

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1728/August 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15943

In the Matter of

DAVID J. MONTANINO

ORDER ON SUBPOENAS

On June 24, 2014, the Securities and Exchange Commission instituted this proceeding against David J. Montanino, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and (k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940.

On August 18, 2014, this Office received a request from Respondent for a subpoena duces tecum directed to Lime Brokerage, requesting the production of documents and other materials. On August 20, 2014, this Office received the Division of Enforcement's Objection to Respondent's subpoena request. On August 21, 2014, Respondent sent this Office a revised subpoena duces tecum for Lime Brokerage, requesting the production of documents and other materials by September 15, 2014, and a Response to the Division's Objection. On August 23, 2014, this Office received two additional requests from Respondent for subpoenas duces tecum directed to Fidelity Investments and Orangefield Columbus, requesting the production of documents and other materials by September 15, 2014.

Pursuant to Commission Rule of Practice 232(a), a party may request the issuance of subpoenas requiring the production of documentary or other tangible evidence. 17 C.F.R. § 201.232(a). However, a subpoena may be quashed or modified "[i]f compliance with the subpoena would be unreasonable, oppressive or unduly burdensome." 17 C.F.R. § 201.232(e)(2).

Respondent's August 18, 2014, and August 21, 2014, Lime subpoena requests are substantially similar to each other. Given this, I consider the Division's Objection to Respondent's August 18, 2014, Lime subpoena request in determining whether to grant the August 21, 2014, Lime subpoena request. The Division argues that the subpoena request directed to Lime is "duplicative and wasteful," because "Respondent has in his possession all of the documents he now seeks to obtain from Lime." Objection at 1. Specifically, the Division argues that it provided Respondent with the investigative file, which contains all of the

information Respondent now seeks from Lime. *Id.* The Division does not otherwise argue that the information sought from Lime is unreasonable, oppressive, or unduly burdensome. In his Response, Respondent argues that he has “made every effort to locate [the information requested] in the investigative file and cannot.”¹ Response at 2. Given that Lime has previously collected the documents Respondent seeks, as the Division argues, I find that it would not be unduly burdensome for Lime to provide that information to Respondent. I will therefore grant the August 21, 2014, Lime subpoena request.

I have not received any objections from the Division to Respondent’s Fidelity Investments and Orangefield Columbus subpoena requests. In my General Prehearing Order, I established that “[a]bsent notice of an objection, I will sign the subpoena the day after I receive it.” *David J. Montanino*, Admin. Proc. Rulings Release No. 1677, 2014 SEC LEXIS 2856 (Aug. 7, 2014). Therefore, I will also grant Respondent’s Fidelity Investments and Orangefield Columbus subpoena requests.

SO ORDERED.

James E. Grimes
Administrative Law Judge

¹ Respondent further argues that “having me search for a needle in a haystack of 40 gigabytes of largely irrelevant data to my case, seems to be inconsistent with fair practices.” Response at 2. The Division is not required to direct Respondent to certain material within the investigative file it provides to Respondent. *See generally John Thomas Capital Mgmt. Grp. LLC*, Exchange Act Rulings Release No. 71021, 2013 SEC LEXIS 3860, at *23 (Dec. 6 2013) (finding that the Division’s “open file” production satisfied its *Brady* disclosure obligations).