

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87968 / January 15, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19658

In the Matter of

GREGORY L. KELLY, Esq.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO RULE
102(e) OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Gregory L. Kelly (“Respondent” or “Kelly”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and over the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any attorney . . . who has been by name (A) [p]ermanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or (B) [f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

1. Gregory L. Kelly, 62, is a United States citizen and resident of Nashville, Tennessee. Kelly is an attorney admitted to practice in Indiana, Tennessee and various federal courts. Mr. Kelly received his J.D. degree from Loyola University – Chicago in 1981. Mr. Kelly was an attorney with the U.S. law firm Barnes Thornburg, LLP before joining Nissan. Kelly previously served in the legal department of Nissan North America and as a Senior Vice President of Human Resources of Nissan from 2008-2014. In that role, Kelly oversaw Nissan's CEO's Office, Secretariat's Office, Legal Department and Internal Audit Department. In June 2012, Kelly was elected to serve as a representative director on Nissan's Board of Directors. Kelly retired from his management role on January 31, 2015, but continued to serve as a representative director on Nissan's Board until he was arrested by Japanese authorities on November 19, 2018. Kelly was removed as a representative director in November 2018 and was formally removed from Nissan's Board by shareholder vote on April 8, 2019.

2. On September 23, 2019, the Commission filed a complaint against respondent in SEC v. Ghosn, et al. (Civil Action No. 1:19-CV-08798). On December 26, 2019, the court entered an order permanently enjoining Kelly from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and from aiding and abetting the same. Kelly was also ordered to pay a \$100,000 civil penalty.

3. The Commission's complaint alleged that from 2009-2018, Kelly provided substantial assistance to former Nissan CEO Carlos Ghosn in connection with a scheme by which Ghosn concealed from public disclosure more than \$90 million in compensation to be paid to Ghosn. In connection with the scheme, Kelly and certain other Nissan subordinates of Ghosn's devised multiple ways to pay Ghosn the undisclosed portion of the compensation without public disclosure, either through other Nissan-related entities or through post-retirement payments that would not be disclosed in the period when the compensation was fixed and earned. In addition, Kelly provided substantial assistance in a scheme whereby Ghosn's retirement allowance was increased by more than \$50 million without proper disclosure. The actions of Ghosn and his Nissan subordinates, including Kelly, caused Nissan to make false disclosures and material omissions about Ghosn's awarded compensation and retirement allowance in annual reports certified by Ghosn and filed with Japanese regulators. These misrepresentations and omissions violated Japanese disclosure requirements, and they were published in English on Nissan's website for U.S. investors.

² The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice, it is hereby ORDERED, effective immediately, that:

A. Respondent Kelly be, and hereby is, suspended from appearing or practicing before the Commission as an attorney for five (5) years from the date of the Order.

B. After five (5) years from the date of the Order, Respondent may request that the Commission consider his application to resume appearing and practicing before the Commission as an attorney. The application should be sent to the attention of the Office of the General Counsel.

C. In support of such an application, Respondent must provide a certificate of good standing from each state bar where Respondent is a member.

D. In support of such an application, Respondent must also submit an affidavit truthfully stating, under penalty of perjury:

1. that Respondent has complied with the Order, and with any orders in SEC v. Ghosn, et al., including any orders requiring payment of disgorgement or penalties;
2. that Respondent:
 - a. is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession; and
 - b. since the entry of the Order, has not been suspended as an attorney for an offense involving moral turpitude by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession, except for any suspension concerning the conduct that was the basis for the Order;
3. that Respondent, since the entry of the Order, has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice; and
4. that Respondent, since the entry of the Order:

- a. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, except for any finding concerning the conduct that was the basis for the Order;
- b. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
- c. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, to have committed an offense involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
- d. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, with having committed an offense involving moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

E. If Respondent provides the documentation required in Paragraphs C and D, and the Commission determines that he truthfully attested to each of the items required in his affidavit, he shall by Commission order be permitted to resume appearing and practicing before the Commission as an attorney.

F. If Respondent is not able to truthfully attest to the statements required in Subparagraphs D(2)(b) or D(4), Respondent shall provide an explanation as to the facts and circumstances pertaining to the matter and the Commission may hold a hearing to determine whether there is good cause to permit him to resume appearing and practicing before the Commission as an attorney.

By the Commission.

Vanessa A. Countryman
Secretary