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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1252/February 19, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15574

In the Matter of HARDING ADVISORY LLC AND WING F. CHAU	ORDER DENYING RESPONDENTS' MOTION FOR RECONSIDERATION

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings 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, and Section 9(b) of the Investment Company Act of 1940. The hearing is scheduled to commence on March 31, 2014, in Washington, D.C.

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 for Adjournment). The Motion for Adjournment sought a six-month adjournment of all prehearing dates and the hearing date, application in this proceeding of certain Federal Rules of Civil Procedure pertaining to discovery and pretrial motions, production of certain materials constituting attorney work product, and production of material pursuant to Commission Rules of Practice (Rules) 230(b)(2) and 231(a) (17 C.F.R. §§ 201.230(b)(2), .231(a)). I denied the Motion for Adjournment, and denied certification for interlocutory review, on January 24, 2014. Harding Advisory LLC, Admin. Proc. Rulings Release No. 1195, 2014 SEC LEXIS 280 (Jan. 24, 2014) (Order Denying Adjournment).

On February 14, 2014, Respondents submitted an Emergency Motion for Reconsideration or to Stay the Hearing and Prehearing Deadlines Pending Appeal to the Commission (Motion). The Motion seeks reconsideration of the Order Denying Adjournment, or, in the alternative, a stay of these proceedings pending interlocutory appeal of the Order Denying Adjournment to the Commission.

Rule 400(d) authorizes a stay pending an interlocutory appeal, but because I have denied certification for interlocutory review, and there is no meritorious basis for interlocutory review, a stay is not warranted. 17 C.F.R. § 201.400(d).

Reconsideration is also not warranted. "Generally, motions for reconsideration are not granted unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." In re BDC 56 LLC, 330 F.3d 111, 123 (2d Cir. 2003) (internal quotation marks omitted), abrogated on other grounds by In re Zarnel, 619 F.3d 156, 166-69 (2d Cir. 2010). "[A] motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Likewise, a party moving for reconsideration may not "advance new facts, issues, or arguments not previously presented to the Court." Polsby v. St. Martin's Press, Inc., No. 97 Civ. 690, 2000 WL 98057, at *1 (S.D.N.Y. Jan. 18, 2000) (internal quotation marks omitted), quoted in Nat'l Union Fire Ins. Co. of Pittsburgh v. Stroh Cos., Inc., 265 F.3d 97, 115 (2d Cir. 2001).

Most of Respondents' arguments pertain to issues they did not present in the Motion for Adjournment, and to that extent, there is nothing for me to "reconsider." Respondents renew their argument that the investigative file is too large, and the deadline under Rule 360(a)(2) too short, to afford them due process. Motion at 11-12. However, because they point to no decisions or data that had been presented and that I overlooked, their argument presents nothing new, and there is no basis for reconsideration of the Order Denying Adjournment. Inasmuch as Respondents do present new facts, issues, or arguments, reconsideration is not appropriate. Additionally, many of Respondents' new arguments pertain to due process and equal protection, issues I doubt I have the authority to adjudicate. See generally David F. Bandimere, Initial Decision Release No. 507, 2013 WL 5553898, at *72-74 (Oct. 8, 2013).

However, in the interest of judicial economy, I will briefly address the merits of these new arguments. Respondents argue that a Commission staff member who participated in the underlying investigation had a conflict of interest, and the investigation was therefore biased. Motion at 8-11. However, in administrative cases, "[d]ue process does not require a neutral prosecutor." Jean-Paul Bolduc, 54 S.E.C. 1195, 1202 (2001). Moreover, the Commission's decision to institute proceedings is "wholly unaffected by any possible bias" on the part of its staff. C.E. Carlson, Inc., 48 S.E.C. 564, 568 (1986), aff'd, 859 F.2d 1429 (10th Cir. 1988); see also Kevin Hall, CPA, Securities Exchange Act of 1934 Release No. 61162 (Dec. 14, 2009), 97 SEC Docket 23679, 23713. Respondents also argue that they have been treated differently from others similarly situated, with no rational basis for the differential treatment. Motion at 2 (citing Village of Willowbrook v. Olech, 528 U.S. 562, 564-66 (2000) (recognizing "class of one" equal protection claims)). But "class of one" claims are unavailable in federal civil enforcement proceedings. See United States v. Am. Elec. Power Serv. Corp., 258 F. Supp. 2d 804, 808 (S.D. Ohio 2003). Thus, Respondents' equal protection and due process arguments are insufficiently meritorious to justify reconsideration of the Order Denying Adjournment.

It is HEREBY ORDERED that Respondents' Emergency Motion for Reconsideration or to Stay the Hearing and Prehearing Deadlines Pending Appeal to the Commission is DENIED.

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Cameron Elliot
Administrative Law Judge