

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95353 / July 22, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6071 / July 22, 2022

Admin. Proc. File Nos. 3-20248; 3-20249

In the Matters of

WESLEY KYLE PERKINS
and
WORLD TREE FINANCIAL, LLC

ORDER CONSOLIDATING PROCEEDINGS, DENYING MOTIONS TO STAY, AND
SCHEDULING BRIEFS

On March 22, 2021, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”) pursuant to Section 15(b) of the Securities Exchange Act of 1934, and Section 203(f) of the Investment Advisers Act of 1940, against Wesley Kyle Perkins.¹ That same day, the Commission issued an OIP pursuant to Advisers Act Section 203(f) against World Tree Financial, LLC (“World Tree”), a registered investment adviser.² The OIPs alleged that Perkins was the principal of World Tree, and that in a civil action in federal district court Perkins and World Tree (“Respondents”) had been enjoined from violating antifraud provisions of the securities laws—Section 17(a) of the Securities Act of 1933, Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2). The OIPs instituted proceedings before the Commission to determine whether the allegations of the OIPs were true and if so what, if any, remedial action against Respondents is appropriate in the public interest.

¹ *Wesley Kyle Perkins*, Exchange Act Release No. 91378, 2021 WL 1168555 (Mar. 22, 2021).

² *World Tree Fin., LLC*, Advisers Act Release No. 5702, 2021 WL 1168567 (Mar. 22, 2021).

On May 28, 2021, Respondents, represented by common counsel, filed answers to the OIPs. The Commission then ordered that the parties in both proceedings file prehearing conference statements as well as briefs concerning whether to consolidate the proceedings.³

On April 14, 2022, the parties filed joint prehearing conference statements. The statements included the Division’s proposed schedule for summary disposition briefing and Respondents’ position that the proceedings are not “appropriate for summary disposition.”

On April 20, 2022, the Division filed a brief in each proceeding stating that consolidation is appropriate because the proceedings share common questions of law and fact and because consolidation would “promote efficiencies.” The Division stated that it had already made identical filings in both proceedings, and that “consolidation would prevent duplicative briefing” on summary disposition and “prevent duplicative argument and evidence” if hearings are held. On May 20, 2022, Respondents filed briefs opposing consolidation, contending that the need for “independent testimony and evidence” arising from their “distinguishable” actions would, if the proceedings were consolidated, result in “unnecessary cost” and undue complication.

On May 20, 2022, Respondents filed motions to stay the proceedings pending the outcome of their appeals of the district court action to the United States Court of Appeals for the Fifth Circuit. On June 2, 2022, the Division filed oppositions to the stay requests.

We now consolidate the proceedings, deny a stay, and issue a briefing schedule.

I. Consolidation

Rule of Practice 201(a) provides that the Commission may consolidate “proceedings involving a common question of law or fact . . . as it deems appropriate to avoid unnecessary cost or delay.”⁴ The proceedings here involve common questions of law and fact. Both OIPs allege that Respondents were enjoined in the same civil action from violating the same provisions of the securities laws. According to the OIPs, the complaint in that civil action alleged the same misconduct—that from March 2011 through September 2015:

[Respondents] disproportionately allocated unfavorable trades to two large accounts owned by a single client, while allocating favorable trades to accounts owned by [Perkins], his wife, and other World Tree clients. Accounts held by or associated with Perkins and his wife received ill-gotten gains of \$354,232 during the course of the scheme. In addition to cherry-picking, World Tree and Perkins

³ *Wesley Kyle Perkins*, Exchange Act Release No. 94619, 2022 WL 1032830 (Apr. 6, 2022); *World Tree Fin., LLC*, Exchange Act Release No. 94618, 2022 WL 1032828 (Apr. 6, 2022); *Wesley Kyle Perkins*, Exchange Act Release No. 94572, 2022 WL 990130 (Mar. 31, 2022); *World Tree Fin., LLC*, Advisers Act Release No. 5991, 2022 WL 990131 (Mar. 31, 2022).

⁴ 17 C.F.R. §201.201(a).

made material misrepresentations in World Tree’s Forms ADV, Part 2A. They misrepresented World Tree’s allocation practices by concealing their cherrypicking, and falsely claimed that World Tree’s principals and their families were prohibited from trading in the same securities as their clients.⁵

The OIPs instituted proceedings to determine whether remedial action against Respondents is in the public interest. Because of these common questions of law and fact, consolidation would avoid unnecessary cost or delay. For example, consolidation would reduce duplication in briefing by the Division and Respondents, and in orders and opinions issued by the Commission. Accordingly, we find it appropriate to consolidate the proceedings.⁶

II. The Stay Motions

Respondents request to stay the proceedings under Rule of Practice 401, but we instead consider their request under Rule of Practice 161. Rule 401(c) authorizes a motion for a stay of a Commission order “by any person aggrieved thereby who would be entitled to review in a federal court of appeals.”⁷ But the Commission has not yet entered a reviewable final order.⁸

Rule 161 authorizes us to order adjournments and postponements for “good cause shown.”⁹ The movant must make “a strong showing that the denial of the request or motion would substantially prejudice their case.”¹⁰ Respondents have failed to make such a showing.

