UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	)	
	)	ADMINISTRATIVE PROCEEDING
JOHN P. FLANNERY, and	)	FILE NO. 3-14081
JAMES D. HOPKINS	)	
	)	

JOHN PATRICK ("SEAN") FLANNERY'S REPLY TO DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' MOTIONS FOR LEAVE TO FILE MOTIONS FOR SUMMARY DISPOSITION

Mr. Flannery hereby responds to the Division of Enforcement's (the "Division") Opposition to John Patrick ("Sean") Flannery's Motion for Leave to File a Motion for Summary Disposition. The Division's opposition to Mr. Flannery's Motion is premised on the bald assertion that there is a dispute as to "numerous material facts." The Division, however, does not identify any of those disputed facts. Contrary to the Division's conclusory assertions, Mr. Flannery has provided good cause for his Motion for Summary Disposition to be considered now.

The Division's charges against Mr. Flannery are based entirely on two letters sent by State Street Global Advisors ("SSgA") to clients on August 2nd and August 14th, 2007. As to the August 2nd letter, for which the Division has charged Mr. Flannery as a primary violator under § 17(a)(1) of the Securities Act and § 10(b) of the Exchange Act (along with Rule 10b-5), the undisputed facts in the Division's record show that (a) Mr. Flannery did not ask that the letter be written, draft the letter, or sign the letter; (b) Mr. Flannery was one of eight people within SSgA, including SSgA's General Counsel, copied on an early draft of the letter and asked for comment; (c) Mr. Flannery provided what he called "suggested edits" to that early draft; (d)

those "suggested edits" marked the only time he ever commented on the letter; (e) the one paragraph (of a nine paragraph letter) that the Division has alleged is misleading included ***only five words from Mr. Flannery's suggested edits***; and (f) those words ("Additionally" "prompting us to" and "some") are not substantive. Under these undisputed facts, Mr. Flannery is entitled to summary disposition as a matter of law. See SEC v. Tambone, 597 F. 3d 436 (1st Cir. 2010) (en banc); Wright v. Ernst & Young, LLP, 152 F. 3d 169 (2nd Cir. 1998); and SEC v. Wolfson, 539 F. 3d 1249 (10th Cir. 2008).

As to the August 14th letter, for which the Division has charged Mr. Flannery with violating §§ 17(a)(2) and (3) of the Securities Act, the Division has alleged that a single clause in one sentence of that letter was misleading. The Division also alleges in the Order Instituting Proceeding ("OIP"), however, that the clause was inserted by SSgA's Deputy General Counsel. Indeed, the letter was fully vetted, reviewed, and edited by the Deputy General Counsel so many times that he eventually wrote to Mr. Flannery, **"How many times do we have to sign off?"** See Exhibit 54 to the Affidavit of Peter M. Acton, Jr. in Support of Summary Disposition (emphasis added). That letter was also reviewed and edited by SSgA's General Counsel, its outside counsel (viewed by SSgA as a securities law expert), and all of the senior leadership in SSgA's client relations department (the department charged with responsibility for client communications)—all of whom were aware of the same relevant facts as Mr. Flannery. With the letter reviewed and approved by the SSgA personnel responsible for communicating with clients and SSgA counsel, Mr. Flannery did not act negligently.

The Division's Opposition also fails to address at all the fact that its OIP does not even allege that Mr. Flannery's conduct was in connection with an offer or sale of securities as required by § 17(a), or that he obtained money or property from the letters as is required under §

17(a)(2). See Flannery Mem. in Support of Motion for Summary Disposition at 25-26, 28. Mr. Flannery is entitled to summary disposition on those bases alone; at a minimum, he is entitled to have his Motion for Summary Disposition be considered.

The financial, professional, and personal burdens and costs imposed on an individual charged in an administrative action are significant. Rule 250 of the Commission's Rules of Practice provides a vehicle for summary disposition of those charges if there is no genuine issue of material fact and the party making the motion is entitled to summary disposition as a matter of law. Mr. Flannery should not be required to endure a burdensome administrative hearing when the undisputed facts in the Division's own investigative record show that he is entitled to disposition in his favor as a matter of law.[1]

The Division's argument that Mr. Flannery's Motion for Summary Disposition "will not serve the efficiency focused goal of Rule 250 because an unnecessary hearing would not be eliminated, and to the contrary, a significant pretrial cost would be imposed – particularly considering the voluminous materials on which the Respondents purport to rely" is nonsensical as to Mr. Flannery. See Division's Opp. at 3. In fact, Mr. Flannery Motion seeks to dispose of all charges as to him and eliminate an unnecessary hearing. Moreover, the burden complained of by the Division in having to answer Mr. Flannery's Motion for Summary Disposition pales in comparison to the expense, burden, and toll imposed on Mr. Flannery and his family if an unnecessary hearing proceeds. Mr. Flannery, a married father of three, with an unblemished, remarkable 30-plus year career in the financial services industry – and who did not personally

[1] The Division's argument that Mr. Flannery has confused Rule 250 with a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure is baseless. Rule 250 permits a motion for summary disposition after a respondent has filed an answer and documents have been made available for inspection. As Mr. Hopkins pointed out in his Reply, Judges often grant leave to file summary disposition. See Hopkins Reply at 2.

profit or stand to from the conduct alleged by the Division – should be entitled to have his Motion for Summary Disposition considered before an unnecessary and unwarranted administrative trial proceeds.

Dated: January 3, 2011

Respectfully Submitted,

Mark W. Pearlstein pp/ permission

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