

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	
	:	Admin. Proc. File No. 3-20828
GREGORY LEMELSON	:	
	:	
	:	
	:	

**RESPONDENT LEMELSON’ RESPONSE TO
CLEAR STREET LLC’S MOTION FOR A PROTECTIVE
ORDER AND APPLICATION FOR CERTIFICATION
FOR INTERLOCUTORY REVIEW BY THE COMMISSION**

After the close of business on June 4, 2025, third party Clear Street LLC served the parties with a motion for a protective order. The ALJ granted that motion less than 24 hours later, shortly after the Division filed a notice of non-opposition and without waiting for Lemelson’s response, which was not due until the middle of this week under the Commission’s Rules of Practice. 17 C.F.R. § 201.154(b) (five-day response time for motions) and § 201.160(a) (time period excludes intervening Saturdays, Sundays, and holidays); *cf.* Order Directing a Response, Admin. Proc. Rulings Rel. No. 6941 (June 6, 2025) (granting the Division its full five business days to respond to a Lemelson motion filed the day before Clear Street’s motion). Lemelson nonetheless files this response, *ex post facto*, while noting for the record his strong objection to the premature granting of Clear Street’s motion.¹

¹ Had the ALJ directed Lemelson to respond to Clear Street’s motion within a shorter time period than the rules otherwise prescribe (as has happened before, *see, e.g.*, Order Granting Motion for Subpoena, Admin. Proc. Rulings Rel. No. 6937 (May 16, 2025) (granting Division’s motion for issuance of Clear Street subpoena in less than 48 hours without awaiting Lemelson response, and allowing Lemelson only five business days to move to quash instead of the usual 15 days allowed by Rule 232, 17 C.F.R. § 201.232)), counsel would have worked diligently to meet the truncated deadline.

As explained herein, the protective order should be vacated forthwith; the Clear Street subpoena should be withdrawn forthwith as *ultra vires* and a legal nullity; and any documents already produced by Clear Street should be ordered immediately returned and/or destroyed, and in any event deemed categorically inadmissible for any purpose in this proceeding. Should the ALJ decline to take such corrective action, Lemelson respectfully requests that the ALJ immediately certify the matter for emergency interlocutory review by the Commissioners pursuant to Commission Rule of Practice 400.

Lemelson's June 3 motion to dismiss explains in detail how the Division recently arrogated the Commission's statutory powers by unlawfully bypassing the Commissioners and filing an *ultra vires* federal lawsuit against Lemelson under a false claim of delegated authority. That unlawful act ultimately resulted in the Division's embarrassing voluntary dismissal of its *ultra vires* federal court lawsuit only a month after filing it—and it should result in dismissal of this proceeding too.

In parallel with the *ultra vires* federal lawsuit, and of a piece therewith, the Division and the ALJ have initiated, and are now actively conducting, what can only be described as an entirely new formal investigation into Lemelson—and doing so again without first consulting with or seeking a formal order of investigation from the Commissioners. This time, the claim of delegated authority apparently rests upon Rules 111 and 232 of the Commission's Rules of Practice, *see* 17 C.F.R. §§ 201.111 and 201.232, which together empower Commission ALJs to issue subpoenas during the course of administrative adjudication proceedings. But under any reasonable interpretation of that authority, it delegates the Commission's statutory power (in this case, under 15 U.S.C. § 80b-9) to issue subpoenas *only* to the extent reasonably relevant to—and *both* “appropriate” and “necessary” for—the particular matter the Commission tasked to the ALJ as set forth in the Order Instituting Proceedings. 17 C.F.R. § 201.111; *see also* 17 C.F.R. §

201.103(b) (“In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute . . . , the latter shall control.”); *id.* § 201.232 (subpoenas should not be “unreasonable” or “excessive in scope”).

The rules delegating subpoena power to ALJs cannot plausibly be read to empower ALJs, at the idle whim and curiosity of Division prosecutors, to launch entirely new, free-wheeling fishing expeditions into unrelated matters, like a confidential arbitration against Clear Street to which Lemelson was not a named party, that has no conceivable relevance—either temporally or in subject matter—to the particular matter the Commission has assigned to the ALJ for initial adjudication. Such investigative subpoenas can be issued *only* under the auspices of a formal order of investigation personally authorized by the presidentially appointed and Senate-confirmed Commissioners, and only by staff specifically appointed as officers of the commission for purposes of the Commission-initiated investigation. *See, e.g.*, 17 C.F.R. § 201.100(b) (Rules of Practice “do not apply . . . to [i]nvestigations, except where made specifically applicable by the Rules Relating to Investigations”).²

