

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 2150/December 18, 2014

ADMINISTRATIVE PROCEEDING  
File No. 3-15945

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In the Matter of

THOMAS A. NEELY, JR.

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ORDER

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The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on June 25, 2014, pursuant to Sections 8A of the Securities Act of 1933 and 21C of the Securities Exchange Act of 1934. The hearing is scheduled to commence on January 12, 2015, in Birmingham, Alabama.

This order addresses Respondent Thomas A. Neely, Jr.'s (Neely), December 11, 2014, Motion for Extension of Time, the Division of Enforcement's (Division) December 15, 2014, Opposition, and Neely's December 17, 2014, Reply. Neely requests a postponement of the hearing date to at least February 23, 2015, based on difficulties experienced in reviewing the Division's investigative file made available pursuant to 17 C.F.R. § 201.230 and other discovery.

According to Neely and the Division, the Division made its 1.5 million page investigative file available to Neely electronically about one month after the date of the OIP, in July 2014. To review the documents, counsel for Neely supplemented the work of its own attorneys with twelve contract attorneys. Fourteen loan files are relevant to this proceeding, and, on or about October 29, 2014, counsel became aware that one of the fourteen was missing a significant number of pages (400 of 450 pages were blank). Counsel contacted the Division, which determined the file was corrupt and replaced it with a good copy. Thereafter, on November 3, 2014, counsel determined that the remaining thirteen loan files were also corrupt, and the Division sent replacement files (over 6,000 pages), which were delivered on November 4, 2014. Thereafter, the Division reviewed its entire production and identified other images that were or were likely to be corrupt. The Division sent replacement copies to counsel, who received them on November 21, 2014. Thereafter, on November 25, 2014, counsel advised the Division that a password was needed to access the November 21 delivery, and the Division supplied the password within a few minutes. The result of this series of events is that counsel did not have full access to the entire investigative file until November 25, 2014. Neely also points to slower than expected production of material specified in a subpoena directed to Ernst & Young.

An earlier, October 6, 2014, Motion for Extension of Time recounted the efforts that counsel had made after receiving the investigative file on July 25, 2014, including obtaining from the Division an index to link two sets of Bates numbers found on documents as well as negotiating for, obtaining, and training reviewers on a document review platform. That motion also requested an extension until February 23, 2015, of the then-current hearing date of December 8, 2014. That motion was addressed in an October 9, 2014, prehearing conference, and the hearing was postponed to commence on January 12, 2015. *Thomas A. Neely, Jr.*, Admin. Proc. Rulings Release No. 1904, 2014 SEC LEXIS 3812 (A.L.J. Oct. 9, 2014).

Considering the factors enumerated in 17 C.F.R. § 201.161(b)(1), a one-month postponement was previously granted, and, as Neely recognizes, a postponement to February 23, 2015, would impact the ability of the undersigned to complete the proceeding in the time specified by the Commission. Certainly, the Commission has rejected the argument that the size of the investigative file in itself justifies a lengthy postponement of the hearing date. *John Thomas Capital Mgmt. Grp. LLC*, Investment Advisers Act of 1940 Release No. 3733, 2013 SEC LEXIS 3860 (Dec. 6, 2013). *See also Gregory M. Dearlove, CPA*, Admin. Proc. File No. 3-12064, 2006 SEC LEXIS 3191 (Jan. 6, 2006). However, without regard to its size, because the initial production was corrupt, counsel did not actually receive the material to which Neely was entitled under 17 C.F.R. § 201.230 until November 25, 2014 – five months after the OIP.<sup>1</sup> Accordingly, the requested postponement of the commencement of the hearing until February 23, 2015, is warranted. Counsel is advised that, if the hearing is not completed during the week of February 23, it may be not be possible to schedule additional hearing sessions during the following week in light of the current schedule of the undersigned. Counsel may be able to reduce the number of hearing days through stipulations and/or by considering some video hearing sessions.

In light of the above and consistent with 17 C.F.R. § 201.161, IT IS ORDERED that the commencement of the hearing is postponed to February 23, 2015.

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

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<sup>1</sup> *See* 17 C.F.R. § 201.230(d).