

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

Administrative Proceedings Rulings  
Release No. 5535 / January 26, 2018

Administrative Proceeding  
File No. 3-18099

In the Matter of

**Black Diamond Asset  
Management LLC and  
Robert Wilson**

**Order Ratifying Certain Prior  
Actions, Discharging Order to  
Show Cause, and Setting  
Procedural Schedule**

On November 30, 2017, the Securities and Exchange Commission ratified my appointment and directed me to take certain actions in this proceeding.<sup>1</sup> Consistent with the Commission's order, I gave the parties "until January 5, 2018 to submit any *new evidence* [they] deem relevant to [my] reexamination of the record."<sup>2</sup> The Division of Enforcement filed a brief requesting ratification of all decisions and orders issued in this case except the default order, which the Division urges should be revised to not apply to Robert Wilson.<sup>3</sup> The Division believes that Wilson, as a pro se litigant, should

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<sup>1</sup> The Commission instructed me to reconsider the record and all prior actions by an administrative law judge, allow the parties to submit any new, relevant evidence, and issue an order ratifying or revising all prior actions. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 SEC LEXIS 3724, at \*1-2 (Nov. 30, 2017).

<sup>2</sup> *Black Diamond Asset Mgmt. LLC*, Admin. Proc. Rulings Release No. 5258, 2017 SEC LEXIS 3822, at \*1-2 (ALJ Dec. 5, 2017) (quoting *Pending Admin. Proc.*, 2017 SEC LEXIS 3724, at \*2).

<sup>3</sup> The Division of Enforcement's Brief Requesting Ratification of Certain Prior Actions in These Proceedings and Revision of the Default Order 8-9 (Jan. 5, 2018) (Div. Ratification Br.); see *Black Diamond Asset Mgmt. LLC*, Admin. Proc. Rulings Release No. 5110, 2017 SEC LEXIS 3059 (ALJ Sept. 28, 2017).

be given the benefit of the doubt because he filed a response to the Division's motion for sanctions that denied the allegations in the order instituting proceedings (OIP) and included evidentiary exhibits.<sup>4</sup> But the Division argues that the default order should be ratified as to Black Diamond Asset Management LLC because Wilson did not state in any of filings or attempted filings that he was also acting as Black Diamond's representative.<sup>5</sup> Wilson filed a brief urging that the default order should not be ratified.<sup>6</sup> I scheduled a telephonic prehearing conference for January 23, 2018, to allow for further discussion.

During the conference, the parties agreed that the hearing could commence on June 11, 2018, in the Eastern District of New York. Wilson also stated that he intended all of his filings and attempted filings to be submitted individually *and* on behalf of Black Diamond. But shortly thereafter Wilson became irate and behaved in a contemptuous manner. After he threatened violence and refused to allow others to speak without interruption, I excluded him from the remainder of the conference under Rules of Practice 111 and 180.<sup>7</sup> Wilson is cautioned that future disruptive or contemptuous behavior will be met with sanctions, including exclusion from some or all of the hearing.<sup>8</sup>

I have reconsidered the record in light of the parties' submissions and representations. Based on that reconsideration, I RATIFY all actions taken by an administrative law judge in this proceeding before November 30, 2017, *except* that I decline to ratify the order finding Respondents in default entered on September 28, 2017.<sup>9</sup> That September 28 order is VOID.

I will construe the opposition to the Division's motion for sanctions as an answer that generally denies the allegations in the OIP. Because neither Wilson nor Black Diamond is represented by counsel and because Wilson

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<sup>4</sup> Div. Ratification Br. at 9.

<sup>5</sup> *Id.* at 8–9.

<sup>6</sup> *See* Brief to Reenter Evidence in to the Review by the Judge (Jan. 8, 2018).

<sup>7</sup> 17 C.F.R. §§ 201.111(d), .180(a)(1)(i).

<sup>8</sup> 17 C.F.R. § 201.180(a)(1)(i).

