

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19838

In the Matter of

JOHN CHRISTOPHER POLIT,

Respondent.

DIVISION OF ENFORCEMENT’S RESPONSE TO RESPONDENT’S
PARTIAL JOINDER WITH DIVISION’S MOTION TO DISMISS,
AND REQUEST FOR OTHER RELIEF

The Division of Enforcement (“Division”) hereby replies to Respondent John Christopher Polit’s (“Respondent”) Partial Joinder with Enforcement’s Motion to Dismiss, and Request for Other Relief (“Partial Joinder”).

As a threshold matter, Respondent’s Partial Joinder is a substantive response to the Motion to Dismiss filed by the Division on December 18, 2020, and as such was untimely filed and should not be considered. On the same day that the Division filed its Motion to Dismiss, Respondent’s counsel reached out to undersigned counsel to request a dismissal of these proceedings “with prejudice,” and undersigned counsel responded on December 21, 2020, that the proceedings should be simply dismissed without any reference to “with” or “without” prejudice because there is no basis in the Rules of Practice or case law for Respondent’s position. Inexplicably, Respondent waited nearly two months to address the potential characterization of a dismissal in its Partial Joinder. Even if the Partial Joinder had been filed timely, Respondent’s requests for relief are nonetheless meritless.

First, “the Commission’s Rules of Practice do not distinguish between dismissing proceedings with or without prejudice.” *John M. Lucarelli*, Release No. 34-56075, 2007 WL 2031556, at *2 (July 13, 2007); *see also*, *Richard L. Goble*, Release No. 34-68651, 2013 WL 150557, at *1-2 (January 14, 2013). Indeed, the Commission has noted that “[i]t is not our practice, nor do we consider it necessary, to add the words “with prejudice” to final orders of dismissal.” *Richard J. Adams*, 55 S.E.C. 85, 88 (2001). Respondent has not cited to any case law that supports requiring the Commission to take the extra step of conducting an analysis on the finality of the Ecuadorian proceedings in order to determine whether to designate a dismissal as one “with” or “without prejudice.” Accordingly, the Division submits that a simple dismissal of these proceedings is appropriate.

Second, Respondent’s request directed at “a lingering webpage” is vague, unsupported by the Commission’s Rules of Practice or case law, and/or unnecessary. It is unclear to which specific webpage Respondent is objecting as Respondent has not provided a link for it. To the extent that Respondent is referring to the Commission’s website containing links for administrative proceedings, Respondent’s request is unnecessary. For example, the link <https://www.sec.gov/litigation/apdocuments/ap-3-19838.xml> contains the “docket sheet” for the instant proceedings against Respondent. Assuming that the Commission grants the Division’s Motion to Dismiss, any such order would be reflected on this page, including a hyperlink to the order itself, just like there are currently hyperlinks to the Order Instituting Administrative Proceedings and the Division’s Motion to Dismiss.¹ If the Respondent is referring to a different “lingering webpage,” then there is still no basis to ask the Commission to take an additional step

¹ Presumably, the Partial Joinder will also be reflected on this docket within a short period of time.

and expressly note that this proceeding was dismissed, the reasons for the dismissal, and providing a link to the order of dismissal because all of the filings – including Respondent’s, which contain his positions and arguments, as well as the eventual order of dismissal – are contained on the Commission’s website. Finally, upon dismissal of these proceedings, the matter will be moved from the “Open” to “Closed” section of the Commission’s administrative proceedings.

For the reasons set forth above, the Division respectfully requests that the Commission (1) order dismissal of these proceedings against Respondent without reference to whether it is with or without prejudice and (2) deny the request to “amend its webpage.”

Dated: February 17, 2021

Respectfully submitted,

/s/ Alice K. Sum

Alice K. Sum
Trial Counsel
Direct Line: (305) 416-6293
Email: sumal@sec.gov

Division of Enforcement
U.S. Securities and Exchange Commission
801 Brickell Avenue, Suite 1950
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on this 17th day of February 2021, on the following persons entitled to notice:

VIA E-MAIL

Richard E. Brodsky

rbrodsky@thebrodskylawfirm.com

/s/ Alice K. Sum

Alice K. Sum