

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

Administrative Proceedings Rulings  
Release No. 6578 / May 17, 2019

Administrative Proceeding  
File No. 3-19145

In the Matter of

**Matthew R. Rossi and  
SJL Capital, LLC**

**Scheduling Order**

On May 8, 2019, I held a telephonic prehearing conference with Respondent Matthew R. Rossi—representing himself and SJL Capital, LLC—and the Division of Enforcement. The parties agreed that Respondents were served with the order instituting proceedings (OIP) by April 30, 2019.

I ORDER the following schedule, which incorporates the parties' proposed briefing schedule for the Division's motion for summary disposition.

June 7, 2019: File motions for summary disposition.

Rossi's motion presenting evidence of his inability to pay is due. Rossi should include a Form D-A financial disclosure statement, as described in Commission Rule of Practice 630, 17 C.F.R. § 201.630, and any other evidence or affidavits that support his claim. Rossi has the burden of proof to establish his inability to pay claim. *See Terry T. Steen*, Securities Exchange Act of 1934 Release No. 40055, 1998 WL 278994, at \*7 (June 2, 1998).

If Rossi would like any of the information he or the Division submits to be kept confidential, he should file a motion, under Rule 322, for the issuance of a protective order. *See* 17 C.F.R. § 201.630(c).

July 12, 2019: File oppositions to motions for summary disposition.

Division to file opposition to Rossi's motion regarding inability to pay.

July 26, 2019: File replies in support of motions for summary disposition.<sup>1</sup>

Rossi to file reply in support of inability to pay motion.

July 31, 2019: Exchange witness lists, exhibit lists, and exhibits. File witness lists and exhibit lists.

August 5, 2019: File objections to exhibits and witnesses. File motions in limine.

August 12, 2019: File oppositions to motions in limine.

August 19, 2019: Final telephonic prehearing conference at 2:00 p.m. EDT.

August 21, 2019: Hearing begins at 9:30 a.m. EDT at a location to be determined in New York City.

September 23, 2019: File posthearing briefs.

October 7, 2019: File responses to posthearing briefs.

The parties are reminded that all filings must be filed in hard copy with the Office of the Secretary.<sup>2</sup> In addition, they are asked to email courtesy copies of filings to [alj@sec.gov](mailto:alj@sec.gov) as Word documents and as text-searchable PDFs. 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.

### ***Guidelines***

I will follow the general guidelines described below during these proceedings. The parties should review what follows *and promptly raise any objections they may have to these guidelines.*

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<sup>1</sup> The parties intend to use their summary disposition briefs as their prehearing briefs.

<sup>2</sup> See 17 C.F.R. §§ 201.151, .152.

1. **Subpoenas.** A party's motion to quash a subpoena will be due within five business days of the submission of the subpoena for signing. Any opposition to the motion to quash will be due within five business days thereafter. A party moving to quash a subpoena duces tecum based on a claim of privilege must support its motion with a declaration and privilege log.<sup>3</sup>
2. **Motions for summary disposition.** A motion for summary disposition must include legal analysis and evidentiary support for the allegations and requested relief in accordance with *Rapoport v. SEC*<sup>4</sup> and *Ross Mandell*.<sup>5</sup>
  - a. A motion for summary disposition must be accompanied by a statement of material facts as to which the moving party contends there is no genuine issue. The statement should consist of short numbered paragraphs, each of which must include citations to supporting evidence. I may disregard a factual assertion that fails to cite supporting evidence, even if the opposing party fails to controvert it.
  - b. An opposition to such a motion must be accompanied by a separate responsive statement of material facts. The responsive statement should address each numbered paragraph in the moving party's statement, by including citations to evidence establishing the existence of a genuine issue necessary to be litigated or agreeing that the asserted fact is undisputed. The responsive statement may contain, in addition, short numbered paragraphs as to which the opposing party contends there is no genuine issue. These additional paragraphs must also be supported by citations to evidence and should continue the numbered list started by the moving party.
  - c. The moving party may file a reply statement that addresses the opposing party's statement, with citations to evidence as

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<sup>3</sup> See *Dorf & Stanton Commc'ns, Inc. v. Molson Breweries*, 100 F.3d 919, 923 (Fed. Cir. 1996); *Caudle v. District of Columbia*, 263 F.R.D. 29, 35 (D.D.C. 2009).

<sup>4</sup> 682 F.3d 98, 108 (D.C. Cir. 2012).

