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

Administrative Proceedings Rulings
Release No. 6921 / January 30, 2025

Administrative Proceeding
File No. 3-20828

In the Matter of

Gregory Lemelson[1]

Order on Subpoena Request

The Division of Enforcement seeks the issuance of a subpoena directing Respondent Lemelson to produce 18 categories of documents and other electronic data. Respondent moves to quash the subpoena, and the Division opposes the motion.

The rules instruct the hearing officer to refuse to issue a subpoena that would be "unreasonable, oppressive, excessive in scope, or unduly burdensome." 17 C.F.R. § 201.232(b). The standard governing a motion to quash is similar but also includes consideration of whether the subpoena "would unduly delay the hearing." *Id.* § 201.232(e)(2). Furthermore, the hearing officer may determine to issue a subpoena "only upon such conditions as fairness requires," may ask whether the parties would stipulate to certain facts, *id.* § 201.232(b), or may order a response to the subpoena "only upon specified conditions," *id.* § 201.232(e)(2).

Constitutional Challenges

Respondent asserts that the provisions of the Securities Exchange Act of 1934 and SEC Rules of Practice regarding subpoenas, 15 U.S.C. § 78u and 17 C.F.R. § 201.232, are unconstitutional. In support of this argument, Respondent cites *City of Los Angeles v. Patel*, 576 U.S. 409 (2015). In that case, the Supreme Court held that a city ordinance requiring hotel operators to provide the police with a list of guests upon request was facially unconstitutional because it did not provide an opportunity for precompliance

[1] Respondent goes by his ecclesiastical name, Father Emmanuel Lemelson.

review. Unlike that ordinance, Rule 232 provides for precompliance review, a process that Respondent has availed himself of here.

The Court in *Patel* explained that administrative review of a subpoena before it is issued by a "neutral decisionmaker, including an administrative law judge," is "one way in which an opportunity for precompliance review can be made available." *Patel*, 576 U.S. at 422–23. The Court then noted the prevalence of administrative subpoena authorities and cited a Department of Justice Report that included the SEC's authority under 15 U.S.C. § 78u. *Id.* Because the administrative subpoena process in this proceeding provides for precompliance review, there is no constitutional infirmity under *Patel*.[2]

Reasonableness of the Subpoena

Respondent argues the Division is seeking more discovery to be vindictive, wants to "slow-walk" an already long and abusive investigation, and is on a "fishing expedition" for new violations. Mot. at 6. For these reasons, Respondent contends the requests in the subpoena are unreasonable, oppressive, excessive in scope, and unduly burdensome. The Division, on the other hand, asserts that it seeks a wide variety of documents and data relevant to the public interest factors that must be considered in this proceeding. The reasonableness of these requests must be judged by comparing the probative value against the burden of compliance. *See Dow Chem. Co. v. Allen*, 672 F.2d 1262, 1270 (7th Cir. 1982). This analysis is informed by the nature of this

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[2] If Respondent's argument is that this subpoena would violate the Fourth Amendment as applied, that argument would be tied to the subpoena's scope and relevance and whether compliance would be unreasonably burdensome. *See SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978) ("[T]he Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." (quoting *See v. City of Seattle*, 387 U.S. 541, 544 (1967))); *see also United States v. Wilson*, 98 F.4th 1204, 1221 (10th Cir. 2024) ("[A]n investigatory or administrative subpoena is not subject to the same probable cause requirements as a search warrant. Rather, administrative subpoenas will generally be enforced if the inquiry is within the statutory authority of the agency, and if the subpoena is sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." (cleaned up)). Here, Rule 232, which requires that a subpoena not be "unreasonable, oppressive, excessive in scope, or unduly burdensome," provides a standard consistent with constitutional requirements. 17 C.F.R. § 201.232(b), (e)(2).

follow-on proceeding, which is based on the injunction issued in *SEC v. Lemelson*.

The purpose of this follow-on proceeding is to determine what, if any, remedial sanction under Section 203(f) of the Investment Advisers Act of 1940 is warranted based on the injunction imposed in *SEC v. Lemelson*, 18-cv-11926 (D. Mass. Mar. 30, 2022). Section 203(f) provides that the Commission may censure, limit the activities of, suspend, or bar a person from the securities industry if (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) a sanction is in the public interest. 15 U.S.C. § 80b-3(e)(4), (f). In determining the public interest, the Commission considers the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

In the predicate injunction case, the parties engaged in extensive pretrial discovery, conducted a nine-day jury trial, and received a mixed jury verdict finding Respondent liable for some statements and not liable for others. The evidence needed to determine the first two elements of the Section 203(f) claim and several aspects of the public interest analysis is therefore already in the Division's possession.

Because of this background and the extensive evidence already available, the scope and burden of some of the Division's requests outweighs their probative value. For example, the Division's request for *all* communications between Respondent and *any* investor or prospective investor over the past five years is excessive. But Respondent's assertion that all the Division's requests are "entirely irrelevant" is not correct either. Mot. at 3. The Commission may consider conduct post-dating the order instituting proceedings in assessing sanctions in follow-on proceedings. *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *5 & n.39 (July 26, 2013); *see Robert Bruce Lohmann,* Exchange Act Release No. 48092, 2003 WL 21468604, at *5 & n.20 (June 26, 2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions"). In this proceeding, Respondent's post-injunction conduct is relevant to several of the public interest factors, including the sincerity of assurances against future misconduct, the recognition of misconduct, and opportunities for future violations. For that reason, I will approve the following limited categories of document requests:

1. A list of names and contact information for Respondent's present investor clients and former investors who had been clients at some point from January 2020 to present.

2. All communications concerning any complaints by investors and prospective investors in any funds managed by Respondent from January 2020 to present.

3. All communications from Respondent to investor clients or the public concerning *SEC v. Lemelson* from January 2020 to present.

4. A list of any litigation, arbitration, enforcement action by any state, federal, international or securities regulator, criminal authority, or self-regulatory agency, or other proceeding to which Respondent was a party from January 2020 to the present and all documents filed and served by Respondent in those proceedings, and the transcripts of Respondent's testimony in them. And, for the FINRA arbitration proceeding titled *The Amvona Fund, LP v. Clear Street, LLC*, No. 20-01555, Clear Street's exhibits 128, 130, 132, 134, 135, 136, 137, 138, and 139.

The Division's other requests are denied without prejudice. The Division may submit a new subpoena request conforming to the above four categories. Additionally, the parties should confer about stipulating to the names of the funds Respondent manages, the number of clients, and amount of assets under management. This would obviate the need for additional discovery on these issues.

The Commission Rejected the Request for a Stay or Postponement

Respondent argues that any discovery in this proceeding should wait until the district court in the collateral action *Lemelson v. SEC*, No. 24-cv-2415 (D.D.C.), rules on Respondent's motion to enjoin this administrative proceeding. But the Commission previously rejected Respondent's request to stay or postpone this proceeding due to that district court case. Order Denying Motion for Stay of Proceedings, at 2, Investment Advisers Act of 1940 Release No. 6775 (Oct. 23, 2024), https://www.sec.gov/files/litigation/opinions/2024/ia-6755.pdf. Unless the Commission orders otherwise or further developments in the district court case require it, a postponement or stay is not available on this basis.

Order

Respondent's motion is granted in part and denied in part. The Division may submit a new subpoena request for the four categories of documents

outlined above. The parties should confer regarding a joint stipulation about the names of the funds Respondent manages and the number of clients and assets under management for each fund.

/s/ Jason S. Patil
Administrative Law Judge