The power to launch a new investigation is an awesome one that is statutorily entrusted only to the politically appointed Commissioners who have been thoroughly vetted and nominated by our elected President and then publicly vetted again by our elected Senators. In its Canon of Ethics, the Commission openly acknowledges the undeniable fact that “[T]he power to investigate carries with it the power to defame and destroy. 17 C.F.R. § 200.66. Earlier this year, the Commission wisely and purposefully revoked the predecessor Commission’s delegation of that power to the Division Director, and there’s no good reason to believe the Commission has *ever* intended to delegate that power to its ALJs, or to allow the Division to negate the Commissioners’

² Counsel is confident that no ALJ has ever been so appointed in any Commission formal order of investigation.

revocation of formal-order authority by enlisting ALJs to open their own formal investigations under the guise of their limited authority to issue subpoenas in adjudicatory proceedings. Yet make no mistake: That is *exactly* what has occurred here, and it is unlawful.

To appreciate just how absurdly far afield the Clear Street subpoena is to the limited matter currently assigned to the ALJ—and why there is no plausible ground to deem the subpoena even “appropriate” much less “necessary” as mandated by Rule 232—consider the following:

- The sole purpose of this follow-on proceeding is to determine whether Lemelson should be censured, barred, or suspend based on the time-limited injunction a federal court issued in March 2022.
- That injunction was in turn based on a November 2021 jury verdict that, as explained at length in Lemelson’s June 3 motion to dismiss, predominantly exonerated Lemelson and rejected nearly all of the Commission’s case against him, including all charges of manipulation, scheme to defraud, and any act, practice, or course of business that operated or would operate as a fraud or deceit, as well as all claims of fraud or even negligence under the Investment Advisers Act. Having previously warned the Division that its “scheme” theory was “underdeveloped” after more than six years of scorched-earth investigation and litigation, the judge overseeing the case ultimately ruled that the Division had failed to prove, among other things, any investor harm, any illicit gain, or any material stock-price movement caused by the three isolated sentences or sentence fragments the jury found to be inaccurate among Lemelson’s 56 pages of detailed written reports and several online interviews.
- The jury verdict and injunction reduced the Division’s wildly overcharged case to only those three cherry-picked sentences or sentence fragment, all of which were uttered within a several-month period *nearly 11 years ago*—in 2014—and nearly eight years before the court issued the injunction that is the sole predicate for this proceeding.
- Nothing in that federal lawsuit had *anything* to do with Lemelson’s relationship with his fund’s clearing broker, which at the time was not even Clear Street.
- Lemelson’s fund had no relationship with Clear Street until 2019—that is, *five years after any event relevant to the Commission’s federal enforcement lawsuit that resulted in the injunction that forms the sole lawful predicate for the current proceeding*.
- The private dispute with Clear Street involved events in 2020—*i.e.*, five years ago, and *six years after any event relevant to the federal lawsuit*. The business relationship between Clear Street and the fund Lemelson advised at the time ended shortly thereafter.
- Lemelson was not even a named party to the FINRA arbitration proceeding; the fund he then managed asserted claims against Clear Street, and Clear Street asserted counterclaims against the fund, but *none of those counterclaims alleged any violation of the securities*

laws against anyone, and no claims were asserted against Lemelson personally. The panel awarded no monetary relief to either party and found no violations of any securities laws.

- During the federal jury trial in 2020 and the subsequent briefing about remedies, the Division never hinted that Lemelson’s relationship or dispute with Clear Street was in any way relevant to the case or to the appropriate remedies.
- During the instant follow-on proceeding, which has been pending since April 2022, the Division never hinted that *any* discovery was necessary or appropriate, much less discovery from Clear Street—until late December 2024, just two weeks after Lemelson asked a different federal court to preliminarily enjoin this proceeding on several constitutional and other legal grounds.
- The documents sought by the Clear Street subpoena are private, nonpublic records protected by strict confidentiality requirements imposed by FINRA to protect the privacy and other interests of brokerage customers, like Lemelson’s fund (on behalf of its investors), when they make claims against their brokers.

In short, the documents demanded by the Clear Street subpoena have literally nothing whatsoever to do with the matters upon which this proceeding are predicated. Nor could they, because they didn’t even exist until six years later. And contrary to the Division’s conclusory assurances, they also have no conceivable bearing on the so-called *Steadman* public interest factors, which predominantly focus on *the matters at issue in the federal court case that led to the injunction that forms the sole predicate for the follow-on proceeding.*

Thus, for example the first *Steadman* factor plainly focuses on the “egregiousness” of the respondent’s actions that constituted the purported violation(s) that led to the injunction. Documents that have nothing whatsoever to do with those alleged actions, and that didn’t even exist until six years after the actions at issue in the predicate case, could not possibly shed light on this *Steadman* factor.

