

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 2195/January 8, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16165

In the Matter of  
  
DAVID SCOTT CACCHIONE

ORDER ON RESPONDENT'S  
MOTION TO QUASH AND  
MODIFY SUBPOENAS

On January 8, 2015, Respondent moved to quash and modify the Division of Enforcement's Subpoenas Issued to David Scott Cacchione and Montara Capital Management LLC (Motion). A subpoena may be quashed "[i]f compliance with the subpoena would be unreasonable, oppressive or unduly burdensome," or "excessive in scope." 17 C.F.R. § 201.232(b), (e)(2).

As reflected in my order of December 19, 2014, Admin. Proc. Rulings Release No. 2152, 2014 SEC LEXIS 4868 (December 19 Order), the Division of Enforcement (Division) should have the opportunity to discover documents relevant to the allegation that Mr. Cacchione is or is seeking to become associated with an investment adviser and relevant to whether Montara is, or ever was, an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(11).<sup>1</sup> In light of that order, the objections to Cacchione Request 8 and Montara Requests 3, 10, and 13, except as they seek privileged material (which need not be produced), should be able to be resolved through negotiation, in order to ensure that the Division has the ability to obtain documents that may serve as evidence at the hearing. By contrast, while other select requests also relate in part to potentially relevant evidence, their scope may be somewhat excessive. *See e.g.*, Cacchione Requests No. 1 ("All documents relating to Montara or the Fund"); No. 9 ("All telephone records . . . of all telephones or wireless phones maintained by [Respondent]"). Using the December 19 Order as a guide, I am confident that the parties will be able to negotiate a resolution to the objections raised in the Motion that allows the Division reasonable access to potentially relevant evidence, while avoiding any undue burden on Cacchione or Montara.

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<sup>1</sup> With regard to the "the nature and extent of the discussions between counsel," the Division should already possess relevant correspondence with opposing counsel, and this issue must be addressed through testimony in any case. However, to the extent that there are any additional non-privileged documents relating to these discussions in the possession of Respondent and his counsel, they should be produced.

To that end, the parties are ORDERED to hold a prehearing conference pursuant to 17 C.F.R. § 201.221, without the presence of the administrative law judge, no later than January 13, 2015, in order to negotiate, in good faith and consistent with this Order and the December 19 Order, a resolution to each of Respondent's objections. By January 14, 2015, the parties will file a joint statement reflecting the resolution of those objections. Only in the unlikely event that this process is not fully successful in resolving the dispute, the Division may file an opposition to the Motion on January 16, 2015.

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Jason S. Patil  
Administrative Law Judge