

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15263

In the Matter of

ZPR INVESTMENT MANAGEMENT, INC.,
AND MAX E. ZAVANELLI,

Respondents.



**DIVISION OF ENFORCEMENT'S AND RESPONDENTS' JOINT BRIEF
TO RESOLVE THE REMAINING ISSUES IN THIS MATTER**

The Division of Enforcement ("Division") and Respondents ZPR Investment Management, Inc. ("ZPRIM") and Max E. Zavanelli submit this joint brief in response to the Securities and Exchange Commission's November 22, 2017 Order Scheduling Briefs, directing the parties to submit briefs limited to the issue of the amount, if any, by which the penalty imposed on ZPRIM should be reduced in light of the June 30, 2017 Order issued by the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") in the appeal of this matter.

BACKGROUND

On October 30, 2015, the Commission issued an opinion and order finding, among other things, that Respondents ZPRIM and Mr. Zavanelli violated Section 206 of the Investment Advisers Act of 1940 and imposing sanctions.¹ Respondents petitioned for review in the Eleventh Circuit. On June 30, 2017, the Eleventh Circuit affirmed in part and vacated and

¹ *ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 WL 6575683 (Oct. 30, 2015), *reconsideration denied*, Advisers Act Release No. 4417, 2016 WL 3194778 (June 9, 2016).

remanded in part.² Specifically, the Eleventh Circuit affirmed all the findings of violations and the sanctions imposed except it vacated the Commission's finding of Respondents' violations based on ZPRIM's December 2009 newsletter and the civil penalties related to that newsletter.³ The Eleventh Circuit directed that "the penalties imposed here must be reduced by any amounts related to the December 2009 newsletter violations."⁴ Because the Commission's order explicitly assessed a \$75,000 penalty on Mr. Zavanelli for the December 2009 newsletter, the Eleventh Circuit vacated that portion of his monetary sanction.⁵ However, because the Commission's order "did not impose penalties for each [ZPRIM] violation, but instead a single \$250,000 penalty," the Eleventh Circuit "vacate[d] the [ZPRIM] penalty and remand[ed] for the Commission to determine the amount, if any, by which that penalty should be reduced."⁶ The Eleventh Circuit's mandate issued on November 3, 2017.

On November 22, 2017, the Commission, pursuant to Rule 450(a) of the Rules of Practice directed the parties to file briefs limited to the issue of the amount, if any, by which the penalty imposed on ZPRIM should be reduced. The parties do not dispute the amount by which the penalty should be reduced, and accordingly file this joint brief regarding same.

**THE PARTIES AGREE AS TO THE AMOUNT BY WHICH
THE PENALTIES SHOULD BE REDUCED**

The Commission's order imposed a \$250,000 penalty against ZPRIM based on its finding of eight violations of the federal securities laws. In light of the Eleventh Circuit's order vacating one of those eight violations, the parties believe the appropriate resolution of this matter is to reduce the \$250,000 penalty by one-eighth (\$31,250), resulting in a civil penalty of \$218,750

² *ZPR Inv. Mgmt., Inc. v. S.E.C.*, 861 F.3d 1239 (11th Cir. 2017).

³ *Id.* at 1244.

⁴ *Id.* at 1257.

⁵ *Id.*

⁶ *Id.*

against ZPRIM. The parties agree that the penalty against him should be reduced by \$75,000 pursuant to the Eleventh Circuit's order.

Accordingly, the parties respectfully submit the Commission should reduce the penalty against ZPRIM by \$31,250 and reduce the penalty against Mr. Zavanelli by \$75,000.

December 20, 2017

Respectfully submitted,



Amie Riggle Berlin
Senior Trial Counsel
Direct Line: (305) 982-6322
berlina@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

s/Philip J. Snyderburn
PHILIP J. SNYDERBURN, ESQ.
K. MICHAEL SWANN, ESQ.
SNYDERBURN, RISHOI & SWANN, LLP
258 Southhall Lane, Suite 420
Maitland, FL 32751
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by overnight, on this 20th day of December 2017, on the following persons entitled to notice:

The Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Philip J. Snyderburn, Esq.
Snyderburn, Rishoi & Swann, LLP
2250 Lucien Way, Suite 140
Maitland, FL 32751
*Counsel for Respondents ZPR Investment Management, Inc. and
Max E. Zavanelli*


Amie Riggle Berlin