

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10109 / July 7, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 78253 / July 7, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32173 / July 7, 2016

Admin. Proc. File No. 3-16498

In the Matter of the Application of

RUSSELL C. SCHALK, JR.

ORDER
REQUESTING
ADDITIONAL
BRIEFS

On April 17, 2015, pursuant to an offer of settlement that the Commission accepted, the Commission issued an order instituting proceedings, making findings of violations, and imposing remedial sanctions against Russell C. Schalk, Jr. (the "OIP").¹ The OIP ordered that an administrative law judge determine Schalk's ability to pay the disgorgement, prejudgment interest, and civil money penalty amounts set forth in the OIP.² On February 10, 2016, the law judge issued an initial decision which determined that, based on the record, "Schalk's current ability to pay disgorgement and civil monetary penalties is limited to \$20,000 per year."³ Schalk filed a petition for Commission review of the initial decision on March 9, 2016. On May 18, 2016, he filed a brief in support of this petition that identified alleged errors in the initial decision, and that attached documentation (already in the record) in support of these claims.

In a July 1, 2016 letter to the Commission, Schalk, proceeding *pro se*, states that he "did not understand" that he had the option to file a motion to correct manifest errors of fact before the law judge and requests permission "to submit the correct documentation for the record."

¹ *Russell C. Schalk, Jr.*, Securities Act Release No. 9751, 2015 WL 1745864 (Apr. 17, 2015).

² *Id.*

³ *Russell C. Schalk, Jr.*, Initial Decision Release No. 958, 2016 WL 536129, at *6 (Feb. 10, 2016).

Pursuant to Rule of Practice 111(h), the time for filing a motion to correct manifest errors of fact expired on February 20, 2016, and the Commission is already considering Schalk's claims of error in the initial decision through its review of Schalk's petition. The record is closed, and in any event it is unclear whether the documentation to which Schalk refers in his July letter is new documentation or documentation already submitted but which Schalk does not believe was accurately considered in the initial decision. In its discretion, the Commission has determined to permit Schalk to submit any additional new documentation as specified below.

Accordingly, IT IS ORDERED, that:

- By July 14, 2016, Petitioner shall submit any documentation not already in the record that he believes supports his contentions that there are errors in the initial decision, provided that he also submit a separate brief, not to exceed 3,000 words, explaining the materiality of any such documentation and why he could not have submitted such documentation earlier;⁴ and that
- By July 19, 2016, the Division shall file a responsive brief, which is not to exceed 3,000 words.

No briefs in addition to those specified in this order may be filed without leave of the Commission. The briefs shall conform to Rules of Practice 150-153, with respect to service, filing, and form, and Rule of Practice 450(b)-(d), with respect to content and length limitations, except as modified in this order.⁵ Pursuant to Rule of Practice 180(c), failure to file a brief may result in dismissal of this proceeding.⁶

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

Brent J. Fields
Secretary

⁴ See 17 C.F.R. § 201.452.

⁵ 17 C.F.R. §§ 201.150-153, 201.450(b)-(d).

⁶ 17 C.F.R. § 201.180(c).