

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 2219/January 14, 2015

ADMINISTRATIVE PROCEEDING

File No. 3-15918

In the Matter of

DENNIS J. MALOUF

ORDER ON DIVISION OF  
ENFORCEMENT'S  
MOTION TO STRIKE

On January 13, 2015, the Division of Enforcement filed a motion (Motion) to strike Respondent's proposed findings of fact and conclusions of law, and an affidavit concerning his inability to pay disgorgement or penalties. The Division communicated to this office today that the parties have reached an agreement to allow Respondent to supplement his proposed findings of facts and conclusions of law with necessary citations and quotations. The Division has agreed to withdraw its Motion as it pertains to striking Respondent's proposed findings of fact and conclusions of law, but not as it pertains to Respondent's affidavit concerning his inability to pay disgorgement or penalties.

I interpret the affidavit attached to Respondent's post-hearing brief as a motion to consider his alleged inability to pay disgorgement or penalties, pursuant to 17 C.F.R. § 201.630(a), in the event they are ordered. Although Respondent's motion was filed late in the proceeding, I will consider it along with the affidavit that appears to comport with the requirements in 17 C.F.R. § 201.630(b) and closely tracks the model Form D-A, prescribed by 17 C.F.R. § 209.1. I will not reach a conclusion that Respondent is unable to pay, however, without first giving the Division the opportunity to discover and examine, and argue as to, the relevant evidence. Thus, if Respondent wants me to decide the issue of his alleged inability to pay on the merits, then by January 16, 2015, Respondent must file a notice reflecting his willingness to accept service of a subpoena to produce documents from the Division for documents relating to this issue. By January 21, 2015, the Division shall submit to me any subpoena requests on this topic. The parties may also request subpoenas to produce documents to third parties on this issue up until February 6, 2015. On February 27, 2015, the parties should file briefs of up to ten pages in length, supported by attached evidence (not subject to the ten-

page limit), which set forth their respective positions on Respondent's inability to pay any potential disgorgement, interest, or penalties that might be ordered.<sup>1</sup>

SO ORDERED.

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Jason S. Patil  
Administrative Law Judge

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<sup>1</sup> While I do not anticipate that testimony may be necessary to decide this issue, in the event that either party has a good faith belief that testimony is required, they should make that request, by motion, as soon as possible. Any testimony would be taken in a mutually agreeable fashion to minimize the burden on the parties.