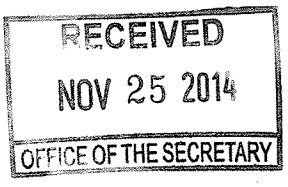
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-16184



In the Matter of JORDAN PEIXOTO, Respondent.	:

DIVISION OF ENFORCEMENT OPPOSITION TO RESPONDENT JORDAN PEIXOTO'S MOTION TO STAY

Pursuant to SEC Rule of Practice 401(a) and 154, the SEC Division of Enforcement (the "Division") respectfully submits this opposition to the motion of respondent Jordan Peixoto ("Peixoto"), in which Peixoto requests that the Securities and Exchange Commission ("Commission") stay this proceeding pending resolution of the pending Second Circuit appeals in United States v. Newman, No. 13-1837 and United States v. Chiasson, No. 13-1917.

PRELIMINARY STATEMENT

The Commission should deny Peixoto's motion because the requested stay would serve no useful purpose, as resolution of the pending Second Circuit appeals is unlikely to affect the conduct or outcome of this case. The issue before the Second Circuit is whether the Government must prove that a downstream "remote tippee" – i.e., a person several times removed from the original tipper -- was *aware* that the tipper received a benefit by disclosing confidential information. In such "remote tippee" cases, requiring

the Government to prove this knowledge element can be critical, because it may be difficult (or impossible) for the Government to prove that the remote tippee knew the identity of the original tipper, much less that the remote tippee knew of a benefit to the tipper. In the Division's case against Peixoto, however, no such issue exists, because Peixoto is not a "remote tippee." To the contrary, Peixoto received his confidential information directly from the tipper, his good friend Filip Szymik. Furthermore, the benefit that Szymik received by tipping Peixoto arose directly from his relationship with Peixoto. Thus, Peixoto knew both the identity of the tipper and the benefit the tipper received. Indeed, at trial, the evidence of Szymik's benefit will be the same as the evidence that Peixoto was aware of that benefit. Thus, even if (as Peixoto hopes) the Government loses the pending Second Circuit appeals -- and if the Division must therefore prove that Peixoto was aware of Szymik's benefit -- any such holding should not affect the outcome or conduct of this case, and staying this case would serve no useful purpose.

Furthermore, the other SEC cases that Peixoto cites -- in which the Commission did *not* object to a stay pending resolution of the Chaisson/Newman appeals – are easily distinguished from this case. Unlike this case, those SEC cases are very closely related to the Chiasson/Newman appeals – i.e., they arise from the same facts and involve the same witnesses and parties at issue in those appeals. Thus, the Chiasson/Newman appeals are likely to affect directly the outcomes of those SEC cases, and staying them pending resolution the appeals is efficient and sensible. Staying this case, by contrast, will serve no useful purpose because this case bears no relationship to the Chiasson/Newman appeals and, thus, the outcome of those appeals should not affect the outcome of this case.

Finally, contrary to Peixoto's assertion, it is impossible to predict when the Second Circuit will issue its decision regarding the pending *Chiasson/Newman* appeals. Nor is it possible to know whether additional litigation will ensue after that decision, and final resolution of the issues Peixoto raises could take many months. The Division should not be required to wait indefinitely to pursue its case against Peixoto, particularly where the outcome of pending Second Circuit appeals is unlikely to affect the conduct or outcome of this litigation.

ARGUMENT

The Division alleges that Szymik unlawfully communicated confidential information directly to respondent Peixoto regarding an upcoming Pershing Square Herbalife presentation, and that Peixoto then traded Herbalife securities while knowingly or recklessly in possession of that confidential information. The Division further alleges that, by thus "tipping" Peixoto, Szymik breached his duty of trust and confidence to his friend and roommate, Mariusz Adamski -- the Pershing Square analyst from whom Szymik learned the confidential information. The Division also alleges that Szymik received a "benefit" by tipping Peixoto. Peixoto argues that, in addition, the Division must establish that Peixoto *knew* of the benefit that Szymik received. The Division disagrees. However, the parties' disagreement on this issue is academic, because Peixoto was a direct tippee of Szymik and, thus, must have been aware of the benefit that Szymik received.[1]

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[1] The Division asserts a "misappropriation" insider trading claim against respondent Peixoto -- as opposed to the "classical" insider trading claims at issue in the Chiasson/Newman appeals. This brief does not address whether, in a tippee "misappropriation" case such as this one, the Division is even required to prove that the tipper received a benefit. The Division reserves the right to argue at trial in this case that it need not prove that Szymik received a benefit. *See SEC v. Obus*, 693 F.3d 276, 289 (2d Cir. 2012) (Second Circuit summarized misappropriation "tippee liability" elements