Similarly, the second *Steadman* factor plainly focuses on the isolated or recurrent nature “of the infraction” that led to the injunction. Again, documents that have nothing whatsoever to do with the purported infraction, and that didn’t even exist until six years later, could not possibly shed light on this factor.

Similarly still, the third *Steadman* factor focuses on the degree of scienter involved in the alleged violation(s) that led to the injunction. Yet again, documents that have nothing whatsoever to do with the predicate case, and didn't even exist until six years after the violation(s) alleged in that case, could not possibly shed light on this factor. In any event, the jury was not specifically asked to make any finding regarding scienter in its verdict form, and it did not. And its rejection of all SEC claims containing the word "fraud" cuts decidedly against any implicit finding of scienter.

The fourth *Steadman* factor focuses on the sincerity of a respondent's assurances against future violations. To begin with, the Division has not identified any assurances by Lemelson that would be relevant to this factor. The most salient assurance is that Lemelson was enjoined by a federal court from violating the securities laws, and he has indisputably complied with that injunction and intends to continue doing so. In any event, it is difficult to conjure up any credible argument as to how documents relating to a private dispute between Clear Street and a fund Lemelson formerly managed—which involved no allegations or findings of securities-law violations by anyone—could possibly shed light on whatever thus-far unidentified "assurances" the Division intends to challenge as insincere.

Likewise, the fifth *Steadman* factor focuses on a respondent's recognition of the purportedly wrongful nature of the conduct that led to the injunction. That factor is not even in dispute here: As the Division would presumably concede, Lemelson has consistently denied that he engaged in wrongdoing and will forever continue to do so. That is why he denied and contested the Commission's charges—a good-faith denial supported by ample evidence—and so he naturally disagrees in good faith with the jury to the very limited extent it disagreed with him. That is also why he appealed in good faith from the final judgment, and why he subsequently petitioned in

good faith for Supreme Court review of his case. He of course had an unqualified constitutional right to do all of the foregoing (as well as to vigorously defend himself in this proceeding), and it would be wholly inappropriate for the Commission to cite this exercise of constitutional rights against him in order to punish him in this proceeding. More importantly for present purposes, and once again, *nothing* in the documents demanded from Clear Street could conceivably shed further light on whether or why Lemelson continues to deny wrongdoing.

Finally, the last *Steadman* factor focuses on Lemelson's *current* and *undisputed* occupations as a Greek Orthodox priest and a hedge fund manager. The documents sought by the Clear Street subpoena, concerning a dispute over events that occurred in 2020 and that involved no violations of the federal securities laws, cannot possibly have any probative value in "proving" Lemelson's current occupation, nor in proving whether his current and undisputed occupation presents an opportunity to violate the federal securities laws.

Most respectfully, there is no good faith basis for asserting that the documents sought by the Clear Street subpoena could have *any* legitimate probative value in connection with the limited task assigned by the Commission to the ALJ. The Division's frivolous and vindictive pursuit of this information is prosecutorial harassment of the worst kind—and a desperate, last-minute Hail Mary that speaks volumes about the Division's confidence in whatever legitimate evidence, if any, it might otherwise present in this case after 11 years of scorched-earth investigation and litigation. Neither the ALJ nor the Commissioners should allow themselves to be drawn in as facilitators of the Division's prosecutorial abuse and harassment. *See* 17 C.F.R. § 200.66 ("A member [of the Commission] should never suggest, vote for, or participate in an investigation aimed at a particular individual for reasons of animus, prejudice or vindictiveness."); *id.* § 200.51 ("It is characteristic of the administrative process that the Members of the Commission and their place in public opinion

are affected by the advice and conduct of the staff, particularly the professional and executive employees.”).

The Clear Street protective order should be vacated forthwith; the Clear Street subpoena should be withdrawn forthwith as *ultra vires* and a legal nullity; and any documents already produced by Clear Street should be ordered immediately returned and/or destroyed, and in any event deemed categorically inadmissible for any purpose in this proceeding. Should the ALJ decline to take such corrective action, Lemelson respectfully requests that the ALJ immediately certify the matter for emergency interlocutory review by the Commissioners pursuant to Commission Rule of Practice 400.

Dated: June 10, 2025

Respectfully submitted,

/s/ 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 Division, Marc Jones, Esq. and Alfred Day, Esq., and on counsel for Clear Street LLC, Gayle Klien and Steven Fisher of Freshfields US LLP, by email on June 10, 2025.

/s/ Douglas S. Brooks _____

Counsel for Respondent Lemelson