

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 9790 / May 21, 2015

SECURITIES EXCHANGE ACT OF 1934  
Release No. 75027 / May 21, 2015

INVESTMENT COMPANY ACT OF 1940  
Release No. 31644 / May 21, 2015

Admin. Proc. File No. 3-15514

In the Matter of

FRANK H. CHIAPPONE,  
ANDREW G. GUZZETTI,  
WILLIAM F. LEX,  
THOMAS E. LIVINGSTON,  
BRIAN T. MAYER, and  
PHILIP S. RABINOVICH

ORDER GRANTING PETITIONS FOR  
REVIEW AND SCHEDULING BRIEFS

Pursuant to Commission Rule of Practice 411,<sup>1</sup> the petitions of Frank H. Chiappone, Andrew G. Guzzetti, William F. Lex, Thomas E. Livingston, Brian T. Mayer, and Philip S. Rabinovich (collectively, "Respondents") for review of the administrative law judge's initial decision (the "Initial Decision") are granted.<sup>2</sup> Pursuant to Rule of Practice 411(d),<sup>3</sup> the Commission will determine what sanctions, if any, are appropriate in this matter.

<sup>1</sup> 17 C.F.R. § 201.411.

<sup>2</sup> *Donald J. Anthony, Jr., et al.*, Initial Decision Release No. 745 (Feb. 25, 2015), 110 SEC Docket 19, *modified by* Order on Motions to Correct Manifest Errors of Fact in the Initial Decision, Administrative Proceedings Release No. 2528 (Apr. 9, 2015), 111 SEC Docket 5.

<sup>3</sup> 17 C.F.R. § 201.411(d).

Accordingly, IT IS ORDERED, pursuant to Rule of Practice 450(a),<sup>4</sup> that Respondents' briefs in support of their petitions for review shall be filed by July 6, 2015. Respondents shall file one joint brief of no more than 10,000 words (the "Joint Brief") addressing the following arguments that are raised or incorporated by reference in multiple petitions for review:

- (i) claims that 28 U.S.C. § 2642 bars the Division of Enforcement's claims against Respondents in whole or in part, limits the relief that may be granted with respect to those claims, and/or requires exclusion of evidence that predates the Order Instituting Proceedings ("OIP") by five years or more;
- (ii) claims that the Initial Decision misapplies or impermissibly expands *Hanly v. SEC*, 415 F.2d 589 (2d Cir. 1969) or otherwise applied an incorrect legal standard to Respondents with respect to their diligence and other obligations;
- (iii) claims that the Initial Decision improperly treated certain circumstances as red flags for reasons common to the Respondents, including that conflicts were disclosed in private placement memoranda;
- (iv) claims that Respondents should not be held liable under Securities Act Section 5, 15 U.S.C. § 77e, because Respondents "reasonably believe[d]" under Rule 506 of Regulation D, 17 C.F.R. § 230.506, that the offerings at issue were limited to 35 unaccredited purchasers or because an exemption from registration is otherwise available;
- (v) claims that Respondents should not be held liable because Timothy McGinn and David Smith concealed their wrongdoing;
- (vi) claims that Respondents should not be held liable because a failure to investigate is not fraud;
- (vii) claims that Respondents should not be held liable for negligent conduct because the title of Securities Act Section 17, 15 U.S.C. § 77q, is "Fraudulent Interstate Transactions";
- (viii) claims that the use of the administrative forum and its processes infringed Respondents' rights under the United States Constitution;
- (ix) claims that the law judge lacked independence and impartiality;
- (x) claims that the Commission has prejudged Respondents' case;

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<sup>4</sup> 17 C.F.R. § 201.450(a).

- (xi) claims that Respondents lacked reasonable notice of their charged misconduct under the Constitution, Administrative Procedure Act, and the Commission's Rules of Practice;
- (xii) claims that the Division obtained evidence after the issuance of the OIP in violation of Rule of Practice 230(g), 17 C.F.R. § 201.230(g); and
- (xiii) claims that deposition testimony from some Respondents should be excluded.

In addition, each Respondent shall file an individual brief of no more than 7,000 words that addresses arguments applicable to him, including with respect to sanctions, that are not raised in the Joint Brief (each, an "Individual Brief").

On or before August 20, 2015, the Division shall file one brief of no more than 10,000 words responding to the Joint Brief and a single additional brief of no more than 14,000 words responding to all the Individual Briefs.

On or before September 10, 2015, Respondents shall file any joint reply brief of no more than 5,000 words in support of the arguments raised in the Joint Brief, and each individual Respondent shall file any reply brief of no more than 3,500 words in support of the arguments raised in his Individual Brief.<sup>5</sup>

Pursuant to Rule of Practice 180(c),<sup>6</sup> failure to file a brief in support of a party's petition may result in dismissal of this review proceeding as to that petitioner.

For the Commission, by the Office of General Counsel, pursuant to delegated authority.

Brent J. Fields  
Secretary

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<sup>5</sup> As provided by Rule of Practice 450(a), no briefs in addition to those specified in this schedule may be filed without leave of the Commission. Attention is called to Rules 150–153, 17 C.F.R. § 201.150–153, with respect to form and service, and Rules of Practice 450(b) and (c), 17 C.F.R. § 201.450(b), 201.450(c), with respect to content and the calculation of length limitations. Requests for extensions of time to file briefs are disfavored.

<sup>6</sup> 17 C.F.R. § 201.180(c).