

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19733**

**In the Matter of**

**NICHOLAS J. GENOVESE**

**DIVISION OF ENFORCEMENT’S MEMORANDUM ADDRESSING  
RESPONDENT’S MOTIONS FOR A PRIVILEGE LOG AND ADDITIONAL TIME TO  
OPPOSE THE DIVISION’S SUMMARY DISPOSITION MOTION.**

On July 22, 2024, the Division’s staff received Respondent Genovese’s Motion For Division To Produce Privilege Log, dated May 6, 2024, and Respondent Genovese’s Motion For Extension of Time, dated May 6, 2024.<sup>1</sup> Both motions by Respondent Genovese appear to be based on a SEC FOIA letter, dated April 24, 2024 (“April 24 FOIA letter”), that was sent to Respondent Genovese and which he attached to his two motions. Based on that April 24 FOIA letter, attached as Exhibit A, Respondent Genovese is claiming that the Enforcement staff improperly withheld documents from discovery. Respondent Genovese is relying on a statement in the April 24 FOIA letter that stated that an “initial search” “identified approximately 14 gigabytes of electronically maintained records (equivalent to approximately 112 boxes of records)”. That statement in the April 24 FOIA letter was incorrect. On July 30, 2024, the SEC FOIA office sent a letter to Respondent Genovese, attached as Exhibit B, stating that “[t]his initial volume estimate was incorrect and should have reflected a volume of 2 gigabytes of electronically maintained records rather than 14 gigabytes to approximately 17 boxes of records rather than 112 boxes.” The actual 2 gigabytes of records is

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<sup>1</sup> Neither of Respondent Genovese’s motions appear on the Commission’s public docket for this administrative enforcement case.

entirely consistent with the full discovery that the Enforcement staff produced to Respondent Genovese in this administrative case as well in the federal civil action, *SEC v. Genovese*, 18-cv-942 (S.D.N.Y.). As such, the FOIA letter does not provide a basis for Respondent Genovese's motion for the Division to produce a privilege log.

**I. There Is No Basis At This Late Date To Order the Enforcement Division to Produce a Privilege Log.**

Respondent Genovese has no automatic right to a privilege log as Commission Rule of Practice 230(c) provides the hearing officer “**may** require the Division of Enforcement to submit for review a list of documents or categories of documents withheld pursuant to paragraphs (b)(1)(i) through (v) of this section or to submit any document withheld, and **may** determine whether any such document should be available for inspection and copying.” (emphasis in bold). The Division brought this administrative case on March 24, 2020, but Respondent Genovese did not seek a privilege log until May 6, 2024, more than four years later, and his current motion is based solely on a mistaken statement in the April 24 FOIA letter. As such, there is no basis at this late date for the hearing officer to require the Division to produce a privilege log.<sup>2</sup> As the Division documented on page 12 of its brief supporting its motion for summary disposition (docketed on March 22, 2024), the Division produced to Respondent Genovese 7,068 pages of documents on June 2, 2020, and July 31, 2020. *See also* Division of Enforcement Memorandum in Opposition to Respondent Genovese Motion for Discovery and Sanctions with Declaration of Alexander Vasilescu in Opposition with Exhibits 1-2 (docketed on April 2, 2024)(stating that the Division fully complied with discovery, there was no basis for Respondent Genovese's motion for sanctions, and no privilege log was ordered in the federal civil action or this administrative enforcement matter).

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<sup>2</sup> There is also no basis for Respondent Genovese's claims that the Division staff committed misconduct in discovery.

**II. The Division Consents To Providing Respondent Genovese With Additional Time To Oppose the Division's Motion for Summary Disposition.**

As noted in Division of Enforcement's Reply Memorandum In Further Support Of Its Motion For Summary Disposition, docketed on May 21, 2024, the scheduling order (docketed on March 11, 2024) required Respondent Genovese to file his opposition to the motion for summary disposition by May 7, 2024. Respondent failed to meet that May 7, 2024 deadline. The Division consents to giving Respondent an additional 30 days to respond to the motion for summary disposition.

August 1, 2024

Respectfully submitted,

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CERTIFIED MAIL  
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