Szymik benefitted in at least two ways from tipping Peixoto -- and the evidence that establishes those benefits also will establish that Peixoto knew of those benefits (or recklessly disregarded them). First, Peixoto and Szymik were close friends, and Szymik's disclosures to Peixoto helped maintain or further his friendship with Peixoto. *See Obus,* 693 F.3d, at 285 ("Personal benefit to the tipper is broadly defined: it includes not only 'pecuniary gain,' such as a cut of the take or a gratuity from the tippee, but also a 'reputational benefit' or the benefit one would obtain from simply 'mak[ing] a gift of confidential information to a trading relative or friend.'"). The evidence will establish that Szymik provided Peixoto confidential information regarding the Herbalife presentation on more than one occasion – including after Peixoto repeatedly urged Szymik to obtain additional such information from his roommate. Peixoto surely understood that Szymik's helping Peixoto in this regard benefitted their mutual friendship.

Second, Szymik also benefitted from Peixoto's assistance with Szymik's own plans to trade Herbalife securities. When he gave Peixoto the confidential information, Szymik was also considering trading Herbalife options, alongside Peixoto, and the two discussed trading Herbalife securities prior to the Pershing Square presentation. Indeed, as noted above, Peixoto repeatedly pushed Szymik to obtain additional information from his roommate to pursue their trading strategy. Thus, in sharing the confidential information, Szymik also received assistance from Peixoto with Szymik's own trading plans, a benefit that Peixoto likewise must have understood.[2]

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without including tipper benefit); *Unites States v. Whitman*, 904 F.Supp.2d . 363, 370-71 n.6 (S.D.N.Y. 2012) (noting that *Obus* is "somewhat Delphic on this score").

[2] Szymik did not ultimately trade Herbalife securities.

Furthermore, because the evidence of Szymik's tipping benefits is essentially the same as the evidence of Peixoto's knowledge of those benefits, the outcome of the Second Circuit appeals should not affect the parties' trial preparation and presentation. Litigants typically must prepare for trial without perfect certainty regarding applicable law and, thus, must prepare for such contingencies. In this case, such contingency planning appears minimal, at best. The evidence supports the Division's case regardless of how the law judge resolves this scienter issue, and the law judge is free to apply the facts to both the Division's and Peixoto's view of the law (and arrive at the same result) -- as Courts often do in such situations. Thus, no purpose would be served by staying this case pending resolution of the Second Circuit appeals.[3]

The SEC cases that Peixoto cites -- in which the SEC did not object to a stay of a pending enforcement action -- are easily distinguished. In *SEC v. Steinberg*, 13-cv-2082 (S.D.N.Y.), the Commission filed a District Court action charging defendant Michael Steinberg with insider trading. While the SEC District Court case was pending, Steinberg was convicted in his parallel criminal case (brought by the Department of

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[3] Peixoto notes that the Order Instituting Proceedings in this case does not expressly allege that Peixoto knew of the tipper benefits that Szymik received. As noted above, the Division does not believe such an allegation is necessary. In any event, as also explained above, the OIP alleges facts adequate to infer that Peixoto knew of the tipper benefit that Szymik received (i.e., friendship). Moreover, even if the OIP did not allege such facts, the Division would not be precluded from presenting such additional scienter evidence at trial, or from arguing, in the alternative, that the trial evidence satisfies such a scienter element, should the law judge require its proof in this case. *See Aloha Airlines, Inc. v. Civil Aeronautics Board*, 598 F.2d 250, 262 (D.C. Cir. 1979) (in administrative proceeding, "variance between the allegations of the complaint and the proof and ruling" not fatal; "[p]leadings in administrative proceedings are not judged by the standards applied to an indictment at common law. It is sufficient if the respondent 'understood the issue' and 'was afforded full opportunity' to justify its conduct during the course of the litigation"); *In the Matter of Ira Weiss*, Admin Proc. File No. 3-11462, 2005 WL 3273381, *14-15 (December 2, 2005) (OIP that alleged respondent "violated Section 17(a) of the Securities Act" "fairly placed [the respondent] on notice that all subsections of Securities Act Section 17(a) would be at issue").

Justice), which charges the same illegal conduct as the SEC civil case. Furthermore, Steinberg's SEC case arises from the same facts at issue in the Second Circuit *Newman/Chiasson* appeals. (Peixoto Brief at 4; Peixoto Ex. M.[4]) Thus, because the outcome of the *Chiasson/Newman* appeals likely will directly affect the SEC's District Court case against Steinberg -- including the SEC's ability to seek summary judgment against Steinberg based on his criminal conviction -- it would be inefficient to proceed with the Steinberg SEC litigation until the Second Circuit appeals are resolved. By contrast, as explained above, no such close relationship exists between the Peixoto case and the *Chiasson/Newman* appeals, and certainly none that would cause a risk of inefficient litigation.

