

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9628 / August 7, 2014

SECURITIES EXCHANGE ACT OF 1934

Release No. 72788 / August 7, 2014

INVESTMENT ADVISERS ACT OF 1940

Release No. 3890 / August 7, 2014

INVESTMENT COMPANY ACT OF 1940

Release No. 31200 / August 7, 2014

Admin. Proc. File No. 3-15514

In the Matter of

DONALD J. ANTHONY, JR.,  
FRANK H. CHIAPPOINE,  
RICHARD D. FELDMANN,  
WILLIAM P. GAMELLO,  
ANDREW G. GUZZETTI,  
WILLIAM F. LEX,  
THOMAS E. LIVINGSTON,  
BRIAN T. MAYER,  
PHILIP S. RABINOVICH, and  
RYAN C. ROGERS

ORDER GRANTING  
EXTENSION

Chief Administrative Law Judge Brenda P. Murray has moved, pursuant to Commission Rule of Practice 360(a)(3),<sup>1</sup> for a 150-day extension to issue the initial decision in this proceeding. For the reasons set forth below, we grant her motion.

On September 23, 2013, we issued an Order Instituting Proceedings ("OIP") against ten persons associated with McGinn, Smith & Co., Inc. ("MS & Co."), a former registered broker-

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<sup>1</sup> 17 C.F.R. § 201.360(a)(3).

dealer and investment adviser.<sup>2</sup> The OIP alleges that nine of MS & Co.'s top-selling brokers ignored numerous red flags in selling millions of dollars of securities in private placement offerings created and controlled by the founders of MS & Co. It alleges that these respondents willfully violated Sections 5(a) and 5(c) of the Securities Act of 1933 by offering and selling securities for which no registration statements were in effect.<sup>3</sup> It further alleges that these respondents willfully violated the antifraud provisions in Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by making misrepresentations and omissions about the securities and recommending the securities to customers without a reasonable basis.<sup>4</sup> The OIP also alleges that Andrew G. Guzzetti, a managing director of MS & Co., violated Section 15(b) of the Exchange Act by failing reasonably to supervise the other respondents with a view towards detecting and preventing these violations.<sup>5</sup>

The OIP directs the presiding law judge to issue an initial decision within 300 days of the date of service of the OIP. On July 16, 2014, Chief Judge Murray filed a motion stating that the initial decision is due on August 28, 2014, and requesting an extension pursuant to Commission Rule of Practice 360(a)(3).

We adopted Rules of Practice 360(a)(2) and 360(a)(3) to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings by setting deadlines for issuance of initial decisions.<sup>6</sup> The rules further provide for extensions under certain circumstances, if supported by a motion from the Chief Administrative Law Judge and we determine that "additional time is necessary or appropriate in the public interest."<sup>7</sup>

In her motion, Chief Judge Murray states that it will not be possible to issue an initial decision by the due date in light of the workload in the Office of Administrative Law Judges. She further notes that the hearing took place over eighteen days and involved eight respondents,<sup>8</sup> and that the final brief was filed on June 13, 2014. Under the circumstances, it is appropriate in the public interest to grant the Chief Administrative Law Judge's request and to extend the deadline for issuance of a decision.

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<sup>2</sup> *Donald J. Anthony, Jr.*, Securities Exchange Act Release No. 70473, 2013 WL 5306694 (Sept. 23, 2013).

<sup>3</sup> 15 U.S.C. §§ 77e(a), 77d(c).

<sup>4</sup> *Id.* § 78j(b); 17 C.F.R. § 240.10b-5.

<sup>5</sup> 15 U.S.C. §§ 78o(b)(4), 78o(b)(6).

<sup>6</sup> *See Adopting Release*, Exchange Act Release No. 48018, 2003 WL 21354791, at \*2 (June 11, 2003).

<sup>7</sup> 17 C.F.R. § 201.360(a)(3).

<sup>8</sup> Of the ten respondents named in the OIP, one settled and another was found to be in default. *See Exchange Act Release No. 71864* (Apr. 3, 2014) (Richard D. Feldmann settlement); *Admin. Proceeding Rulings Release No. 1081* (Dec. 4, 2013) (finding default as to Donald J. Anthony).

Accordingly, IT IS ORDERED that the deadline for filing the initial decision in this proceeding is extended to January 26, 2015.

By the Commission.

Lynn M. Powalski  
Deputy Secretary