UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20828

In the Matter of

GREGORY LEMELSON,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE AND ARGUMENT ABOUT RESPONDENT'S UNDERLYING LIABILITY, THE DIVISION'S LITIGATION CONDUCT, AND TESTIMONY OF DIVISION WITNESSES

The Division moves *in limine* to exclude evidence and argument related to Respondent's liability for the three violations of Exchange Act Rule 10b-5(b) found by the jury after his district court trial, and any argument that Respondent should not have been charged, was charged for improper reasons, or about the conduct of the investigation and litigation. The Division further moves to exclude testimony of any Division personnel, including undersigned counsel, on these or any other topics.

Respondent makes clear in his pre-hearing filings his intention to relitigate the district court action. On his witness list, Respondent proposes testifying about "the *allegedly* false statements [and] the materiality of the allegedly false statements." Resp. W. List at 1 (emphasis added). His exhibit list further shows that he will seek to introduce exhibits for this purpose. For instance, Respondent's proposed exhibits 30 and 31 are (both) listed as "Chart showing Ligand's stock price changes on days of Respondent's Reports, Empire Reports, and Janet Yellen statement used in Respondent's Closing PowerPoint in trial of SEC v Lemelson." Ex. 29 purports to show the same. Respondent will likely use these exhibits (as he did at trial) to argue

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about the stock price effect of his misrepresentations, a materiality argument. Resp. Exs. 8, 10, 12, and 15 (and perhaps others) appear intended to argue about Ligand personnel's reactions to the false and fraudulent statements made by Lemelson, which Respondent presumably wants to use to challenge falsity and materiality.

Respondent's exhibit and witness lists also make clear that he intends to relitigate collateral issues rejected by the district court and are plainly irrelevant to the *Steadman* factors at issue in this proceeding. Among other things, Respondent proposes testifying about "[t]he history of the SEC's investigation[.]" Resp. W. List at 1. And he lists several related exhibits, *e.g.*, Resp. Ex. 20, the Commission's original 2018 complaint (subsequently amended and superseded) which he has historically claimed contained errors, and Resp. Ex. 19, an excerpt from his investigative testimony preceding the filing of the district court action in 2018. None of this has anything to do with what is at issue in this proceeding – *Respondent's* conduct and whether that conduct warrants an associational bar.

Likewise, several other exhibits appear to be intended to argue that the district court case should not have been brought in the first instance or that the SEC was improperly influenced to bring it—both arguments that he raised and the district court rejected in pre-trial proceedings and at trial. *See, e.g.*, Resp. Exs. 13-14, 33 (presentations made by Ligand's counsel to the SEC before the district court action was filed); Ex. 32 (showing comments by Ligand staff about Lemelson). Both categories of evidence should be excluded.

Lastly, Respondent proposes to call Division staff to testify about these various irrelevant matters. For all the same reasons, the proposed testimony should be excluded. Respondent also names trial counsel as witnesses which, absent extraordinary circumstances not present here, is neither appropriate nor justified.

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I. Respondent Cannot Relitigate the District Court Action in Which a Jury Found Him Liable for Making Three False and Fraudulent Statements of Material Fact.

The law is well-established concerning what Respondent may introduce at this hearing. Respondent "may put forward mitigating evidence concerning the circumstances surrounding his misconduct, [but] he may not relitigate factual questions conclusively decided in the underlying proceeding…." *Nicholas Rowe*, Init. Decision Release No. 746 (Feb. 27, 2015) (citing *Siris v. SEC*, 773 F.3d 89, 91, 95-96 (D.C. Cir. 2014)). Nor can he "use this administrative proceeding to collaterally attack the underlying proceeding…." *Id*. (citing *Blinder, Robinson*, 837 F.2d at 1108-09; *James E. Franklin*, Exchange Act Release No. 56649, at *11 (Oct. 12, 2007), pet. denied, 285 Fed. App'x 761 (D.C. Cir. 2008)). Evidence in the hearing must not be about the jury's determination of Respondent's liability under the securities laws and instead must be surrounding his misconduct that is germane to the [Commission] in exercising its judgment as to the nature and scope of sanctions that are appropriate in the public interest." *Siris*, 773 F.3d at 91-92) (internal citations and quotation omitted). In short, Respondent cannot "relitigate the factual issues conclusively decided in the underlying civil suit." *Id*.; *Sherwin Brown*, Investment Advisers Act Release No. 3217, 2011 WL 2433279, at *4 (June 17, 2011) (Commission opinion) (explaining that "a respondent in a follow-on proceeding may not challenge the findings made by the court in the underlying proceeding").

The facts of Respondent's fraud were established in the district court and may not be relitigated in the administrative proceeding. Those facts and the consequent findings by the jury of each element of those violations (falsity, materiality, scienter) should be taken as given by this this Tribunal, and the Commission. Respondent should not be permitted to argue or introduce evidence suggesting that there should have been different findings or a different result.

II. Evidence Related to the Underlying Investigation, District Court Litigation, and Subpoena Enforcement Action Should Be Excluded.

