

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21280

In the Matter of

DARAYL D. DAVIS.

DIVISION OF ENFORCEMENT'S
MOTION FOR EXTENSION OF TIME
TO CONDUCT A PREHEARING
CONFERENCE

The Division of Enforcement (the “Division”), pursuant to Commission Rules of Practice (“Rules”) 154(a) [17 C.F.R. § 201.154(a)] and 161(a) [17 C.F.R. § 201.161(a)], respectfully moves the Securities and Exchange Commission (“the Commission”) for an extension of time of 21 days, until Wednesday, December 13, 2023, to conduct a prehearing conference with Respondent DaRayl D. Davis (“Respondent” or “Davis”), an inmate at the Federal Correctional Institution in Milan, Michigan (“FCI-Milan”). The Division seeks a 21-day extension in order to coordinate with the staff at FCI-Milan so that counsel for the Division and the Respondent can conduct the prehearing conference over the telephone.

Procedural Background

On January 19, 2023, the Commission issued an Order Instituting Administrative Proceeding (“OIP”) against Respondent, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”). Order, Release No. 34-96712 (Jan. 19, 2023). The OIP alleges that Respondent, who was an associated person of a dually registered investment adviser and broker-dealer from 2005 to 2008, has been permanently enjoined from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule

10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled *Securities and Exchange Commission v. DaRayl D. Davis, et al.*, 1:17-CV-09224 (N.D. Ill.) (the “Civil Case”), and has been criminally convicted of one count of mail fraud in violation of Title 18, United States Code, Section 1341 in the parallel criminal case, *United States v. DaRayl D. Davis*, No. 1:18-CR-00025 (N.D. Ill.) (the “Criminal Case”). *Id.* at ¶¶ II.A.1, II.B.2, II.B.4.

The Commission’s complaint in the Civil Case alleged that from at least 2003 to December 2017, approximately 30 individuals invested more than \$5 million with Respondent by purchasing so-called “corporate bond notes” and “guarantee bonds.” *Id.* at ¶ II.B.3. These investment products were not real and Respondent used investors’ money to fund his lavish lifestyle and further his scheme. *Id.* The Criminal Case concerned the same conduct that formed the basis for the Commission’s complaint. *Id.* at ¶ II.B.5. On May 3, 2021, a judgment in the Criminal Case was entered against Respondent and he was sentenced to a prison term of 160 months followed by three years of supervised release, and ordered to pay restitution of \$7,171,085. *Id.* at ¶ II.B.4.

On January 27, 2023, a process server personally served Respondent with a copy of the OIP and Notice of Hearing, among other papers, at FCI-Milan. *See* Proof of Service and Exhibit A thereto (Affidavit of Personal Service), filed on February 3, 2023, in the instant action. On October 11, 2023, the Commission ordered Respondent to show cause why he should not be deemed in default for failing to file an answer to the OIP. Order, Release No. 34-98720 (Oct. 11, 2023). On October 31, 2023, in response to the Commission’s Order to Show Cause, Respondent demonstrated that he had filed a timely answer to the OIP, having sent his answer via certified mail to the Office of the Secretary on January 31, 2023. As an inmate at FCI-Milan, Respondent does not have access to the eFAP system. On November 8, 2023, the Commission

issued an order discharging the Order to Show Cause and ordering the parties to hold a pretrial conference on or before November 22, 2023. Order, Release No. 34-98883 (Nov. 8, 2023). The Commission further ordered the parties to file a statement with the Office of the Secretary by December 6, 2023, setting forth any agreements reached at the conference. *Id.*

Argument

Given Respondent's limited access to telephone communications within FCI-Milan and the time it will take to coordinate a telephone call with the staff at FCI-Milan, the Division respectfully requests a 21-day extension of deadline for a prehearing conference. Rule 161(a) provides that "the Commission, at any time, ... may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers and may, consistent with paragraphs (b) and (c) of this section, postpone or adjourn any hearing." In consideration requests for extensions of time, the Commission considers the following factors:

- (i) The length of the proceeding to date;
- (ii) The number of postponements, adjournments or extensions already granted;
- (iii) The stage of the proceedings at the time of the request;
- (iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and
- (v) Any other such matters as justice may require.

17 C.F.R. § 201.161(b)(1).

In this proceeding, a 21-day extension of time for the prehearing conference is necessary and serves the interests of justice. The proceeding is in its early stages. On November 8, 2023, the Commission discharged the Order to Show Cause and accepted Respondent's answer to the OIP. No prior extensions of time have been requested by the Division. Because Respondent is an inmate at a federal correctional institution, his access to communication facilities is severally

limited. To schedule a telephonic prehearing conference with Respondent, the Division must coordinate with several Bureau of Prisons' staff within FCI-Milan, including counsel for FCI-Milan and Respondent's case manager. The Division staff is in the process of identifying those individuals and obtaining contact information. Given the complications of communicating with Respondent within a federal correctional institution, it is in the interest of justice to grant an additional 21 days for the parties to conduct a prehearing conference.


Additionally, the Division respectfully requests that the statement setting forth any agreements reached at the conference be filed with the Office of the Secretary by December 27, 2023, two weeks after the deadline for the prehearing conference. The Division respectfully requests that Commission grant this request.

Conclusion

For the reasons set forth above, the Division respectfully requests that the Commission grant the Division's Motion and extend the deadline for the parties to conduct a prehearing conference until December 13, 2023, and to file a statement setting forth any agreements reached at the conference until December 27, 2023.

Dated: November 14, 2023

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of November, 2023, with respect to In the Matter of DaRayl D. Davis Administrative Proceeding File No. 3-21280, I caused a true and correct copy of the Division of Enforcement's Motion for Extension of Time to Conduct a Prehearing Conference to be filed and served by the eFAP system and on the Respondent by U.S. Mail at the following address:

DaRayl D. Davis
Register Number: 63665-037
FCI Milan
Federal Correctional Institution
P.O. Box 1000
Milan, MI 48160

Respectfully submitted,



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