

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10409 / August 31, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 81517 / August 31, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4761 / August 31, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32807 / August 31, 2017

Admin. Proc. File No. 3-15617

In the Matter of
LARRY C. GROSSMAN

ORDER SCHEDULING BRIEFS

On September 30, 2016, the Commission issued an opinion and order finding that respondent Larry C. Grossman violated the federal securities laws by, among other things, making misrepresentations and omissions of material fact to his investment advisory clients when he advised them to invest in funds from which he received undisclosed referral fees, consulting fees, and sales charges.¹ The Commission ordered Grossman to disgorge \$3,004,180.65 in unjust enrichment as well as \$757,853.75 in prejudgment interest. The Commission also imposed certain industry bars and ordered that Grossman cease and desist from committing or causing any violations or future violations of the securities laws.

In its opinion, the Commission rejected Grossman's argument that the five-year statute of limitations in 28 U.S.C. § 2462, applicable to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture," "bars disgorgement of ill-gotten gains causally connected to misconduct occurring outside the five-year statute of limitations period."² Rather, the Commission held that, "consistent with the longstanding recognition that disgorgement is an

¹ *Larry Grossman*, Securities Act Release No. 10227, 2016 WL 5571616 (Sept. 30, 2016).

² *Id.* at *15; *see also* 28 U.S.C. § 2462.

equitable and non-punitive remedy, the clear weight of authority supports our conclusion that Section 2462's statute of limitations does not apply to disgorgement."³

Grossman petitioned for review of the Commission's order in the United States Court of Appeals for the Eleventh Circuit.⁴ While his appeal was pending, the Supreme Court held in *Kokesh v. SEC*, a civil case, that "[t]he 5-year statute of limitations in Section 2462 . . . applies when the SEC seeks disgorgement."⁵ On August 11, 2017, the Eleventh Circuit ordered that "[t]he September 30, 2016, final order issued by the Securities and Exchange Commission in this matter is VACATED and the case is REMANDED for the Commission to reconsider its order of disgorgement in light of the Supreme Court's decision in *Kokesh*."⁶

Accordingly, IT IS ORDERED, pursuant to Rule 450(a) of the Rules of Practice,⁷ that the parties shall file briefs limited to the appropriateness of the Commission's "order of disgorgement in light of the Supreme Court's decision in *Kokesh*." Respondent shall file an opening brief by October 2, 2017, the Division of Enforcement shall file a response brief by November 1, 2017, and respondent may file a reply brief by November 15, 2017. No briefs in addition to those specified in this order may be filed without leave of the Commission.⁸

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

Brent J. Fields
Secretary

³ *Grossman*, 2016 WL 5571616, at *18 (citing cases).

⁴ Petition for Review, *Grossman v. SEC*, No. 16-16907 (11th Cir. filed Nov. 3, 2016).

⁵ *Kokesh v. SEC*, 137 S. Ct. 1635, 1644 (2017).

⁶ Order, *Grossman v. SEC*, No. 16-16907 (11th Cir. Aug. 11, 2017).

⁷ 17 C.F.R. § 201.450(a).

⁸ Attention is called to Rules of Practice 150 - 153, 17 C.F.R. § 201.150 - 153, with respect to form and service, and Rule of Practice 450(b) and (c), 17 C.F.R. § 201.450(b), (c), with respect to content and length limitations. Requests for extensions of time to file briefs will be disfavored.