

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5754 / June 16, 2021

Admin. Proc. File No. 3-19510

In the Matter of  
  
ALBERT K. HU

ORDER SETTING BRIEFING SCHEDULE

On September 24, 2019, the Commission issued an order instituting proceedings (“OIP”) against Albert K. Hu pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> Hu filed an answer to the OIP on January 9, 2020. On April 12, 2021, the Commission ordered that the parties file a statement by May 10, 2021, advising the Commission of any agreements reached at the prehearing conference specified in the OIP.<sup>2</sup>

On May 10, 2021, the Division of Enforcement and Hu filed a joint statement following prehearing conferences held on April 26, 2021, April 28, 2021, May 4, 2021, and May 7, 2021. In the statement, the Division indicates that it will seek to resolve this matter through a motion for summary disposition pursuant to Rule of Practice 250. The joint statement further provides that Hu intends to file an opposition to the Division’s motion for summary disposition.

Based on the parties’ representations, we find it appropriate to set a briefing schedule for the Division’s motion for summary disposition.<sup>3</sup> Rule 250 provides that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and . . . the movant is

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<sup>1</sup> *Albert K. Hu*, Investment Advisers Act Release No. 5365, 2019 WL 4645968 (Sep. 24, 2019).

<sup>2</sup> *Albert K. Hu*, Investment Advisers Act Release No. 5717, 2021 WL 1393069 (Apr. 12, 2021).

<sup>3</sup> *Cf. Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at \*5 (Feb. 4, 2008) (“Use of the summary disposition procedure has been repeatedly upheld in cases such as this one where the respondent has been enjoined or convicted, and the sole determination concerns the appropriate sanction.”), *petition denied*, 561 F.3d 548 (6th Cir. 2009).

entitled to summary disposition as a matter of law.”<sup>4</sup> An opposition to a motion for summary disposition should precisely specify the basis for that opposition, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.<sup>5</sup> Hu should also advance in his opposition brief any arguments and support for his claim that summary disposition is inappropriate and that an in-person evidentiary hearing is required to resolve genuine disputes of material fact.<sup>6</sup> In setting the briefing schedule, we provide the parties with more time than generally provided in Rule 154(b) for the filing of opposition and reply briefs.<sup>7</sup>

Accordingly, IT IS ORDERED that the Division’s motion for summary disposition against Hu is due by July 16, 2021; Hu’s opposition is due by August 16, 2021; and the Division’s reply is due by August 30, 2021.

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<sup>4</sup> 17 C.F.R. § 201.250(b). Under Rule 250 and the OIP in this case, a motion for summary disposition may be made after the respondent’s answer has been filed and documents have been made available to the respondent for inspection and copying pursuant to Rule of Practice 230, 17 C.F.R. § 201.230. See 17 C.F.R. § 201.250(b) (providing procedures for summary disposition in a proceeding designed under the “75-day timeframe”); *Hu*, 2019 WL 4645968, at \* (designating this proceeding as one under the 75-day timeframe for purposes of Rule 250). The joint statement indicated that the Division would, by June 10, 2021, make available to Hu for inspection and copying the documents identified in Rule of Practice 230. We assume that has occurred here, in light of the Division’s representation. If that is not the case, the parties should notify the Commission and the scheduling order will be modified.

<sup>5</sup> 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).

<sup>6</sup> The Division requests that prehearing matters such as exchanging witness and exhibit lists be postponed until after the Commission rules on its motion for summary disposition. Hu opposes this request and argues that discovery should proceed. As discussed above, the Division may not file its motion for summary disposition until it complies with its discovery obligations under Rule 230. But, once it does so, the Division will have provided Hu with the discovery required before it may file a motion for summary disposition. And once it files a motion for summary disposition, the parties need not prepare for an in-person evidentiary hearing until the Commission rules on that motion. Accordingly, this briefing schedule provides deadlines for the parties to file their motions for and oppositions to summary disposition only.

<sup>7</sup> See 17 C.F.R. § 201.154(b) (providing that briefs in opposition to a motion shall be filed within five days after service of the motion and reply briefs within three days after service of the opposition).

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at [apfilings@sec.gov](mailto:apfilings@sec.gov).<sup>8</sup> Also, the Commission's Rules of Practice were recently amended to include new e-filing requirements, which took effect on April 12, 2021.<sup>9</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>8</sup> 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 250(e) and (f), 17 C.F.R. § 201.250(e) and (f), with respect to length limitations. *See also In re: Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001, at \*1 (Mar. 18, 2020) (stating that “pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161” (citing 17 C.F.R. § 201.161(b)(1)).

<sup>9</sup> *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations on parties to administrative proceedings such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.