

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

Administrative Proceedings Rulings
Release No. 5744 / May 21, 2018

Administrative Proceeding
File No. 3-18404

In the Matter of
David Gray

**Order Following
Prehearing Conference**

Respondent and counsel for the Division of Enforcement appeared telephonically at a prehearing conference held on May 18, 2018. During the conference, it was established that Respondent was served with the order instituting this proceeding (OIP) on April 3, 2018. Respondent is incarcerated and recently has been transferred to and from multiple facilities, preventing him from filing an answer. The Division did not object to extending the deadline for Respondent's answer to June 1, 2018. Respondent's movements have also prevented the Division from making its investigative file available to Respondent, as required by Commission Rule of Practice 230, 17 C.F.R. § 201.230, but the Division stated that it will work with Respondent to do so.

In addition, we discussed what appears to be a meaningful typographical or drafting error in the second sentence of paragraph II.A.1. of the OIP. I directed the Division of Enforcement to file a brief on this issue by June 1, 2018. Respondent may submit a response to the Division's brief by June 15, 2018.

Finally, I set a briefing schedule for the Division's dispositive motion. The Division's motion is due June 22, 2018. Respondent's opposition to the Division's motion is due July 13, 2018, and the Division's reply is due July 23, 2018. The motion should include legal analysis and evidentiary support for the allegations and requested sanction in accordance with *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012), and *Ross Mandell*, Securities Exchange Act of 1934 Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016). If Respondent wishes to file a dispositive motion, it will follow the same schedule.

In addition to complying with the rules regarding service contained in the Commission's Rules of Practice, courtesy copies of any filings by the Division should be e-mailed to my office at alj@sec.gov, in PDF text-searchable format if possible. Exhibits should be e-mailed as separate attachments, not as a combined PDF file, and accompanied by a declaration of counsel.

James E. Grimes
Administrative Law Judge