

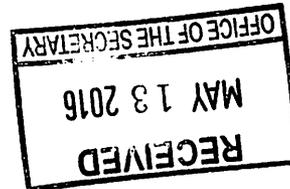
UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-17210

In the Matter of

PAUL LEON WHITE, II,

Respondent.



**DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW  
IN OPPOSITION TO RESPONDENT'S MOTION TO WAIVE  
REQUIREMENTS PURSUANT TO 17 C.F.R §§ 201.152(a)(2), (5), AND (d)  
AND TO DISMISS THE ORDER INSTITUTING PROCEEDINGS**

DIVISION OF ENFORCEMENT  
Alexander Janghorbani  
Margaret Spillane  
New York Regional Office  
Securities and Exchange Commission  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, New York 10281  
(212) 336-0177 (Janghorbani)  
(703) 813-9504 (fax)

May 12, 2016

The Division of Enforcement (“Division”) respectfully submits this memorandum opposing—except to the extent set forth below—Respondent’s motion, dated May 1, 2016 (“Resp. Br.”), seeking to (1) dismiss the Order Instituting Proceedings, dated April 15, 2016 (“OIP”); (2) extend Respondent’s deadline to answer the OIP from May 11 to June 15, 2016; and (3) to waive compliance with the Securities and Exchange Commission’s (“Commission”) Rules of Practice 152(a)(2), 152(a)(5), and 152(d).<sup>1</sup>

**I. The Court Should Deny Respondent’s Motion to Dismiss the OIP**

Respondent urges the Court to dismiss the OIP on the grounds that its issuance and service do not conform with Rules of Practice 151(b), (c), (d) and 152(a)(2), (a)(5), (b), and (d). (Resp. Br. at 3.) However, the cited Rules control the filing of papers by the *parties*—i.e., either the Division or Respondent—and are, therefore, entirely irrelevant to the *Commission’s* institution of an order instituting proceedings. See, e.g., Rule 151(a) (setting out the procedures for “[a]ll papers required to be served by a party . . .”). The form and service of orders instituting proceedings, by contrast, are set out in Rules 140-141. Respondent does not allege—nor can he—any violation of those Rules. Compare, e.g., Rule 140(a) (requiring that the OIP be “signed by the Secretary or any other person duly authorized by the Commission”) with the OIP at 3 (bearing the signature of the Assistant Secretary on behalf of the Secretary). Thus, there is no basis to dismiss the OIP.

**II. The Court Should Deny Respondent’s Request for an Extension of Time to File an Answer**

Respondent requests that the Court extend his time to answer the OIP by five weeks, from May 11, 2016 to June 15, 2016. (Resp. Br. at 5.) Such extensions are:

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<sup>1</sup> The Division received Respondent’s current motion only on May 11, 2016.

strongly disfavor[ed] . . . except in circumstances where the requesting party makes a strong showing that the denial of the request . . . would substantially prejudice their case.

Rule 161(b). Respondent cannot make such a strong showing in support of his request for a five-week extension. Respondent's claim that he does not have the time or the resources to file a timely answer to the Commission's *three-page long* OIP is contradicted by the fact that he was able to prepare and file by May 1<sup>st</sup>—10-days before his Answer was due—a six-page motion requesting a host of relief.

Indeed, contrary to his claimed lack of resources, the true purpose of Respondent's proposed request appears to be to allow him to contest improperly the underlying validity of his conviction. In seeking the extension, Respondent argues that:

Respondent will be irreparably harmed by granting a lifetime ban to practice within the securities industry as a result of his unjust conviction for crimes that he truly did not commit.

(Resp. Br. at 4 (emphasis in original).)<sup>2</sup> It is well-established, however, that a respondent—in a follow-on administrative proceeding before the Commission—may not re-litigate the propriety of the criminal conviction that led to that follow-on proceeding.<sup>3</sup>

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<sup>2</sup> There is additional evidence from Respondent's motion to conclude that he intends to re-litigate the merits of his criminal conviction. See, e.g., Resp. Br. at 2 (“Based upon the fact that the underlying criminal action . . . [is] based upon one of the most complicated real estate transactions that ha[s] ever been litigated in the United States, coupled with the requirement in the Rules that the Respondents must present all defenses to the OID [sic] in the Respondent's Answer . . . it will be logistically impossible for the Respondent to adequately and effectively respond and contain all required information within 7,000 words . . . .”); id. at 1 (“Respondent . . . was convicted of crimes that he truly did not commit . . . .”) (emphasis in original).

<sup>3</sup> Even within this motion, moreover, Respondent White makes at least one misleading statement. He argues that he was investigated by FINRA, which found no “wrongdoing” because “he is truly innocent.” (Resp. Br. at 1 (emphasis in original).) However, in September 2010, FINRA initiated an action against White—arising out of some of the same conduct that led to his criminal conviction—for, inter alia, making

See, e.g., In the Matter of David R. Wulf, IA Rel. No. 4356, 2016 WL 1085661, at \*5 (Comm. Op. Mar. 21, 2016) (“Wulf’s continued assertion that he was ignorant of the scheme, and innocent, are inconsistent with his conviction and the judgment entered against him. As we have long held, ‘follow-on proceedings based on a criminal conviction are not an appropriate forum to ‘revisit the factual basis for,’ or legal defenses to, the conviction.’”) (citation omitted). Thus, the Court should not grant Respondent’s request for a five-week extension to answer the OIP.

The Court should likewise deny Respondent’s request for a standing order granting him “at least” thirty days “from date of service” to respond to any future motions without requiring him to make the showing mandated by Rule 161(b) on a case-by-case basis.

(Resp. Br. at 5.)

### **III. The Court Should Deny Respondent’s Request to Waive the Requirements of Rule 154(c)**

Respondent requests that the Court waive Rule 154(c)’s requirement that motions not exceed 7,000 words with respect to his “Answer to the OIP as well as any future pleadings.” (Id.) However, Rule 154(c) does not apply to answers or other pleadings, but rather to motions. Respondent’s request is therefore irrelevant.

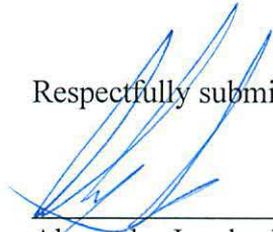
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unsuitable sales to clients. (See Paul Leon White II, BrokerCheck Report at 8, available at <http://brokercheck.finra.org/Report/Download/44739299>.) In September 2011, FINRA instituted a permanent bar against Respondent White on consent. (Id. at 10, 12.)

Finally, based on Respondent's representation about conditions at the [REDACTED] [REDACTED], the Division does not object to his requests with respect to Rules 152(a) (requiring 12-point font in all filings), 152(a)(5) (requiring filings to be double-spaced), or 152(d) (requiring three copies of all papers to be filed with the Secretary's Office).

Dated: May 12, 2016  
New York, New York

Respectfully submitted,



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Alexander Janghorbani  
Margaret Spillane  
U.S. Securities and Exchange Commission  
New York Regional Office  
200 Vesey Street, Suite 400  
New York, New York 10281  
Tel. (212) 336-0177 (Janghorbani)  
Fax (703) 813-9504  
Email: JanghorbaniA@sec.gov

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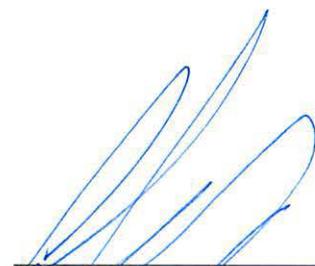
Certificate of Service

I hereby certify that I served the Division of Enforcement's Memorandum of Law in Opposition to Respondent's Motion to Waive Requirements Pursuant to 17 C.F.R. §§ 201.152(a)(2), (5), and (d) and to Dismiss the Order Instituting Proceedings, on this 12<sup>th</sup> day of May, 2016, on the below parties by the means indicated:

Paul Leon White  
Dept. Identification No. [REDACTED]  
[REDACTED]  
[REDACTED]  
Inmate Mail: [REDACTED]  
Dannemora, New York [REDACTED]  
(By UPS)

Brent Fields, Secretary  
Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549-2557  
(By UPS (original and three copies))

The Honorable James E. Grimes  
Administrative Law Judge  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557  
(By Email and UPS)

  
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Alexander Janghorbani  
Senior Trial Counsel