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

ADMINISTRATIVE PROCEEDINGS RULINGS Release No. 5038/September 8, 2017

ADMINISTRATIVE PROCEEDING File No. 3-17828

In the Matter of	:	
ROSALIND HERMAN	:	ORDER

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on February 7, 2017, pursuant to Section 203(f) of the Investment Advisers Act of 1940. The proceeding is a follow-on proceeding based on *United States v. Herman*, No. 1:12-cr-10015, ECF Nos. 299-300 (D. Mass. Aug. 1, 2016), *aff'd*, 848 F.3d 55 (1st Cir. 2017), *cert. denied*, 137 S. Ct. 1603 (2017), in which Respondent Rosalind Herman was convicted of securities and wire fraud and other crimes.

The Division of Enforcement filed a motion for summary disposition pursuant to 17 C.F.R. § 201.250 on July 20, 2017. Previously, the due date for Respondent Herman's opposition was set at August 25, 2017. *Rosalind Herman*, Admin. Proc. Rulings Release No. 4900, 2017 SEC LEXIS 1984 (A.L.J. June 29, 2017). Under consideration is her motion for extension of time, dated August 8, 2017, and the Division's August 15, 2017, response.

Respondent Herman who is incarcerated, cites logistical difficulties, such as delay in receiving mail, including the Division's investigative file that it is required to make available pursuant to 17 C.F.R. § 201.230, in compliance with the Commission's rulings in *Byron S. Rainner*, Securities Exchange Act of 1934 Release No. 59040, 2008 SEC LEXIS 2840, at *4-7 (Dec. 2, 2008), and *José P. Zollino*, Exchange Act Release No. 51632, 2005 SEC LEXIS 987, at *7-10 (Apr. 29, 2005). She also states that she needs time to subpoena documents, including for 28 U.S.C. §§ 2241, 2255 (habeas corpus) motions. Additionally, she requests various additional documents that she states were not included in the Division's production. The Division does not oppose a limited extension of time but states that it has provided all the documents that are in its investigative file. In light of the logistical difficulties, and consistent with 17 C.F.R. § 201.161, the due date for Respondent Herman's opposition is postponed until October 13, 2017. The Division's time for reply is extended to November 3, 2017. The Division is not required to obtain and produce to her documents beyond those that are actually in its investigative file.

The pendency of any habeas corpus motions does not warrant additional delay or action by the undersigned. It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. *See Ira William Scott*, Advisers Act Release No. 1752, 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). Nor does the pendency of an appeal preclude the Commission from action based on a conviction. *See Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 n.17 (Sept. 17, 1992). If Respondent Herman is successful in overturning her conviction, she can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).¹

IT IS SO ORDERED.

<u>/S/ Carol Fox Foelak</u> Carol Fox Foelak Administrative Law Judge

¹ See Jilaine H. Bauer, Esq., Securities Act of 1933 Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded district court's judgment that was basis for OIP); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for OIP); *Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded other convictions, all of which were basis for OIP); *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012) (vacating bar issued in follow-on administrative proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).