<sup>9</sup> *See Black Diamond Asset Mgmt. LLC*, Admin. Proc. Rulings Release No. 5110, 2017 SEC LEXIS 3059.

stated during the prehearing conference that he intended to speak for Black Diamond, I will consider the answer to be filed on behalf of both Respondents. Respondents therefore answered the OIP on November 13, 2017, and the order to show cause<sup>10</sup> is DISCHARGED.

After the prehearing conference, the Division submitted a letter with a proposed schedule. Based on that proposal, I FURTHER ORDER the following schedule:

- February 6, 2018: Parties exchange preliminary fact witness lists.
- March 13, 2018: Disclosure of expert witnesses.
- March 20, 2018: Parties exchange and file expert reports, if any.
- April 3, 2018: Deadline for requests under Rule of Practice 232 for deposition subpoenas and for subpoenas to produce documents. Rule 232 “requir[es] the attendance and testimony at such depositions” by any individual who is properly served a subpoena.<sup>11</sup>  
  
Production under Rule of Practice 230 of any previously undisclosed materials in the investigatory file.
- April 17, 2018: Deadline to complete fact and expert witness depositions.
- April 24, 2018: Motions for summary disposition, if any, under Rule 250(c) are due. A motion under Rule 250(c) for leave to file a motion for summary disposition should be filed in conjunction with the motion for summary disposition.

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<sup>10</sup> *Black Diamond Asset Mgmt. LLC*, Admin. Proc. Rulings Release No. 5056, 2017 SEC LEXIS 2876, at \*1 (ALJ Sept. 15, 2017).

<sup>11</sup> 17 C.F.R. § 201.232(a). An individual who fails to comply with a subpoena may be subject to criminal sanctions. *See* 15 U.S.C. § 78u(c). Wilson is informed that failure to comply with any subpoena issued to him in this proceeding, including a subpoena to appear for a deposition, may result in sanctions in this proceeding, as well. *See* 17 C.F.R. § 201.111(d).

May 8, 2018: Oppositions to motions filed under Rule 250(c) are due.

May 15, 2018: Replies to oppositions to motions filed under Rule 250(c) are due.  
Parties exchange and file witness and exhibit lists.

May 22, 2018: Motions in limine, including objections to witnesses and exhibits, are due.  
Stipulations, requests for official notice, and admissions of fact are due.  
Requests under Rule 232 for subpoenas requiring the attendance and testimony of a witness at the hearing are due.<sup>12</sup> Requests for such subpoenas submitted after this date will be permitted only upon a showing of good cause.

May 30, 2018: Prehearing briefs, if any, are due.<sup>13</sup>

June 5, 2018: Parties exchange but do not file premarked exhibits.  
Amendments to witness lists are due.

June 7, 2018: The parties will participate in a telephonic prehearing conference at a time to be determined.

June 11, 2018: The hearing will begin at 9:30 a.m. in New York. The hearing guidelines explained in my prior scheduling order will apply.<sup>14</sup>

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<sup>12</sup> Although May 22, 2018, is the deadline for requesting such subpoenas, to minimize inconvenience and provide adequate notice to third parties, the parties are encouraged not to wait to submit requests for such subpoenas.

<sup>13</sup> Prehearing briefs are optional. The parties should note, however, that I do not normally entertain opening statements and that a prehearing brief serves as the party's opening statement.

<sup>14</sup> *Black Diamond Asset Mgmt. LLC*, Admin. Proc. Rulings Release No. 5028, 2017 SEC LEXIS 2759, at \*5–10 (ALJ Sept. 7, 2017).

The parties are reminded that all filings must be filed in hard copy with the Office of the Secretary.<sup>15</sup> Wilson, in particular, is reminded that his privilege of submitting filings to my office by e-mail has been revoked.<sup>16</sup> The Division is asked to e-mail PDF text-searchable courtesy copies of any filings to alj@sec.gov. Electronic copies of exhibits should not be combined into a single PDF file, but sent as separate attachments, and should be provided in text-searchable format whenever practicable.

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James E. Grimes  
Administrative Law Judge

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<sup>15</sup> See 17 C.F.R. §§ 201.151–.153.

<sup>16</sup> *Black Diamond*, 2017 SEC LEXIS 2876, at \*2–3.