Fannie Mae Sec. Litig., Civ. Action No. 04-01639 (D.D.C.), Exchange Act Release No. 60772 (Oct. 2, 2009), 96 SEC Docket 21176, 21180, 21183-84; David J. Checkosky, 50 S.E.C. 1180, 1183-84 (1992), remanded on other grounds, 23 F.3d 452 (D.C. Cir. 1994). Moreover, Imperato has not submitted a subpoena to be signed.

¹ To the extent Imperato asserts that his Commission Minutes Request is sought "under discovery . . . since you [are] unable to subpoena [sic]" the information, the request does not pertain to existing information in the investigative file of the Division of Enforcement, but to new information he seeks. Motion at 2. Thus, the request does not fall under Rule 230 or any other Rule other than Rule 232.

Regarding Imperato's Clarification Request, the Commission instituted this proceeding under Exchange Act Section 15(b), and the OIP sets forth the allegations against Imperato. This proceeding is an administrative proceeding before an administrative law judge; it is a new and separate proceeding from SEC v. Imperiali, Inc., 9:12-cv-80021 (Imperiali matter), that was heard before the U.S. District Court for the Southern District of Florida and is currently on appeal before the U.S. Court of Appeals for the Eleventh Circuit. Although the OIP's allegations relate to the Imperiali matter, I have no jurisdiction over the Imperiali matter. If Imperato seeks further clarification of Exchange Act Section 15(b), 15 U.S.C. § 78o(b), he is directed to review the statute. He may also review initial decisions issued by this Office in other proceedings under Exchange Act Section 15(b), which are available online at <https://www.sec.gov/alj/aljdec.shtml>.

The remaining issues raised in Imperato's Motion for Summary Disposition will be addressed in an initial decision. The parties are reminded that oppositions are due March 7, 2014; and replies, if any, are due March 17, 2014.

SO ORDERED.

Cameron Elliot
Administrative Law Judge