Respondent proposes testifying about "[t]he history of the SEC's investigation[.]" Resp. W. List at 1. This has nothing to do with the matter at issue in this proceeding: whether Respondent should be barred from associating with an investment adviser under the public interest factors set forth in *SEC v. Steadman*, 603 F.2d 1126 (5th Cir. 1979):

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Id. at 1140 (quotation omitted). Respondent himself acknowledges that these factors are the focus of the hearing and topics beyond the *Steadman* factors should be off limits.[1]

Respondent, in addition to proposing testimony about the SEC's investigation of his fraud, lists many exhibits that are plainly irrelevant to the *Steadman* factors. For example, Respondent proposes to introduce:

1. Commission press releases about the outcome of the district court trial in which the jury found that Respondent made three materially false and fraudulent public statements about Ligand Pharmaceuticals, Inc. Resp. Exs. 16-17, 37. Whatever the Commission did or did not say about the jury's verdict has no bearing on Respondent's fitness to participate in the securities industry.

2. The Commission's original district court complaint which was amended and superseded. Resp. Ex. 20. The superseded allegations in the Commission's original complaint again have no bearing on Respondent's conduct.

3. The subpoena enforcement action filed, and subsequently voluntarily dismissed, in the District of Massachusetts. Resp. Exs. 21-23. As this Tribunal recognized, the

[1] Respondent, focusing narrowly on the *Steadman* factors, as is appropriate, argues that the documents produced by non-party Clear Street LLC ("Clear Street") should be excluded. Respondent is wrong about the Clear Street documents. First, this Tribunal already found the documents potentially relevant. Second, the Clear Street FINRA arbitration panel found that Respondent harassed and threatened Clear Street personnel, misconduct probative of Respondent's fitness to participate in the securities industry. *See* Division of Enforcement's Reply to Respondent's Response to Clear Street LLC's Motion for Protective Order and Application for Certification for Interlocutory Review By the Commission (filed June 13, 2025). Respondent is nevertheless correct that this Tribunal should not entertain irrelevant matters that have no bearing on the *Steadman* factors.

subpoena enforcement action did not result in any significant prejudice to Respondent[2] and it is unrelated to the focus of this proceeding, which is *Respondent's* conduct.

4. Respondent lists as an exhibit the President's Executive Order on Anti-Christian Bias. Resp. Ex. 36. This presumably relates to Respondent's long-rejected accusation that he has been targeted because of his faith. The district court rejected that baseless claim on summary judgment, and the claim cannot be re-litigated here. *See SEC v. Lemelson*, 532 F. Supp. 3d 30, 45-46 (D. Mass. 2021) (rejecting Respondent's claim that the "SEC impermissibly considered Lemelson's religion" in the investigation and litigation).

5. Similarly, Respondent lists trial exhibits that appear to be related to why the Commission investigated him, including the involvement of Ligand's attorney, who is a former Commission staffer. *See* Resp. Exs. 8, 12-15, 38. All of Respondent's baseless claims of impropriety were rejected by the district court, *id.* (rejecting Respondent's claims the Commission's action against him "was motivated by Ligand's undue influence and sought to suppress Lemelson's free speech."), and Respondent should not be permitted to rehash those issues now. But even if the district court had not disposed of Respondent's baseless allegations, any alleged "bias" or "undue influence" is irrelevant to *Respondent's* conduct that is at issue in this proceeding.

None of the proposed testimony and related exhibits have any relevance to the *Steadman* factors, and all should be excluded.

III. This Tribunal Should Not Permit Testimony of Division Witnesses.

In a similar vein, Respondent lists as potential witnesses undersigned Division trial counsel and "To-be-identified SEC staffers." Resp. W. List at 1. He proposes to examine trial counsel and unnamed others about: "The history of the SEC's investigation, the SEC's original Complaint, the press releases issued by the SEC, the recent ill-fated ultra vires SEC subpoena enforcement action brought in district court and all decisions related to that ill-fated action." *Id.* For all the reasons discussed above, these topics are facially irrelevant to this proceeding.

[2] Order Denying Postponement and Granting Subpoena Request, Administrative Proceedings Rulings Release No. 6944 (June 11, 2025) at 2-4.

Indeed, Respondent appears to want to make the upcoming hearing about everything other than his conduct and the *Steadman* factors.

Respondent's proposal to call Division trial counsel as witnesses at the hearing is frivolous. "[T]he procurement of trial testimony from opposing counsel is generally disfavored. *United States v. Yonkers Bd. of Educ.*, 946 F.2d 180, 185 (2d Cir.1991). Among the appropriate factors for consideration by the trial court are the following: (i) whether the subpoena was issued primarily for purposes of harassment, (ii) whether there are other viable means to obtain the same evidence, and (iii) to what extent the information sought is relevant, nonprivileged, and crucial to the moving party's case. *Bogosian v. Woloohojian Realty Corp.*, 323 F.3d 55, 66 (1st Cir. 2003) (citations omitted). Respondent fails each of these tests: First, the testimony sought is plainly irrelevant and largely concerns matters that the district court rejected, as discussed above. Second, whatever information Respondent seeks, he would need to show that it is not available from another source. Third, given the irrelevance of the proposed subject matters, it is no leap to conclude that listing Division trial counsel as witnesses is nothing more than harassment.

* * *

The Tribunal should exclude any evidence, documentary or otherwise, related to Respondent's attack on the jury's verdict, and his long-rejected grievances about the Commission's investigation, litigations, and this proceeding. This Tribunal should further exclude testimony by Division staff.

Dated: June 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alfred A. Day, hereby certify that on June 16, 2025, the above was served via electronic mail pursuant to Rule 150(c) on the following counsel of record for Respondent:

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