

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 10583 / December 10, 2018

SECURITIES EXCHANGE ACT OF 1934

Release No. 84776 / December 10, 2018

INVESTMENT COMPANY ACT OF 1940

Release No. 33319 / December 10, 2018

Admin. Proc. File No. 3-16318

In the Matter of

MICHAEL W. CROW,
ALEXANDRE S. CLUG,
AURUM MINING, LLC,
PANAM TERRA, INC., and
THE CORSAIR GROUP, INC.

SUPPLEMENTAL BRIEFING ORDER

On February 8, 2016, an administrative law judge issued an initial decision in this matter finding that respondents violated the federal securities laws and imposing sanctions.¹ The Commission granted a petition for review filed by one of the respondents, Alexandre Clug, and the cross-petition for review filed by the Division of Enforcement.²

On November 30, 2017, the Commission ratified the appointments of its ALJs, including the ALJ assigned to this case, and remanded this proceeding (among others) in order for the ALJ to conduct a de novo reconsideration and reexamination of the record to determine “whether to ratify or revise in any respect all prior actions taken by” the ALJ.³ As part of the remand, the

¹ *Michael W. Crow*, Initial Decision Release No. 953, 2016 WL 489352 (Feb. 8, 2016).

² *Alexandre S. Clug*, Exchange Act Release No. 77420, 2016 WL 1106868 (Mar. 22, 2016) (granting Clug’s petition for review and scheduling briefs); *Alexandre S. Clug*, Exchange Act Release No. 77766, 2016 WL 2344261 (May 4, 2016) (granting Division’s cross-petition for review and scheduling briefs).

³ *Order*, Exchange Act Release No. 82178, 2017 WL 5969234, at *1-2 (Nov. 30, 2017).

parties were allowed to submit new evidence and briefs.⁴ On April 20, 2018, based upon the new evidence submitted and reconsideration of the record, the ALJ determined to ratify all prior actions he had taken, including the initial decision, except that he modified the disgorgement amount.⁵ Thereafter, Clug and the Division again sought Commission review.

Following the Supreme Court’s decision in *Lucia v. SEC*,⁶ which held that the Commission’s ALJs are inferior officers for purposes of the Appointments Clause of Article II of the Constitution, the Commission remanded this proceeding (among others) to the Office of Administrative Law Judges to provide respondents the “opportunity” for a “new hearing before an ALJ who did not previously participate in the matter.”⁷ The Commission specified that, in any such hearing, the newly assigned ALJ would “exercise the full powers conferred by the Commission’s Rules of Practice and the Administrative Procedure Act” and not “give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued in the matter.”⁸ The Commission also provided parties with the option of submitting an “express agreement . . . regarding alternative procedures” to the Chief ALJ.⁹

On September 11, 2018, Clug and the Division jointly requested that the Commission decide their petitions and cross-petitions for review on the existing record. Their joint agreement states that Clug knowingly and voluntarily “waive[d] any claim or entitlement to . . . a new hearing before another ALJ or the Commission”; “waive[d] any challenge to this administrative proceeding, as well as the Commission’s consideration of the Petitions for Review, and any and all orders . . . issued during or at the conclusion of these proceedings . . . based upon any alleged or actual defect in the appointment of [the] ALJ”; and “elect[ed] to have the Commission decide the issues raised in the” already-filed petitions for review without “taking new evidence.”

Citing the parties’ express “waive[r] [of] their right to a new hearing” and their “request[] that the Commission decide their petitions for review on the present record,” the Chief ALJ determined not to re-assign this proceeding to a new ALJ to hold a new hearing and prepare a new initial decision.¹⁰ Giving effect to the Chief ALJ’s order and the parties’ joint agreement, the petitions and cross-petitions for review are operative as to the February 8, 2016 initial decision, as modified by the April 20, 2018 order concerning ratification. Further, also as

⁴ *Michael W. Crow*, Admin. Proc. Ruling Release No. 5300 (Dec. 6, 2017), *available at* <https://www.sec.gov/alj/aljorders/2017/ap-5300.pdf>.

⁵ *Michael W. Crow*, Admin. Proc. Ruling Release No. 5691 (Apr. 20, 2018), *available at* <https://www.sec.gov/alj/aljorders/2018/ap-5691.pdf>.

⁶ 138 S. Ct. 2044 (2018).

⁷ *Order*, Exchange Act Release No. 83907, 2018 WL 4003609, at *1 (Aug. 22, 2018).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Pending Administrative Proceedings*, Admin. Proc. Ruling Release No. 5955 (Sep. 12, 2018), *available at* <https://www.sec.gov/alj/aljorders/2018/ap-5955.pdf>.

contemplated by the parties, the “Commission’s consideration of [these] Petitions for Review will proceed according to the Commission’s Rules of Practice” in the ordinary course, including a determination of what sanctions, if any, are appropriate pursuant to Rule of Practice 411(d).¹¹

It is ORDERED that the parties may file simultaneous supplemental briefs, not to exceed 6,000 words, addressing any matters that they deem pertinent by January 9, 2019.¹² They may file simultaneous response briefs, not to exceed 3,000 words, by January 23, 2019. It is unnecessary to restate arguments asserted in previous briefing before the Commission.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

¹¹ 17 C.F.R. § 201.411(d).

¹² Attention is called to Rules of Practice 150-153, 17 C.F.R. § 201.150-153, with respect to form and service, and Rule of Practice 450(b), 17 C.F.R. § 201.450(b), with respect to content limitations. Requests for extensions of time to file briefs are disfavored.