

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86208 / June 26, 2019

Admin. Proc. File No. 3-18900

In the Matter of
ROBERT WILLIAM MYERS, JR.

ORDER SETTING BRIEFING SCHEDULE

On November 19, 2018, the Commission instituted proceedings against Robert William Myers, Jr., pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ The Order Instituting Proceedings (“OIP”) alleged that the Division of Enforcement brought a civil action against Myers in the United States District Court for the Eastern District of Texas in which the district court found that Myers violated Section 15(a) of the Exchange Act by “act[ing] as an unregistered broker in the offer and sale of securities.”² The OIP alleged further that the district court entered a judgment against Myers permanently enjoining him from future violations of Exchange Act Section 15(a). The OIP instituted proceedings to determine whether the allegations are true, afford Myers “an opportunity to establish any defenses to such allegations,” and determine, based on those allegations, “[w]hat, if any, remedial action is appropriate.”³ Myers, acting pro se, filed his answer on December 17, 2018, in which he disputed the Division’s account of his conduct and asserted that no further remedial action was warranted.

After Myers filed his answer, the parties notified the Commission that they were in settlement discussions. By May 21, 2019, it became clear that a settlement would not occur.

On June 10, 2019, the Division filed a report on the parties’ prehearing conference (“Report”).⁴ As part of that Report, both the Division and Myers proffered separate lists of three issues they identified as necessary to be decided in this proceeding. The Division further

¹ *Robert William Myers, Jr.*, Exchange Act Release No. 84618, 2018 WL 6040672 (Nov. 19, 2018).

² *Id.* at *1.

³ *Id.* at *2.

⁴ The Division noted that while the Report “reflects the positions that [Myers] expressed to counsel for the Division, Respondent was unwilling to join and sign th[e] report because he does not have an attorney.”

asserted that its three issues “are particularly well-suited to be resolved by summary disposition.” Myers did not state a position with regard to summary disposition.

Commission Rule of Practice 250 provides that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and [] the movant is entitled to summary disposition as a matter of law.”⁵ Motions for summary disposition may be made by any party after a respondent’s answer has been filed and documents have been made available for inspection and copying pursuant to Rule of Practice 230.⁶ The Report recites that the “parties anticipate completing production of documents pursuant to Rule 230 by June 28, 2019.”

It appears appropriate for both parties to be given the opportunity to file briefs in support of motions for summary disposition. Such briefs should include references to relevant undisputed pleaded facts along with facts eligible to be officially noted pursuant to Rule of Practice 323,⁷ and should include, as attachments, relevant declarations, affidavits, and other supporting documentation. To the extent either party opposes summary disposition, it should precisely specify the basis for that opposition in its responsive briefing, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.⁸

The Report also included agreements reached regarding other prehearing filings and deadlines, including witness and exhibit lists and a proposed hearing date. We will refrain from ruling on those matters until after a ruling on any summary disposition motion is made.⁹ A hearing will not need to be held if the Commission determines that there are no genuine issues of material fact necessitating a hearing and that the matter can be resolved on the papers.

In the Report summarizing the conference between the Division and Myers, the Division reported that Myers “suggested two amendments to the OIP” regarding his residence and age.

⁵ 17 C.F.R. § 201.250(b).

⁶ 17 C.F.R. § 201.250(b); 17 C.F.R. § 201.230.

⁷ 17 C.F.R. § 201.323.

⁸ *See, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 & n.68 (Dec. 12, 2013) (discussing appropriateness of summary disposition in follow-on proceedings and providing citations); *Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 WL 2790633, at *4-6 (Sept. 26, 2007) (discussing unsuccessful attempt to oppose summary disposition), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

⁹ The Report also notes that the parties have “agreed to serve pleadings, letters, and other papers in this matter on each other by email.” In addition to filing hard copies of all filings with the Office of the Secretary, it is requested that they email courtesy copies to APFilings@sec.gov in PDF text-searchable format.

Rule of Practice 200(d) governs parties' motions for amendments to an OIP.¹⁰ To the extent Myers seeks an amendment to the OIP, he should file a motion pursuant to Rule 200(d).

The Division proposed a deadline of August 15, 2019 for the filing of motions for summary disposition. Myers stated that he was not opposed to that deadline. Accordingly, it is ORDERED that briefs in support of motions for summary disposition may be filed by the parties by August 15, 2019; opposition briefs may be filed by September 16, 2019; and reply briefs, if any, may be filed by September 30, 2019.¹¹

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

Vanessa A. Countryman
Secretary

¹⁰ 17 C.F.R. § 201.200(d).

¹¹ If Rule 230's provisions regarding document production have not been satisfied by August 15, 2019, the parties should notify the Commission and the briefing schedule will be modified. Rule 250(e) and (f) governs the length limitations for dispositive motions, oppositions to dispositive motions, and reply briefs. See 17 C.F.R. § 201.250(e), (f).