In *In the Matter of Steven A. Cohen*, Admin. Proc. File No. 3-15382, the Commission instituted an administrative proceeding charging Steven Cohen with failing to supervise Matthew Martoma and Michael Steinberg, who engaged in insider trading while employed at Cohen's firm, S.A.C. Capital Advisors. The Department of Justice intervened to stay the administrative proceeding, pending resolution of its pending criminal cases against Martoma and Steinberg (charging the same insider trading conduct). (Peixoto Ex. I.) Thus, according to the law judge in *Cohen,* that proceeding and the related criminal cases "have overlapping factual allegations and will involve largely the same witnesses, documents, and other evidence." (Peixoto Ex. H, at 1.) Indeed, the insider trading activity alleged in the related Martoma/Steinberg criminal cases is the same activity "upon which the failure to supervise allegations are premised" in the SEC administrative proceeding. (Peixoto Ex. I, at 1.) The law judge granted the

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[4] "Peixoto Brief" refers to Peixoto's Brief of Points and Authorities in support of his stay motion; "Peixoto Ex." refers to the exhibits attached to the Declaration of Derrelle M. Janey in support of Peixoto's motion.

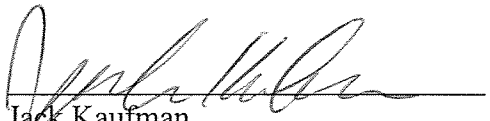
Justice Department's stay request, pursuant to SEC Rule of Practice 210(c)(3), designed to "protect the public interest" related to pending criminal proceedings. In so doing, the law judge noted the "substantial prejudice" that "could result" to a related criminal prosecution in the absence of a stay, "such as from disclosure of the government's investigative files in [the] administrative action." (Peixoto Ex. H, at 2-3, citing *A.S. Goldman & Co.*, 54 S.E.C. 349, 352 (1999).) Here, by contrast, no prosecutor has sought to intervene or raised such issues and, as explained above, this case bears no factual relationship to the pending *Newman/Chiasson* appeals.

Finally, Peixoto cites *In the Matter of Anthony Chiasson,* a follow-on Commission administrative proceeding, which is based on both Anthony Chiasson's prior criminal conviction and an injunction entered against him in the parallel Commission District Court case, *SEC v. Adondakis*, 12-cv-409 (S.D.N.Y. Oct. 4, 2013). *In the Matter of Anthony Chiasson,* Admin. Proc. File No. 3-15580, 2014 WL 1512024 (Initial Decision April 18, 2014). In the *Anthony Chiasson* administrative proceeding, the law judge issued an initial decision barring Chiasson from the securities industry. *Id.* Chiasson appealed that decision to the Commission, requesting that the Commission delay issuing a final bar order until the outcome of Chiasson's Second Circuit appeal of his conviction. (Peixoto Ex. E.) Peixoto's reliance on this administrative proceeding is puzzling, as the Commission has not yet granted Chiasson's requested stay. To the contrary, in its order granting Chiasson's petition for review, the Commission directs the parties "to address the question of whether the initial decision should be summarily affirmed pursuant to Rule of Practice 411(e)." (Peixoto Ex. N.) Moreover, historically, the Commission has denied such requests in follow-on administrative proceedings, where the respondent seeks a stay based on a pending appeal in the related criminal case. *See In*

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Commission deny respondent Peixoto's request to stay this proceeding.

Respectfully submitted,



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November 24, 2014

CERTIFICATE OF SERVICE

I, Jack Kaufman, certify that on the 24th day of November, 2014, I caused true and correct copies of the foregoing Division of Enforcement Opposition to Respondent Jordan Peixoto's Motion to Stay to be filed and served by United Parcel Service and electronic mail on:

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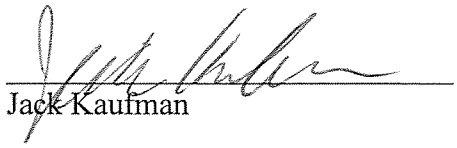
(Counsel for Respondent Jordan Peixoto)



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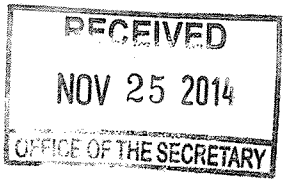
November 24, 2014

VIA UPS OVERNIGHT



Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549

Re: In the Matter of Jordan Peixoto, Admin Proc. File No. 3-16184

Dear Mr. Fields:

Enclosed please find an original and three copies of the Division of Enforcement Opposition to Respondent Jordan Peixoto's Motion to Stay.

Respectfully submitted,

Jack Kaufman
Senior Trial Counsel
Division of Enforcement

cc: Derrelle M. Janey, Esq.