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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1195/January 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15574

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| In the Matter of<br><br>HARDING ADVISORY LLC AND<br>WING F. CHAU | ORDER DENYING<br>RESPONDENTS' MOTION FOR<br>ADJOURNMENT |

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on October 18, 2013, pursuant to Section 8A of the Securities Act of 1933, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940. A hearing is scheduled to commence on March 31, 2014.

On December 23, 2013, Respondents filed a Motion for an Order (1) Extending Time and Granting an Adjournment; (2) Providing that Proceedings Will be Governed by Certain Federal Rules of Civil Procedure; and (3) Requiring the Division to Provide or Identify Certain Materials (Motion). They attached three declarations in support of the Motion. The Division of Enforcement (Division) timely filed an opposition (Opposition), to which was attached the Declaration of Daniel R. Walfish (Walfish Decl.) and Exhibits A through F, and Respondents timely filed a reply (Reply), to which were attached eight exhibits.

Respondents seek a six-month adjournment of all prehearing dates and the hearing date, which I have considered in light of the factors recited in Commission Rule of Practice (Rule) 161(b)(1). See 17 C.F.R. § 201.161(b)(1). The OIP was served relatively recently, on November 18, 2013, there have been three extensions granted so far, all relating to the filing of various papers, and we are still at an early stage of the proceedings; these factors weigh generally in favor of an adjournment. However, I find it dispositive that a six-month adjournment will make it impossible for me to complete the proceeding within the time specified by the Commission. See OIP at 14; 17 C.F.R. § 201.360(a)(2). Extending the deadline for my issuance of an initial decision is not a ministerial formality. I must consult with the Chief Administrative Law Judge, and she has the discretion to file a motion for extension with the Commission, which makes the final determination. 17 C.F.R. § 201.360(a)(3). Also, to accommodate Respondents, I have already deviated from my usual practice, by: (1) setting the hearing date more than four months after service of the OIP; (2) requiring the exchange of witness lists more than four weeks in advance of the hearing; and (3) requiring the exchange of exhibits, exhibit lists, and expert

reports more than three weeks in advance of the hearing. See 17 C.F.R. § 201.360(a)(2) (requiring a hearing date "approximately 4 months" after service of the OIP).

I have also considered whether the prejudice to Respondents arising from lack of an adjournment constitutes an exception to the "policy of strongly disfavoring" such adjournments enunciated in Rule 161(b)(1). 17 C.F.R. § 201.161(b)(1). Respondents do not cite to a single case, nor am I aware of any, where a Commission administrative hearing was adjourned for six months or more solely to give Respondents a longer time to review the investigative file. Indeed, the argument that the size of the investigative file renders complete review of it prior to the hearing "not feasible," such that relief is justified, was recently rejected by the Commission. John Thomas Capital Mgmt. Grp. LLC, Advisers Act Release No. 3733, 2013 WL 6384275, at *5 (Dec. 6, 2013).

One basis for the holding in John Thomas was that the Division produced its files in the same form in which it maintained them, or in which they had been produced to the Division. 2013 WL 6384275, at *5. The same is true here, and Respondents apparently do not dispute this. Opposition at 4, 6; Reply. Another basis for the holding in John Thomas was that the Division produced its files entirely in an electronically searchable database, which the Division admits was not the case here. John Thomas, 2013 WL 6384275, at *5 & n.37; Opposition at 7 n.8. But Respondents have not refuted the Division's contention that "most of the core documents in the case are in the comparatively tiny universe of testimony exhibits and other evidence aired in the white paper and Wells processes." Opposition at 13; see Reply. At most, the evidence attached to the Reply shows that there are some potentially core documents that fall outside that universe.

I am sympathetic to Respondents' situation, and there may one day be an administrative proceeding where the difficulties of preparing for hearing within the time specified by Rule 360(a) are found to warrant some of the extraordinary relief Respondents request. But this is not that proceeding. Given the manner in which the Division has produced the investigative files, including files from other investigations, and given the representations the Division has made regarding them, Respondents should be able to meaningfully prioritize their review. For example, if it is true that the investigative file is larger than the entire printed Library of Congress, as Respondents assert, it stands to reason that the Division did not actually review every page in all the investigative files it produced, and/or that there is substantial duplication within and among those files. Motion at 2. This fact alone should permit Respondents to focus their review efforts on a small subset of the investigative files.

Respondents' other requested forms of relief are also generally foreclosed by John Thomas. Respondents argue that certain Federal Rules of Civil Procedure pertaining to discovery and pretrial motions should apply in this proceeding. Motion at 9-11. John Thomas holds that the Federal Rules of Civil Procedure do not apply in administrative hearings. 2013 WL 6382475, at *6 & n.44 (citing Jay Alan Ochanpaugh, Exchange Act Release No. 54363 (Aug. 25, 2006), 88 SEC Docket 2653, 2662 n.24). Respondents argue that the Division should be required to "provide any tags, labels, file folders or other means of keeping materials into which the Division has organized" relevant documents, and that failure to do so is tantamount to concealing material exculpatory evidence. Motion at 11-14 (citing Brady v. Maryland, 373 U.S.

83 (1963), and Rule 230(b)(2)). The provision of such a "roadmap" was rejected in John Thomas. 2013 WL 6382475, at *6.

Inasmuch as the Motion constitutes a request for Brady material under Rule 230(b)(2), the Division represents that a Brady disclosure is "shortly forthcoming." 17 C.F.R. § 201.230(b)(2); Opposition at 10. I therefore deny the request for Brady material but note that the Division has a continuing duty under Rule 230 to produce material exculpatory evidence. See 17 C.F.R. § 201.230(b)(2). Inasmuch as the Motion constitutes a request for Jencks Act material pursuant to Rule 231(a), the Division agrees that it must produce such material "at an appropriate time" but otherwise does not oppose the Motion. 17 C.F.R. § 201.231(a); Opposition at 12. Because it would be impractical at this time for the Division to produce Jencks Act material not already produced without first knowing who its witnesses will be, I deny the request without prejudice.

Respondents request that I certify this Order for interlocutory review. Motion at 15. The request is meritless. The law is crystal clear on the issues presented, and there is no ground at all for difference of opinion on it, much less substantial ground. See 17 C.F.R. § 201.400(c).

Lastly, I have reviewed the Division's Withheld Documents List and find it to be in order. Walfish Decl., Ex. D.

It is HEREBY ORDERED that Respondents' Motion for an Order (1) Extending Time and Granting an Adjournment; (2) Providing that Proceedings Will be Governed by Certain Federal Rules of Civil Procedure; and (3) Requiring the Division to Provide or Identify Certain Materials is DENIED.

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Cameron Elliot
Administrative Law Judge