Respondents seek to stay the proceeding pending their appeal to the Fifth Circuit. They argue that “there is a significant chance the Fifth Circuit will reverse” the district court’s judgment and that moving forward with this proceeding thus “would be a waste of” resources.

⁵ *Perkins*, 2021 WL 1168555, at *1; *World Tree Fin., LLC*, 2021 WL 1168567, at *1.

⁶ *See, e.g., Jocelyn Murphy*, Exchange Act Release No. 91797, 2021 WL 1835414, at *1 (May 7, 2021) (order consolidating follow-on proceedings “predicated on final judgments” in the same underlying proceeding and “based on similar underlying misconduct”).

⁷ 17 C.F.R. § 201.401(c).

⁸ *See Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *6 n.42 (Mar. 1, 2017) (“Consistent with our practice, we treat this request [to stay a follow-on proceeding pending an appeal of the underlying suit] as a motion for a postponement or adjournment under Commission Rule of Practice 161, but not for a stay under Rule 401.”).

⁹ 17 C.F.R. § 201.161(a).

¹⁰ *Id.* § 201.161(b)(1). The Commission’s order that “all reasonable requests for extensions of time will not be disfavored” with respect to the filing and service of papers, *In re: Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), “does not apply to [a] request to adjourn or postpone the proceeding itself pending an appeal of the underlying suit.” *Donald J. Fowler*, Exchange Act Release No. 89226, 2020 WL 3791560, at *1 n.10 (July 6, 2020).

But we have repeatedly held that “the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related ‘follow-on’ administrative proceedings.”¹¹ Although Respondents argue that an adjournment “will cause no prejudice or harm” to the Commission or the public because they do not intend to work in the securities industry “absent a successful appeal,” they do not explain why denying an adjournment would prejudice their case.¹² Indeed, Respondents have failed to show any prejudice because, if the Fifth Circuit reverses the district court’s judgment, Respondents “may seek to vacate any action based upon that judgment.”¹³

III. Summary Disposition Briefing

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.”¹⁴ 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 230.¹⁵ The joint prehearing conference statements recite that “[p]roduction of documents set forth in Rule 230 is complete.”¹⁶

It appears appropriate for both parties to have the opportunity to file motions for summary disposition.¹⁷ Although Respondents contend that this matter is not “appropriate for summary disposition” because they have appealed the district court’s judgment, that appeal is irrelevant to whether this matter may be resolved without an in-person evidentiary hearing.

¹¹ *Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015) (citing cases).

¹² *Cf. Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *41 (May 29, 2015) (rejecting argument that a bar was unnecessary since respondent had “left the industry” because “[a]bsent a bar, nothing would prevent [respondent] from reentering the industry”).

¹³ *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *3 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

¹⁴ 17 C.F.R. § 201.250(b).

¹⁵ *Id.*; 17 C.F.R. § 201.230.

¹⁶ The joint prehearing conference statements 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 ruling on any summary disposition motion. A hearing will not 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.

¹⁷ *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), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Seghers*, 2007 WL 2790633, at *4-6 (discussing unsuccessful attempt to oppose summary disposition).

Summary disposition briefs should include references to relevant undisputed pleaded facts along with facts eligible to be officially noted pursuant to Rule of Practice 323,¹⁸ 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.

* * *

Accordingly, IT IS ORDERED that the Respondents' proceedings are consolidated; it is further ORDERED that Respondents' motions to stay, postpone, or adjourn the proceeding are denied; and it is further ORDERED that briefs in support of motions for summary disposition shall be filed by August 19, 2022, opposition briefs shall be filed by September 16, 2022, and reply briefs shall be filed by September 30, 2022.¹⁹ Pursuant to Rule of Practice 180(c), a party's failure to file a brief or comply with this order may result in the Commission's determination of the matter at issue against that party, entry of default, dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.²⁰

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.²¹

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

Vanessa A. Countryman
Secretary

¹⁸ 17 C.F.R. § 201.323.

¹⁹ 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(b), (e), and (f), 17 C.F.R. § 201.250(b), (e), and (f), with respect to motion requirements and length limitations.

²⁰ 17 C.F.R. § 201.180(c).

²¹ *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), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations 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.