

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97425 / May 3, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6298 / May 3, 2023

Admin. Proc. File No. 3-21030

In the Matter of

LEON VACCARELLI

ORDER SCHEDULING BRIEFS

On September 2, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings against Leon Vaccarelli pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ The Commission subsequently ordered the parties to engage in a prehearing conference.² On March 15, 2023, the Division of Enforcement filed a statement that said that the Division had conferred with Vaccarelli via telephone and email.

The Division's statement proposed that, based on those discussions, Vaccarelli would have until April 15, 2023, to submit a signed offer of settlement to the Division. The Division further proposed that, if Vaccarelli submitted an offer acceptable to it, the Division would request a postponement of proceedings to allow it time to make a formal recommendation to the Commission on the offer. The Division also proposed that, if Vaccarelli did not do so, the parties would file motions for summary disposition by May 15, 2023; opposition briefs within 21 days of service of such motions; and reply briefs within seven days of service of any opposition briefs.

On or about April 5, 2023, Vaccarelli filed a request for a 30-day extension on "all proposed dates." Vaccarelli stated that he could not comply with the Division's stated schedule because a change in Bureau of Prisons policy had limited his access to email and telephone communications and legal documents. On April 21, 2023, the Division filed a response to Vaccarelli's motion "assent[ing] to his request" and proposing that each of the proposed dates be extended by thirty days. We thus assume that the parties have agreed that Vaccarelli will submit

¹ *Leon Vaccarelli*, Exchange Act Release No. 95671, 2022 WL 4011090 (Sept. 2, 2022).

² *Leon Vaccarelli*, Exchange Act Release No. 96853, 2023 WL 1926499 (Feb. 9, 2023).

any signed offer of settlement to the Division by May 15, 2023, that the Division will seek a postponement of this proceeding if Vaccarelli submits an offer acceptable to it by that date, and that the parties will otherwise engage in summary disposition briefing beginning on June 15, 2023. In light of the parties' representations and circumstances, we believe it is appropriate to enter the following briefing schedule for motions for summary disposition.³

Accordingly, IT IS ORDERED that, if by May 22, 2023, the Division does not move to postpone this proceeding upon receipt of a settlement offer acceptable to it, the parties shall file their respective motions for summary disposition by June 15, 2023; the parties shall file their respective oppositions by July 27, 2023; and the parties shall file any reply briefs by August 17, 2023.⁴ Vaccarelli shall deliver any filings to the proper prison authorities no later than the due date, for forwarding to the Commission's Office of the Secretary.⁵ Vaccarelli is reminded that in the future he must serve the Division with a copy of any document that he files with the Commission,⁶ and he must include a certificate of service with each document that he files.⁷

³ See 17 C.F.R. § 201.250(b) (providing 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"). Motions for summary disposition may be made under Rule 250(b) after a 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. *Id.*; 17 C.F.R. § 201.230. We previously construed Vaccarelli's response to the show-cause order as his answer. *Vaccarelli*, 2023 WL 1926499, at *1. According to the Division's prehearing conference statement, the Division made documents available to Vaccarelli under Rule 230 by sending him an overnight package on February 27, 2023.

⁴ 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. See also *In re: Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (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))). A copy of the Rules of Practice was previously provided to Vaccarelli.

⁵ See *Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that, under federal prison mailbox rule, pro se prisoners' notices of appeal are "filed" at moment of delivery to prison authorities for forwarding to the district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (per curiam) (noting that this "mailbox rule [applies] to other filings by pro se prisoners").

⁶ Rule of Practice 150(a), 17 C.F.R. § 201.150(a).

⁷ Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (providing that papers filed with the Commission "shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person").

A brief in support of a motion for summary disposition should include references to relevant undisputed pleaded facts along with facts eligible to be officially noted pursuant to Rule of Practice 323,⁸ and should include, as attachments, relevant declarations, affidavits, and other supporting documentation. A brief in 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.⁹ Pursuant to Rule of Practice 180(c), a party's failure to file a required 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.¹⁰

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

Vanessa A. Countryman
Secretary

⁸ 17 C.F.R. § 201.323.

⁹ 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); *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4-6 (Sept. 26, 2007) (discussing unsuccessful attempt to oppose summary disposition), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

¹⁰ 17 C.F.R. § 201.180(c).