

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2035/November 19, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15900

In the Matter of

JOHN J. BRAVATA, :
RICHARD J. TRABULSY, and : ORDER
ANTONIO M. BRAVATA :

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on June 2, 2014, pursuant to Sections 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and 203(f) of the Investment Advisers Act of 1940. It 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 they were enjoined against violations of the antifraud and registration provisions of the securities laws.¹

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.² *John J. Bravata*, Admin. Proc. Rulings Release No. 1636, 2014 SEC LEXIS 2595 (A.L.J. July 21, 2014). Respondents are currently incarcerated, and it was expected that each would have access to a computer to search the file for the purpose of these legal proceedings. *Id.* 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.³

¹ The proceeding has ended as to the third respondent, 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).

² *See Byron S. Rainer*, Exchange Act Release No. 59040, 2008 SEC LEXIS 2840 (Dec. 2, 2008); *José P. Zollino*, Exchange Act Release No. 51632, 2005 SEC LEXIS 987 (Apr. 29, 2005).

³ 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 do not dispute that the Division sent CDs to them but complain that the Division provided its entire investigative file, constituting “millions of pages,” without identifying specific documents that support various conclusions disputed by Respondents. The Division represented that it would turn over its entire investigative file in a searchable format; nothing in 17 C.F.R. § 201.230 requires it to go beyond that and prepare a roadmap of the documents or otherwise assist Respondents in opposing the Division’s case. It is not clear from John Bravata’s filings to what extent he has reviewed the CD containing his file. Antonio Bravata sent his CD home, based on the understanding that he would not be allowed to view the CD on a laptop at his federal prison camp.

Respondents also request 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.⁴ 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.⁵ The Division was not ordered to, and will not be ordered to, go beyond making available its investigative file, in accordance with 17 C.F.R. § 201.230.

If Respondents wish to make a further report on the status of their review of the investigative file, they may do so by December 1, 2014.⁶ As noted above, Respondents have made various legal arguments to support dismissal of this proceeding. They may file further oppositions to the Division’s motion for summary disposition by December 31, 2014.

IT IS SO ORDERED.

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

⁴ 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).

⁵ 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).

⁶ The Division provided October 1, 2014, emails from John Bravata’s unit manager and Antonio Bravata’s case manager indicating that, as of that date, neither had taken advantage of the available opportunities to view the file. In their October 10, 2014, filing, Respondents state that the emails are not false but do not tell the whole story.