

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4038/August 2, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17218

In the Matter of

DANIEL CHRISTIAN STANLEY POWELL

ORDER

The Securities and Exchange Commission initiated this proceeding against Respondent Daniel Christian Stanley Powell in April 2016 by issuing an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934. OIP at 1; *see* 15 U.S.C. § 78o(b). The Division of Enforcement has filed a dispositive motion in which it seeks imposition of the full range of associational bars listed in Exchange Act Section 15(b)(6)(A). Mot. at 1 & n.1, 9; *see* 15 U.S.C. § 78o(b)(6)(A).

During a telephonic prehearing conference held in May 2016, Division counsel explained that although the OIP alleges that Powell was associated with a broker-dealer from May through September 2009, based on conversations with Powell's former employer, "the correct date[s] [are] March 2010 through September 2010." Tr. 19-20. In light of Division counsel's statement, I asked whether he felt it would be necessary to amend the OIP. Tr. 27. Counsel stated that although he believed amending the OIP would be unnecessary, he would do so "if [I] prefer[red]." Tr. 27. I then mentioned that I was uncertain how the factual allegations would affect my ability to impose all of the collateral bars the Division seeks in this case.¹ Tr. 27-28. I left the decision how to proceed to the Division. Tr. 28.

¹ Exchange Act Section 15(b)(6)(A) authorizes the Commission to impose a range of collateral bars—bars from participating in the securities industry in capacities in addition to the capacity in which an individual functioned at the time of his or her misconduct at issue. 15 U.S.C. § 78o(b)(6)(A). Effective July 22, 2010, Section 925(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act added two additional bars to this list: bars from associating with municipal advisors or nationally recognized statistical rating organizations. *See* Pub. L. No. 111-203, §§ 4, 925(a), 124 Stat. 1376, 1390, 1850-51. The District of Columbia Circuit later held on retroactivity grounds that the Commission cannot apply the Dodd-Frank amendments to bar a respondent from associating with municipal advisors or statistical rating organizations based on conduct predating Dodd-Frank. *See Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015).

In a subsequently filed dispositive motion, the Division asks that I impose all the bars contemplated in Section 15(b), including the two bars that were the subject of the decision in *Koch*. Mot. at 1 & n.1. In its motion, the Division has not fully explained why, in light of the factual allegations in the OIP, imposing bars on Respondent from associating with municipal advisors and statistical rating organizations would not raise retroactivity concerns. Additionally, although it represents in its motion that the allegations in the OIP as to the period of Powell's association with a broker-dealer are mistaken, Mot. at 9 n.2, the Division has not moved to amend the OIP.

In light of the foregoing, I order that within fourteen days, the Division should either:

- (1) file a brief fully explaining why, in light of the factual allegations in the OIP and the reasoning in *Koch*, it would be permissible to consider barring Powell from associating with a municipal advisor or a nationally recognized statistical rating organization; or
- (2) move to amend the allegation in paragraph 1 of Section II.A of the OIP.²

James E. Grimes
Administrative Law Judge

² See 17 C.F.R. § 201.200(d)(2); *Carl L. Shipley*, Investment Advisers Act of 1940 Release No. 419, 1974 WL 161761, at *4 (June 21, 1974) (“Where the purpose is merely to correct an error in pleading, to conform the pleadings to the proof, or to take into account subsequent developments which should be considered in disposing of the proceeding, *amendment should be freely granted*, subject only to the consideration that other parties should not be surprised nor should their rights be prejudiced.”) (emphasis added); Rules of Practice, 60 Fed. Reg. 32738, 32757 (June 23, 1995) (comment to Rule 200(d), citing *Carl L. Shipley*).