<sup>5</sup> Securities Exchange Act of 1934 Release No. 71668, 2014 WL 907416, at \*2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

appropriate. Each point in the reply statement should include the text of the numbered paragraph from the filing to which it responds.

- d. Each such motion, opposition, and reply should cite to the appropriate paragraphs of a statement of material facts rather than to the record. The motion, opposition, and reply—not the respective statements of material facts—are where parties should make their legal arguments and cite to applicable legal authority. The memorandum of points and authorities required by Rule 154(a) need not be a separate document from the motion.
  - e. If the opposing party fails to controvert any fact asserted by the moving party in its statement of material facts (or the moving party fails to controvert any fact asserted by the opposing party in its responsive statement of additional material facts), I may deem such fact admitted in deciding the motion.
  - f. The Division, having moved for summary disposition against a pro se respondent, must serve and file as a separate document, together with its motion and supporting materials, the “Notice to Pro Se Respondent” that is attached as Exhibit A to this order, along with the full text of Rules of Practice 155, 250, and 323.
3. **Exhibits.** The parties should confer and attempt to stipulate to the admissibility of exhibits. To avoid duplication of exhibits, the parties should identify joint exhibits. Exhibits are not filed with the Office of the Secretary until the close of the hearing at my instruction.
  4. **Exhibit lists.** A comprehensive exhibit list prevents a party opponent from being surprised in the middle of the hearing. Exhibit lists shall be exchanged among the parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or which are presumptively inadmissible. Each party should serve its opponent with any amendments to its exhibit list. Because I rely on the parties’ exhibit lists, the parties should provide me with a paper copy of their final exhibit lists at the beginning of the hearing. There is no need to submit exhibit lists to my office before the hearing. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits, admitted and offered but not admitted, together with citations to the record indicating when each exhibit was admitted.

5. **Hearing schedule.** The first day of the proceeding will begin at 9:30 a.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:15 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in the afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour.
6. **Hearing issues – Examination.**
  - a. In general, the Division of Enforcement presents its case first because it has the burden of proof. Respondents then present their case. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.
  - b. If the Division calls a non-party witness that Respondents also wish to call as a witness, Respondents should cross-examine the witness as if they were calling the witness in their own case. This means that Respondents’ cross-examination of the witness in this circumstance may exceed the scope of what was covered by Division’s direct examination of that same witness. This will avoid the need to recall a witness just so the witness can testify for Respondents’ case.
  - c. In general, cross-examination may be conducted by leading questions, even as to Division witnesses that Respondents wish to call in their own case. If a Commission employee is called as a witness for Respondents, the Division may not ask leading questions on cross-examination.
  - d. Avoid leading questions on direct examination. Leading questions during direct examination of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.
7. **Pleadings.** Posthearing briefs are limited to 14,000 words.<sup>6</sup> Parties may seek leave to exceed this limit through a motion filed at least seven days before the relevant briefing deadline. To enhance the readability of pleadings, I urge counsel to limit the use of acronyms to

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<sup>6</sup> *Cf.* 17 C.F.R. § 201.450(c) (imposing a word-limit for briefs filed before the Commission).

those that are widely known.<sup>7</sup> For the same reason, I ask that counsel use the same font size in footnotes as that used in the body of a filing.

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James E. Grimes  
Administrative Law Judge

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<sup>7</sup> See *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1320–21 (D.C. Cir. 2014) (Silberman, J., concurring).

## Exhibit A

### **Notice to Pro Se Respondent**

The Division of Enforcement has moved for summary disposition under Rule of Practice 250. This means that the Division has asked the administrative law judge to decide this proceeding based on written evidentiary materials submitted in support of its motion. **Be aware that if the Division's motion for summary disposition is granted, the proceeding may be decided against you without a hearing, and sanctions may be imposed.**

To oppose the Division's motion, your filing must include sufficient evidence contradicting the material facts asserted by the Division. You may not oppose summary disposition simply by relying on bare allegations or denials.<sup>8</sup> Rather, you must submit evidence—such as declarations, your own affidavit and/or the affidavits of others, prior testimony, documentary evidence, or facts that can be officially noticed under Rule of Practice 323—countering the facts asserted by the Division and raising specific facts that support your contention that this matter requires a hearing.

Failure to respond to the Division's motion may be grounds for a default under Rule of Practice 155.

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<sup>8</sup> See *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at \*7 (Feb. 15, 2017) (“The party opposing summary disposition may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing.” (internal quotation marks omitted)).