

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF)	
)	
FR. EMMANUEL LEMELSON)	ADMINISTRATIVE PROCEEDING
)	FILE NO. 3-20828
Respondent.)	
)	

RESPONDENT’S APPLICATION TO CERTIFY
SUBPOENA ORDER FOR INTERLOCUTORY REVIEW

Pursuant to Rule 400 of the SEC’s Rules of Practice, Respondent Rev. Fr. Emmanuel Lemelson hereby requests that the Administrative Law Judge (“ALJ”) certify for interlocutory review his January 30, 2025 “Order on Subpoena Request” (the “Order”). The Commission’s prompt interlocutory review is appropriate because the Order involves and presents several controlling questions of law as to which there is substantial difference of opinion. In addition, immediate review may materially advance the completion of this proceeding (perhaps ending it entirely) and will ensure that the Commissioners are fully informed about, and accountable for, the likely unlawful (and potentially unprecedented) administrative search being unleashed on their watch by subordinate Commission personnel.

The controlling questions of law at issue include the following:

- Whether this proceeding constitutes a knowing and ongoing violation of the constitutional separation of powers and related limits on executive agency power, due process of law, and Respondent’s jury-trial rights and other individual constitutional civil liberties. These violations have been explained in prior pleadings in this proceeding and are the subject of cross-motions now pending before the federal district court in Washington, D.C., including a motion to preliminarily enjoin this proceeding. The Order and its ensuing subpoena now threaten to exacerbate those ongoing

violations by adding *new* violations of Respondent’s constitutional civil liberties, inasmuch as the Order and subpoena now purport to authorize an administrative search of Respondent’s private papers without any judicial pre-approval in violation of Respondent’s Fourth and Fifth Amendment rights, and to further infringe upon Respondent’s First Amendment rights by monitoring and chilling his private communications and associations that have no conceivable relevance to the predicate injunction that ostensibly undergirds this proceeding.¹

- Whether continuation of this proceeding contravenes an Executive Order issued by President Trump on January 20, 2025, which explicitly “revoked” Executive Order 13992 (issued January 20, 2021) and thereby reinstated Executive Orders 13891, 13892, and 13924, which collectively direct agencies to ensure that their enforcement investigations and adjudications are conducted in strict fairness and with maximum respect for individual liberties, due process, and the rule of law.
- Whether the Order and its ensuing subpoena contravene a separate Executive Order issued by President Trump on January 20, 2025 (Restoring Freedom of Speech and Ending Federal Censorship), which extolled the enduring virtues of free speech and directed agencies to forbid their officers, employees, and agents from engaging in or facilitating any conduct that would unconstitutionally abridge the free speech of any American citizen.
- Whether the Order and its ensuing subpoena also contravene a separate Executive Order issued by President Trump on January 20, 2025 (Ending the Weaponization of the Federal Government), which seeks to identify and take appropriate action to correct past misconduct by the federal government—and specifically referencing the SEC—related to weaponization of law enforcement and the intelligence community.
- Whether the ALJ, in a follow-on administrative proceeding that is predicated solely on an injunction that was issued three years ago, which in turn was based entirely on events that ended more than a decade ago—and in the absence of any extant Commission formal order of investigation—may lawfully issue or authorize a subpoena requiring the production of private papers having neither temporal nor subject-matter relevance to the underlying enforcement action that led to the injunction or the formal order that led to that underlying enforcement action.
- What legal or procedural consequences, if any, may lawfully befall a respondent who fails to comply with a subpoena issued by an administrative law judge before the Commission authorizes and successfully litigates a subpoena enforcement proceeding in federal court.

In light of these profoundly important yet unsettled legal questions, the recent Executive Orders alluded to above, recent changes in Commission leadership, and Respondent’s now-

¹ Recall that the injunction that forms the sole legal predicate for this proceeding is a classic prior restraint threatening Respondent with contempt if he should utter a false word of criticism about any publicly traded corporation.

pending motion for a preliminary injunction in a nearby federal court, it is essential to allow the Commissioners an opportunity for timely interlocutory review of the Order, thereby allowing them to assess not only the correctness of the Order but also the risks and benefits of rushing forward with this aged proceeding even as a federal court is poised to rule on whether the proceeding is even lawful or constitutional.

Moreover, interlocutory review unquestionably could hasten the completion of this proceeding. Particularly in light of President Trump's recent executive orders and the Commission's new leadership, the Commissioners might belatedly realize the unlawfulness of this proceeding and/or exercise discretion to dismiss it for other reasons, as they have done in recent months with numerous other pending administrative proceedings.² Or they might determine that the subpoena issued by the ALJ is unlawful or unjustified, thus eliminating any need for subsequent court proceedings seeking judicial enforcement of the subpoena.

Moreover, there is no legitimate concern about potential delay. This proceeding has been pending for nearly three years already, and it arose from events that occurred more than a decade ago. It cannot plausibly be argued that, after all these years, there is suddenly an urgent need to rush this matter to conclusion. In any event, even if the Commission declines interlocutory review

² See, e.g., *Robert Lewis Carver*, Exchange Act Rel. No. 102252 (Jan. 22, 2025) (unexplained dismissal of follow-on proceeding against a respondent who was convicted of criminal identity-theft and fraud and subject to at least two separate injunctions in civil cases brought by the Commission); *Alpine Sec. Corp.*, Exchange Act Rel. No. 102148 (Jan. 10, 2025) (unexplained dismissal of follow-on proceeding against recidivist penny-stock firm predicated on court injunction based on 2,720 violations of Commission's ant-money-laundering record-keeping rules); *Halpern & Assocs.*, Exchange Act Rel. No. 101504 (Nov. 1, 2024) (unexplained dismissal of Rule 102(e) proceeding against recidivist audit firm and principal accused for the second time with improper professional conduct); *Joshua Abrahams*, Exchange Act Rel. No. 34-101505 (Nov. 1, 2024) (unexplained dismissal of Rule 102(e) proceeding); *Edward F. Hackett*, Securities Act Rel. No. 11310 (Sept. 27, 2024) (similar); *Paul L. Chancey*, Exchange Act Rel. No. 101208 (Sept. 27, 2024) (similar); *Alan J. Markowitz*, Exchange Act Rel. No. 101205 (Sept. 27, 2024) (similar); *Ira S. Viener*, Exchange Act Rel. No. 101203 (Sept. 27, 2024) (similar); *Jia Roger Qian Wang*, Exchange Act Rel. No. 101214 (Sept. 24, 2024); *Jason Jianxun Tang*, Exchange Act Rel. No. 101204 (Sept. 24, 2024) (similar); see also *Pending Administrative Proceedings*, Securities Act. Rel. No. 11198 (June 2, 2023) (dismissing 42 pending proceedings en masse with no decision on the merits).

of the Order, it would still need to assess the appropriateness of the ALJ's subpoena before deciding whether to commence a federal court proceeding seeking to enforce it, at which time it will need to confront the same issues raised by this application. Thus, there is no good reason to postpone the Commissioners' attention to those issues.

For the foregoing reasons, the Order should be certified for interlocutory review.

Respectfully submitted,

Fr. Emmanuel Lemelson

By his attorneys,

/s/ Douglas S. Brooks

Douglas S. Brooks

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CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on February 5, 2025.

/s/ Douglas S. Brooks

Douglas S. Brooks