

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6416 / September 13, 2023

Admin. Proc. File No. 3-20941

In the Matter of DONALD S. LAGUARDIA, JR.
--

ORDER SCHEDULING BRIEFS

The Securities and Exchange Commission issued an Order Instituting Proceedings (“OIP”) on August 1, 2022, pursuant to Section 203(f) of the Investment Advisers Act of 1940, against Donald S. LaGuardia, Jr. (“Respondent”).¹ On September 5, 2023, the Division of Enforcement filed a status report, on behalf of itself and Respondent, stating that Respondent’s counsel informed the Division that “Respondent does not intend to further litigate this administrative proceeding.” The status report also states that the Division intends to file a motion for summary disposition by September 22, 2023. Given the current posture of the proceeding, we believe it is appropriate to set the following briefing schedule.²

Accordingly, it is ORDERED that the Division’s motion for summary disposition shall be filed by September 22, 2023; Respondent’s opposition shall be filed by October 13, 2023; and the Division’s reply, if any, may be filed by October 27, 2023.³

¹ *Donald S. LaGuardia, Jr.*, Advisers Act Release No. 6078, 2022 WL 3043217 (Aug. 1, 2022).

² Motions for summary disposition may be made under Rule of Practice 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. 17 C.F.R. §§ 201.230, .250(b). Respondent filed an answer, and the status report states that “Respondent already received discovery through the Criminal Case” and that “[b]ased on Respondent’s decision to not further litigate this proceeding, the parties do not contemplate any further discovery.” The Division should promptly inform the Commission if the discovery that Respondent has already received does not include the documents that are to be made available pursuant to Rule of Practice 230; and, if they do not, the Division shall comply with Rule of Practice 230 before filing its summary disposition motion.

³ 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.

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 323,⁴ 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.⁵

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.⁶ In particular, the failure to timely oppose a dispositive motion is itself a basis for a finding of default,⁷ and may result in the determination of particular claims (or the proceeding as a whole) adversely to the non-moving party and may be deemed a forfeiture of any arguments that could have been raised at that time.⁸

⁴ 17 C.F.R. § 201.323.

⁵ 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).

⁶ 17 C.F.R. § 201.180(c).

⁷ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); see, e.g., *Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

⁸ See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 & n.6 (Apr. 13, 2006).

The parties' attention is directed to the e-filing requirements in the Rules of Practice. We also remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.⁹

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

Vanessa A. Countryman
Secretary

⁹ *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 redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81.

⁹ See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) ("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.").