

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

Administrative Proceedings Rulings
Release No. 6802 / December 7, 2020

Administrative Proceeding
File Nos. 3-20021 and 3-20022

In the Matter of the Registration
Statements of

**Crest Radius, Inc., and
Loyal Source Market Services, Inc.**

**Order Regarding
Epstein Declarations**

On November 30, 2020, the Division of Enforcement filed a motion for default and sanctions. In that motion, the Division noted confusion regarding whether, during the hearing, I had admitted the two declarations of Jonathan A. Epstein regarding each Respondent.¹ The Division also submitted two supplemental declarations that are substantially the same as the previously submitted declarations except that they exclude references to prior statements by the two individual witnesses who testified at the hearing. The Division moved to admit these supplemental declarations under the exception in Rule of Practice 235(a)(5) to the general prohibition against the admission of prior sworn statements.²

To clarify the record, I exercise my discretion under Rule 235(a)(5) to ADMIT all four declarations:

Crest Radius Ex. 36 Declaration of Jonathan A. Epstein, *Crest Radius*
(Nov. 13, 2020)

Crest Radius Ex. 37 Supplemental Declaration of Jonathan A. Epstein,
Crest Radius (Nov. 30, 2020)

Loyal Source Ex. 35 Declaration of Jonathan A. Epstein, *Loyal Source*
(Nov. 13, 2020)

¹ See Tr. 28.

² See 17 C.F.R. § 201.235(a)(5).

Loyal Source Ex. 36 Supplemental Declaration of Jonathan A. Epstein,
Loyal Source (Nov. 30, 2020)

Although there is a “presumption that witnesses will testify orally in an open hearing,” I conclude that it is “in the interests of justice” to admit these prior sworn statements.³ Respondents failed to appear at the hearing, so there could not have been adversarial testing of the declarant. If Respondents appear and participate in this proceeding before I issue an initial decision, the hearing can be continued to provide them with the opportunity for live testimony and cross-examination.

James E. Grimes
Administrative Law Judge

Served by email on the Division of Enforcement.

³ *Id.*; cf. *Rolls-Royce PLC v. Rolls-Royce USA, Inc.*, 688 F. Supp. 2d 150, 155–56 (E.D.N.Y. 2010) (applying Second Circuit precedent on Fed. R. Civ. P. 55(b)(2) that “[h]aving provided notice to the defaulting defendant, the court is able to receive affidavits in lieu of holding an evidentiary hearing on damages”).