

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10483 / April 20, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83076 / April 20, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4891 / April 20, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33073 / April 20, 2018

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.

SUPPLEMENTAL BRIEFING ORDER

On September 23, 2013, the Commission instituted this administrative proceeding and directed that it be presided over by an administrative law judge (“ALJ”).¹ The ALJ issued an initial decision on February 25, 2015, which found that respondents committed certain violations of the securities laws and imposed sanctions.² Respondents Frank H. Chiappone, Andrew G.

¹ *Donald J. Anthony, Jr.*, Exchange Act Release No. 70473, 2013 WL 5306694, at *11-12 (Sept. 23, 2013).

² *Donald J. Anthony, Jr.*, Initial Decision Release No. 745, 2015 WL 779516 (Feb. 25, 2015), *modified in part*, Administrative Proceedings Rulings Release No. 2528, 2015 WL 12778038 (Apr. 9, 2015) (Order on Motions to Correct Manifest Errors of Fact in the Initial Decision); *see also Donald J. Anthony, Jr.*, Exchange Act Release No. 75195, 2015 WL 3764881, at *1 (June 17, 2015) (finality order as to respondents who did not appeal, including William P. Gamello, against whom all proceedings were dismissed); *Donald J. Anthony, Jr.*,
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Guzzetti, William F. Lex, Thomas E. Livingston, Brian T. Mayer, and Philip S. Rabinovich sought Commission review of that decision.³ On November 30, 2017, the Commission remanded the matter to the ALJ who issued the initial decision in order for her to conduct a de novo reconsideration and reexamination of the record to determine “whether to ratify or revise in any respect all prior actions taken by” the ALJ.⁴ As part of the remand, the parties were given the opportunity to submit any new evidence and brief any issues that they deemed relevant.⁵ On March 30, 2018, the ALJ determined, upon reconsideration of the record and consideration of the parties’ evidentiary submissions and briefing following remand, to “RATIFY all the actions that [she] h[ad] taken in this proceeding,” except that she amended the ordering paragraph in her initial decision to revise the relief granted as to the appealing respondents.⁶

Respondents have indicated that they wish to pursue their appeal and to challenge the law judge’s order revising the relief granted in the initial decision and ratifying all of her other prior actions. The Commission will now complete its consideration of respondents’ appeals. Accordingly, it is ORDERED that each respondent and the Division of Enforcement may file simultaneous briefs, not to exceed 6,000 words, addressing any matters that they deem pertinent in light of the ALJ’s March 30, 2018 order by May 21, 2018.⁷ They may file simultaneous response briefs, not to exceed 3,000 words, by June 4, 2018. It is unnecessary to restate arguments asserted in previous briefing before the Commission.⁸ As indicated in the order

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Exchange Act Release No. 71864, 2014 WL 1320384, at *1 (Apr. 3, 2014) (accepting settlement offer of Richard D. Feldmann); *Richard D. Feldmann*, Exchange Act Release No. 77803, 2016 WL 2643450, at *1 (May 10, 2016) (denying request to modify agreed disgorgement obligations).

³ *Frank H. Chiappone*, Exchange Act Release No. 75027, 2015 WL 2408963, at *1 (May 21, 2015) (Order Granting Petitions for Review and Scheduling Briefs).

⁴ *Pending Administrative Proceedings*, Exchange Act Release No. 82178, 2017 WL 5969234, at *1-2 (Nov. 30, 2017).

⁵ *Id.* at *2; *see also Donald J. Anthony, Jr.*, Administrative Proceedings Rulings Release No. 5395 (Dec. 15, 2017), available at <https://www.sec.gov/alj/aljorders/2017/ap-5395.pdf>.

⁶ *Donald J. Anthony, Jr.*, Administrative Proceedings Rulings Release No. 5665 (Mar. 30, 2018), available at <https://www.sec.gov/alj/aljorders/2018/ap-5665.pdf>.

⁷ 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), 17 C.F.R. § 201.450(b), with respect to content limitations. Requests for extensions of time to file briefs will be disfavored.

⁸ *See* Rule of Practice 460, 17 C.F.R. § 201.460 (“The Commission shall determine each matter on the basis of the record. . . . In proceedings for final decision before the Commission other than those reviewing a determination by a self-regulatory organization, the record shall consist of: (i) all items part of the record below in accordance with Rule 350; (ii) any petitions

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granting the petitions for review that respondents filed in 2015, the Commission will determine what sanctions, if any, are appropriate in this matter pursuant to Rule of Practice 411(d).⁹

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

Brent J. Fields
Secretary

(. . . *continued*)

for review, cross-petitions or oppositions; and (iii) all briefs, motions, submissions and other papers filed on appeal or review.”).

⁹ *Chiappone*, 2015 WL 2408963, at *1 (citing 17 C.F.R. § 201.411(d)).