

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 2116/December 10, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16274

In the Matter of

GREGORY VIOLA

:
:

POSTPONEMENT ORDER

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings on November 13, 2014, pursuant to Section 203(f) of the Investment Advisers Act of 1940, and the hearing was scheduled to commence on December 16, 2014. The proceeding is a follow-on proceeding based on *United States v. Viola*, Case No. 3:12-cr-25 (D. Conn), *aff'd*, 555 Fed. Appx. 57 (2d Cir. 2014), *cert. denied*, 190 L. Ed. 2d 389 (2014), in which Respondent Gregory Viola (Viola) was convicted, on his plea of guilty, of mail fraud, in violation of 18 U.S.C. § 1341.

Viola has requested a postponement of the hearing of at least thirty days, noting his incarceration and other difficulties. Accordingly, consistent with 17 C.F.R. § 201.161, the hearing will be postponed *sine die*, and a prehearing conference will be held by telephone at a date to be determined. The Division of Enforcement (Division) will confer with officials at the facility where Viola is held to determine the date[s] when he can be made available for a telephonic prehearing conference and any necessary accommodations. The Division will report on the status of its efforts by December 19, 2014.

Viola also filed a Motion for More Definite Statement, dated December 1, 2014, in essence challenging the finality of his conviction. He states that he has continually challenged his plea of guilty based on ineffective assistance of counsel and collusion of counsel with the government and references a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Section 2255 Motion). However, the pendency of an appeal does not preclude the Commission from action based on an injunction. *See Joseph P. Galluzzi*, Securities Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *11 n.21 (Aug. 23, 2002). If Viola is successful in overturning his conviction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismissing the proceeding, if it is still pending). *See, e.g., Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012).

IT IS SO ORDERED.

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