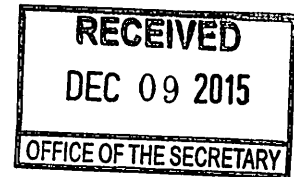


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**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING  
File No. 3-15842**

**In the Matter of  
JACOB KEITH COOPER**

**Division of Enforcement's Brief Addressing Whether Cooper's Appeal  
Should Be Dismissed As Untimely**

Pursuant to the Commission's November 20, 2015 Order, the Division of Enforcement submits this brief addressing whether Jacob Keith Cooper's "appeal should be dismissed as untimely pursuant to Commission Rule of Practice 410(b)." *Jacob Keith Cooper*, Securities Act Release No. 9979, at 2 (Nov. 20, 2015). Rule 410(b) provides that "[t]he petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to Rule 360(b) unless a party has filed a motion to correct an initial decision with the hearing officer." Rule 360(b) in turn states that "[t]he initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed." The initial decision in this case gave Mr. Cooper 21 days after service to file a petition for review. *See Total Wealth Management, Inc., et al.*, Initial Decision Release No. 860, at 47 (Aug. 17, 2015). Mr. Cooper was served with that initial decision on August 18, 2015.

Because Mr. Cooper did not file a motion to correct an initial decision, he had until September 8, 2015 to file his petition—21 days after service of the initial decision. Mr. Cooper

did not file a petition for review by that date. Nor did he seek to extend the 21-day deadline under Rule 360(b). The Commission thus issued a finality notice on October 13, 2015 because “[n]o such petition has been filed by Jacob Keith Cooper and the Commission has not chosen to review the decision on its own initiative.” *Jacob Keith Cooper*, Securities Act Release No. 9962, at 1 (Oct. 13, 2015). Mr. Cooper nonetheless filed a petition for review on November 17, 2015, over two months after the deadline. Because the Commission’s “Rules of Practice do not provide for late appeals,” Mr. Cooper’s appeal is not timely and can be dismissed. *See Walter V. Gerasimowicz*, Securities Act Release No. 9583, 2014 WL 1826641, at \*2 (May 8, 2014).


Cooper has not argued, as an excuse for his late filing, that he did not receive notice of the initial decision when it was issued. According to records kept by the Office of the Secretary, copies of the initial decision were sent to Cooper at his home address and business address and his attorney of record via U.S. Postal Service Certified Mail on August 18, 2015. It does not appear that either Cooper or his attorney accepted delivery of the copies. Although Rule of

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Practice 150(d) provides that “[s]ervice by mail is complete upon mailing,” the Division recognizes that the Commission has the discretion to deem Cooper’s petition timely if he can demonstrate good cause that would excuse his untimely filing. *See* Rule of Practice 161(a).

Dated: December 8, 2015

Respectfully submitted,

  
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Service List

The attached DIVISION OF ENFORCEMENT'S BRIEF ADDRESSING WHETHER COOPER'S APPEAL SHOULD BE DISMISSED AS UNTIMELY has been sent to the following parties and other persons entitled to notice,

**BY FACSIMILE TO (703) 813-9793 AND UPS OVERNIGHT:**

Office of the Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Mail Stop 1090  
Washington, DC 20549-1090;

**BY EMAIL TO ALJ@SEC.GOV AND UPS OVERNIGHT:**

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Mail Stop 2557  
Washington, DC 20549-2557;

**BY US FIRST CLASS MAIL AND UPS OVERNIGHT:**

Vincent J. Brown, Esq.  
8685 Rio San Diego Drive  
Suite 4130  
San Diego, CA 92108  
(Attorney of record for Respondent Jacob Keith Cooper); and,

Mr. Jacob Keith Cooper  
[REDACTED]  
Washington, UT [REDACTED]  
(*Pro Se* Respondent).

Dated: December 8, 2015

  
Matthew A. Himes