

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 2158/December 19, 2014

ADMINISTRATIVE PROCEEDING  
File No. 3-15900

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In the Matter of

JOHN J. BRAVATA,	:	ORDER DENYING
RICHARD J. TRABULSY, and	:	CERTIFICATION FOR
ANTONIO M. BRAVATA	:	INTERLOCUTORY REVIEW

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The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on June 2, 2014, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The proceeding is a follow-on proceeding based on *United States v. Bravata*, No. 2:11-cr-20314 (E.D. Mich. Dec. 11, 2013), in which John J. Bravata (John Bravata) and Antonio M. Bravata (Antonio Bravata) (collectively, Respondents) were convicted of wire fraud and other offenses; and *SEC v. Bravata*, No. 09-cv-12950 (E.D. Mich. May 29, 2014), in which Respondents were enjoined against violations of the antifraud and registration provisions of the securities laws.<sup>1</sup> This Order addresses Respondents Notice of Appeal of an order issued on November 19, 2014. *John J. Bravata*, Admin. Proc. Rulings Release No. 2035, 2014 SEC LEXIS 4398 (A.L.J. Nov. 19, 2014) (November 19 Order).

Following a July 21, 2014, prehearing conference, the Division of Enforcement (Division), in compliance with 17 C.F.R. § 201.230, was to make available its investigative file to each Respondent in a Concordance® format. *John J. Bravata*, Admin. Proc. Rulings Release No. 1636, 2014 SEC LEXIS 2595 (A.L.J. July 21, 2014). The Division was granted leave to file, thereafter, a motion for summary disposition pursuant to 17 C.F.R. § 201.250, due by August 29, 2014, with Respondents' oppositions due by September 26, 2014. *Id.*

The Division timely filed its motion for summary disposition. Respondents made filings dated September 10, October 10, and October 27, 2014, which articulate legal arguments concerning the proceeding against them and also take issue with the Division's compliance with its obligation to make available its investigative file to them.<sup>2</sup> The November 19 Order addressed the Division's compliance with its obligation to make available its investigative file.

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<sup>1</sup> The proceeding has ended as to Richard J. Trabulsy. See *John J. Bravata*, Initial Decision Release No. 641, 2014 SEC LEXIS 2666 (A.L.J. July 24, 2014), *finality order sub nom. Richard J. Trabulsy*, Exchange Act Release No. 73154, 2014 SEC LEXIS 3479 (Sept. 19, 2014).

<sup>2</sup> John Bravata also advised that he has a pending Privacy Act request filed with the Commission pursuant to 5 U.S.C. § 552a(d).

Respondents complained that the Division provided its entire investigative file, constituting “millions of pages,” without identifying specific documents that support various conclusions disputed by Respondents. The November 19 Order pointed out that nothing in 17 C.F.R. § 201.230 requires the Division to prepare a roadmap of the documents or otherwise assist Respondents in opposing the Division’s case.

The November 19 Order also denied Respondents’ request for a subpoena requiring the Division to produce specific pieces of evidence intended to prove that they engaged in specified misconduct and are subject to the jurisdiction of the Commission. However, this is a follow-on proceeding based on *United States v. Bravata* and *SEC v. Bravata*, and the facts underlying those proceedings will not be retried. The Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings.<sup>3</sup> Nor does it permit a respondent to relitigate issues that were addressed in a previous civil proceeding against him, whether resolved by consent, by summary judgment, or after a trial.<sup>4</sup> The Division will not be ordered to go beyond making available its investigative file, in accordance with 17 C.F.R. § 201.230.

Respondents’ Notice of Appeal again challenges the jurisdiction and standing of the Commission in this matter and specifically objects to the denial of their request for a subpoena requiring the Division to produce a specific piece of evidence intended to prove that they engaged in specified misconduct and are subject to the jurisdiction of the Commission. Their filing will be treated as a motion for certification of ruling for interlocutory appeal pursuant to 17 C.F.R. § 201.400(c)(2) (Rule 400(c)(2)).

Rule 400(c)(2) provides, in relevant part:

(c) *Certification Process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer . . . . The hearing officer shall not certify a ruling unless:

...

(2) upon application by a party, within five days of the hearing officer’s ruling, the hearing officer is of the opinion that:

(i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

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<sup>3</sup> See *Ira William Scott*, 1998 SEC LEXIS 1957, at \*8-9 (Sept. 15, 1998); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 SEC LEXIS 193, at \*7-8 (Feb. 12, 1998).

<sup>4</sup> See *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at \*9-11 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *John Francis D’Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at \*1-2 & n.1, \*7 (Jan. 21, 1998) (injunction entered by summary judgment); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at \*11 & nn. 13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. denied*, 285 F. App’x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, 1997 SEC LEXIS 561, at \*5-6 & nn.6-7 (Mar. 12, 1997). See also *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at \*2-10, 22-30 (July 25, 2003).

(ii) an immediate review of the order may materially advance the completion of the proceeding.

Respondents' request for certification must be denied. No ruling in the November 19 Order involves a controlling question of law as to which there is substantial ground for difference of opinion. To the contrary, the issues Respondents raise are baseless. This proceeding was authorized pursuant to Exchange Act Section 15(b) and Advisers Act Section 203(f) based on their convictions and injunctions. *See* Exchange Act Section 15(b)(4)(B), (C) and 15(b)(6)(A) and Advisers Act Section 203(f). The Commission does not permit convictions and injunctions to be collaterally attacked; there is *no* ground for difference of opinion on this. *See nn. 3, 4, supra.* Finally, immediate review of the November 19 Order is more likely to delay than to materially advance the completion of this proceeding.

IT IS SO ORDERED.

/S/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge