

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10076 / May 4, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 77766 / May 4, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32104 / May 4, 2016

Admin. Proc. File No. 3-16318

In the Matter of

ALEXANDRE S. CLUG,

ORDER DENYING PETITION TO REJECT
DIVISION'S CROSS-PETITION FOR
REVIEW AS UNTIMELY, GRANTING
THE DIVISION'S CROSS-PETITION, AND
SETTING A BRIEFING SCHEDULE

Alexandre S. Clug ("Clug") petitioned for review of a law judge's initial decision finding that he violated certain provisions of the securities laws and imposing sanctions on him. The Division of Enforcement subsequently filed a cross-petition seeking review of certain aspects of the initial decision with respect to Clug and other respondents, which Clug requests we reject as untimely. We find that the Division's cross-petition is timely under Rule 410(b) of our Rules of Practice.¹ We also grant the cross-petition and set a briefing schedule that addresses both Clug's and the Division's petitions.

I. Background

On February 8, 2016, a law judge issued an initial decision finding that Clug, Michael W. Crow ("Crow"), Aurum Mining, LLC, PanAm Terra, Inc., and The Corsair Group, Inc., violated certain provisions of the securities laws in connection with investments in South America and elsewhere, and imposing sanctions on Clug and Crow.² The initial decision provided that "a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision."³ It also informed that "[a] party may also file a motion to correct a manifest

¹ 17 C.F.R. § 201.410(b).

² *Michael W. Crow*, Initial Decision Release No. 953, 2016 WL 489352 (Feb. 8, 2016), *modified by*, Administrative Proceedings Rulings Release No. 2528 (Mar. 15, 2016), *available at* <https://www.sec.gov/alj/aljorders/2016/ap-3708.pdf> (Order Granting the Division's Motion to Correct a Manifest Error of Fact).

³ *Crow*, 2016 WL 489352, at *84; Rule of Practice 360(b), 17 C.F.R. § 201.360(b) ("The initial decision shall . . . state the time period, not to exceed 21 days after service of the decision, (continued ...)")

error of fact within ten days of the initial decision,”⁴ and explained that if a motion to correct “is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the [law judge’s] order resolving such motion to correct a manifest error of fact.”⁵

On February 18, 2016, the Division requested that the law judge correct a factual statement in the initial decision that the Division contended understated the amount of certain deposits to bank accounts associated with Crow. Crow opposed the Division’s motion and requested that the law judge correct other aspects of the initial decision.

On March 1, 2016, Clug timely filed a petition for review of the initial decision seeking review of several aspects of the law judge’s liability and sanctions findings. On March 22, 2016, the Commission granted Clug’s petition and set a briefing schedule.⁶

On March 15, 2016, the law judge issued an order granting the Division’s motion to correct manifest error and denying Crow’s motion to correct.⁷ On April 4, 2016, the Division filed a Cross-Petition for Review of Initial Decision, which sought review of certain liability and sanctions issues with respect to Crow and the other respondents. The following day, Clug filed a “Petition for Rejecting Division’s Cross Petition” in which he requested that the Commission dismiss the Division’s cross-petition, asserting that the Division’s cross-petition was untimely because it was filed more than 21 days after the initial decision and more than ten days after Clug filed his petition for review.⁸ The Division opposes Clug’s request.

(... continued)

except for good cause shown, within which a petition for review of the initial decision may be filed.”); *see also* Rule 160(b), 17 C.F.R. § 201.160(b) (“If service is made by mail, three days shall be added to the prescribed period for response unless an order of the Commission or the hearing officer specifies a date certain for filing”).

⁴ *See* Rule of Practice 111(h), 17 C.F.R. § 201.111(h) (“Any motion to correct [a manifest error in the initial decision] must be filed within ten days of the initial decision.”).

⁵ *Crow*, 2016 WL 489352, at *84; *see also* Rule of Practice 410(b), 17 C.F.R. § 201.410(b) (same).

⁶ *Alexandre S. Clug*, Exchange Act Release No. 77420, 2016 WL 1106868 (Mar. 22, 2016) (Order Granting Petition for Review and Scheduling Briefs).

⁷ Administrative Proceedings Rulings Release No. 2528 (Mar. 15, 2016), *available at* <https://www.sec.gov/alj/aljorders/2016/ap-3708.pdf>.

⁸ *See* Rule of Practice 410(b), 17 C.F.R. § 201.410(b) (“In the event a petition for review is filed, any other party to the proceeding may file a cross-petition for review within the original time allowed for seeking review or within ten days from the date that the petition for review was filed, whichever is later.”).

II. Analysis

Although Clug titled his request as a “petition,” we entertain his request as a motion to dismiss the Division’s cross-petition on the ground that it is untimely.⁹ The Division opposes Clug’s request and argues that it timely filed its cross-petition within 21 days of the date that the law judge granted its motion to correct manifest error.¹⁰

Clug argues that the date of the law judge’s resolution of the motions to correct is irrelevant to the Division’s filing deadline because the motions “had nothing to do with [his] case” in that the Division and Crow did not request corrections of the initial decision with respect to Clug. Clug argues that, for this reason, the Division’s petition must be timely under the following portion of Rule 410(b): “In the event a petition for review is filed, any other party to the proceeding may file a cross-petition for review within the original time allowed for seeking review or within ten days from the date that the petition for review was filed, whichever is later.”¹¹ Clug contends that because the Division filed its petition on April 4, 2016—56 days after the initial decision and 34 days after his petition for review—it is untimely.

We reject Clug’s argument and find that the Division’s cross-petition is timely. Our Rules of Practice do not consider the content of a motion to correct manifest error or the parties affected by the relief sought in the motion when determining the deadline for filing a petition for review. Rather, under Rule 410(b), “the time to file a petition for review is stayed until 21 days after resolution of any motion to correct an initial decision filed before the hearing officer.”¹² “While a motion to correct is pending, a party need not file a petition for review to preserve its appeal rights.”¹³ Because the Division “filed a motion to correct an initial decision with the hearing officer,” it had “21 days from the date of the hearing officer’s order resolving the motion

⁹ Oppositions to petitions for review are not authorized under our Rules of Practice, *see Proposed Amendments to the Rules of Practice and Related Provisions*, Exchange Act Release No. 48832 (Nov. 23, 2003), 68 Fed. Reg. 68186, 68191 (Dec. 5, 2003), but a motion to dismiss a petition as untimely is distinct from an *opposition* based on the merits of the petition. *Cf. Jacob Keith Cooper*, Exchange Act Release No. 77068, 2016 WL 453458, at *4 (Feb. 5, 2016) (dismissing untimely petition for review); *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at *3 (May 8, 2014) (denying motion for permission to file a late petition for review); *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at *3 (Sept. 19, 2014) (granting FINRA motion to dismiss untimely application for review).

¹⁰ *See supra* note 5 and accompanying text.

¹¹ *Id.*

¹² *Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission*, Exchange Act Release No. 49412 (Mar. 12, 2004), 69 Fed. Reg. 13166, 13171 (Mar. 19, 2004).

¹³ *Id.*

to correct to file a petition for review.”¹⁴ The Division complied with this deadline: it filed its petition for review on April 4, 2016—20 days after the law judge resolved the motions to correct manifest error.

Accordingly, IT IS ORDERED that the petition of Alexandre Clug to reject the cross-petition of the Division of Enforcement is hereby denied; and it is further

ORDERED, pursuant to Rule of Practice 411,¹⁵ that the Division of Enforcement’s cross-petition for review is hereby granted; and it is further

ORDERED, pursuant to Rule of Practice 411(d),¹⁶ that the Commission will determine what sanctions, if any, are appropriate in this matter; and it is further

ORDERED, pursuant to Rule of Practice 450(a),¹⁷ that briefs be filed as follows:

Division’s principal and response brief: The Division of Enforcement shall file a brief, not to exceed 16,500 words, by June 3, 2016. This brief must address the issues presented by the Division’s cross-petition for review and respond to Clug’s opening brief in support of his appeal.

Clug’s response and reply brief: Clug shall file a brief, not to exceed 14,000 words, by July 5, 2016, responding to the Division’s principal and response brief.

Other respondents’ response briefs: Aurum Mining, LLC, Panam Terra, Inc., The Corsair Group, Inc., and Michael W. Crow shall file briefs, not to exceed 14,000 words, by July 5, 2016, responding to the Division’s appeal with respect to them.

Division’s reply brief: The Division may file a reply brief, not to exceed 7,000 words, by July 19, 2016. This brief must be limited to the issues presented by the Division’s cross-petition for review.

¹⁴ Rule of Practice 410(b), 17 C.F.R. § 201.410(b).

¹⁵ 17 C.F.R. § 201.411.

¹⁶ 17 C.F.R. § 201.411(d).

¹⁷ 17 C.F.R. § 201.450(a).

The filing dates provided for the Division's response brief and Clug's reply brief in the Commission's briefing order dated March 22, 2016, are vacated.¹⁸ As provided by Rule of Practice 450(a), no briefs except those specified in this schedule may be filed without leave of the Commission.¹⁹ Pursuant to Rule of Practice 180(c), failure to file a brief in support of the petition or cross-petition for review may result in dismissal of this review proceeding as to that party.²⁰

By the Commission.

Brent J. Fields
Secretary

¹⁸ *See supra* note 6.

¹⁹ Attention is called to Rules of Practice 150 through 153, 17 C.F.R. §§ 201.150–153, with respect to form and service, and Rules of Practice 450(b) and (c), 17 C.F.R. § 201.450(b), 201.450(c), with respect to content and length limitations (except as modified in this order). The number of words includes any pleadings that are incorporated by reference.

²⁰ 17 C.F.R. § 201.180(c).