

disposition on those issues to which there is “no genuine issue with regard to any material fact.” 17 C.F.R. §201.250(a). Notably, the Division’s reliance on *SEC Release No. 35833* for the proposition that the proper summary disposition circumstances are “comparatively rare” is in the context of a bona fide dispute as to material facts and based on the generality that “typically, enforcement and disciplinary proceedings that reach litigation involve genuine disagreement between the parties as to material facts.” *SEC Release 35833*, 59 SEC Docket 1170, 1995 WL 368865, *66 (Jun. 9, 1995). Here, for all of reasons stated in Mr. Hopkins’ Memorandum in Support of Motion for Summary Judgment, the crux of the issues in this case are clear questions of law, including the direct application of the recent precedent setting case of *Securities and Exchange Commission v. Tambone*, 597 F. 3d 436 (1st Cir. 2010). Even assuming, *arguendo*, the Division actually could prove each of the allegations set forth in the Order Instituting Proceeding (“OIP”), *Tambone* holds that Mr. Hopkins cannot be liable under Section 10(b) and Section 17(a) because he did not “make a statement” or “obtain money or property.” Where, as here, the dispositive issue is the straightforward application of controlling law, and not the resolution of a factual dispute, summary disposition is both appropriate and warranted.

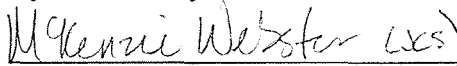
Moreover, while the Division attempts to characterize the granting of such leave as “comparatively rare,” a Westlaw search yielded over 100 opinions in which leave to file was granted and only 3 releases in which leave was denied. Clearly, leave to file a motion for summary disposition is not rare. Indeed, summary disposition is appropriate and warranted in the instant case because the Division’s OIP is devoid of evidentiary allegations that Mr. Hopkins did in fact “make a statement” or “obtain money or property” under controlling First Circuit law. Mr. Hopkins should not be forced to incur time and expense preparing for and defending against

claims that are legally without merit. To the contrary, the efficacy-focused goals of Rule 250 are best served by having this Court to address the serious deficiencies in the Division's case now.

Respectfully Submitted,

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