

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83827 / August 10, 2018

Admin. Proc. File No. 3-18580

In the Matter of the Application of
EGAN-JONES RATINGS COMPANY

ORDER GRANTING ONE-WEEK EXTENSION OF TIME

Egan-Jones Ratings Company (“EJR”) is a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (“NRSRO”) for certain credit ratings classes. The Commission revoked EJR’s registration as an NRSRO for certain other credit ratings classes on January 22, 2013, but provided EJR a right to apply for re-registration in such classes after 18 months.¹ EJR furnished its application for re-registration to the Commission on April 10, 2018.

On July 9, 2018, the Commission issued an order instituting administrative proceedings (“OIP”) pursuant to Section 15E(a)(2)(A)(ii) of the Securities Exchange Act of 1934 to determine whether EJR’s re-registration should be denied.² Section 15E generally requires that this proceeding must be completed within 120 days after EJR furnished its application to the Commission.³ Section 15E also permits the Commission to extend that deadline by another 90 days for “good cause” *sua sponte*, “or for such longer period as to which the applicant consents.”⁴

In the OIP, “[t]he Commission [found] good cause for this 90-day extension on the basis that the application raises substantial questions which necessitate granting additional time to prepare written submissions and the Commission sufficient time to consider those submissions.”⁵

¹ See *Egan-Jones Ratings Co.*, Exchange Act Release No. 68703, 2013 WL 227564 (Jan. 22, 2013).

² See *Egan-Jones Ratings Co.*, Exchange Act Release No. 83610, 2018 WL 3359605, at *1-2 (July 9, 2018) (describing statutory framework for proceedings to determine whether NRSRO registration should be denied); 15 U.S.C. § 78o-7(a)(2)(A)(ii).

³ 15 U.S.C. § 78o-7(a)(2)(B)(i)(II).

⁴ *Id.* § 78o-7(a)(2)(B)(iii).

⁵ *Egan-Jones Ratings Co.*, 2018 WL 3359605, at *3.

The Commission's Office of Credit Ratings ("OCR") filed its initial brief on July 27, 2018. EJR's response is currently due August 17. Absent any extensions, OCR's reply would be due August 24, and EJR's surreply would be due August 31. As indicated in the OIP, with the 90-day extension the statutory deadline for completing proceedings is November 6.⁶

EJR now moves for a 45-day extension of time to file its response, now due August 17, to October 1. Its request is based primarily on the fact that, after OCR filed its opening brief, EJR retained new counsel. EJR argues that its new counsel needs "additional time to formulate a response" to OCR's "voluminous" opening brief. It also proposes that if the Commission grants an extension, OCR's reply would be due October 8, and EJR's surreply would be due October 15. According to EJR, its request should be granted because this "still leaves 23 days" between the completion of briefing and the statutory deadline for the "conclusion of proceedings."

EJR's request invokes Commission Rule of Practice 161, which governs the extension of time limits prescribed by our Rules of Practice.⁷ In considering requests under Rule 161, the Commission considers, "in addition to any other relevant factors:

"(i) The length of the proceeding to date; (ii) The number of postponements, adjournments or extensions already granted; (iii) The stage of the proceedings at the time of the request; (iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and (v) Any other such matters as justice may require."⁸

Only the first factor weighs in EJR's favor. The OIP issued on July 9, and under the briefing schedule in the OIP EJR has only 20 days to respond to OCR's opening brief. EJR's decision to retain new counsel would not itself militate in favor of granting an extension.⁹ But as EJR notes, OCR's brief includes exhibits "outside the four corners of [EJR's] Form NRSRO." An extension would give EJR's new counsel more time to respond to that filing.

⁶ *Id.*

⁷ Rule 161(a) provides that "[e]xcept as otherwise provided by law, the Commission, at any time, . . . may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers" 17 C.F.R. § 201.161(a). The briefing schedule in the OIP is governed by the Rules of Practice because the OIP provides that the "hearing shall be conducted on the basis of written submissions (and in accordance with the Commission's Rules of Practice . . .)." *Egan-Jones Ratings Co.*, 2018 WL 3359605, at *3.

⁸ 17 C.F.R. § 201.161(b)(1).

⁹ *See, e.g., Harding Advisory LLC*, Exchange Act Release No. 32415, 2017 WL 66592, at *17 (Jan. 6, 2017) (stating that the hearing officer "was not required to grant an extended continuance to accommodate [respondents'] eleventh-hour decision to retain new counsel after the institution of proceedings"), *appeal filed*, No. 17-1070 (D.C. Cir.).

But the remaining factors—especially the impact of EJR’s request on the Commission’s ability to complete the proceeding by the statutory deadline—weigh against granting an extension. Although EJR points out that neither it nor OCR has “requested” or “been granted” an “extension[]” of time to file briefs, the Commission has already extended proceedings by the maximum amount Congress has authorized the Commission to order *sua sponte*. In doing so, the Commission explicitly accounted for the parties’ need for sufficient time “to prepare written submissions”—and balanced that against the Commission’s need for sufficient time “to consider those submissions.”¹⁰ At this stage of the proceedings, with the statutory deadline imminent, any extension of time for the parties to prepare written submissions shortens the Commission’s time to consider those submissions before the November 6 deadline to conclude the proceedings.

EJR argues that its extension request “would not unduly delay these proceedings.” But a 45-day extension would significantly shorten the time period in which the Commission could consider the written submissions on the “substantial questions” raised by the application. Indeed, EJR’s extension request does not purport to alter the statutory deadline for completing these proceedings, and the Commission may not *sua sponte* extend that deadline further.

Under the circumstances, a one-week extension of the time for EJR to file its response brief is appropriate. Accordingly, IT IS ORDERED that EJR’s motion for an extension of time is granted in part and EJR’s time to file its response brief is extended to August 24, 2018; the time for OCR to file its reply brief is extended to August 31, 2018; and the time for EJR to file its surreply is extended to September 7, 2018. Further extension requests will be disfavored.

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

Brent J. Fields
Secretary

¹⁰ *Egan-Jones Ratings Co.*, 2018 WL 3359605, at *3; cf. *Gregory M. Dearlove, CPA*, Exchange Act Release No. 57244, 2008 WL 281105, at *36 (Jan. 31, 2008) (rejecting argument that administrative law judge violated due process by denying respondent a sixty-day extension, and noting that the Commission had already accounted for the complexity of the case and large size of a record when it “selected the . . . timeline” from which the respondent had sought an extension), *petition denied*, 573 F.3d 801 (D.C. Cir. 2009).