

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10473 / March 29, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 82967 / March 29, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4871 / March 29, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33062 / March 29, 2018

Admin. Proc. File No. 3-15617

In the Matter of
LARRY C. GROSSMAN

ORDER IN RESPONSE TO REMAND

In an opinion issued on September 30, 2016, we found that Larry C. Grossman violated the federal securities laws by, among other things, making misrepresentations and omissions of material fact to his investment advisory clients when he advised them to invest in funds from which he received undisclosed referral fees, consulting fees, and sales charges.¹ We ordered Grossman to disgorge \$3,004,180.65, as well as \$757,853.75 in prejudgment interest thereon. We also imposed certain industry bars and ordered that Grossman cease and desist from committing or causing any violations or future violations of the securities laws.

In our opinion, we rejected Grossman's argument that the five-year statute of limitations in 28 U.S.C. § 2462, applicable to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture," "bars disgorgement of ill-gotten gains causally connected to misconduct occurring outside the five-year statute of limitations period."² Rather, we held that, "consistent with the longstanding recognition that disgorgement is an equitable and non-punitive

¹ *Larry Grossman*, Securities Act Release No. 10227, 2016 WL 5571616 (Sept. 30, 2016).

² *Id.* at *15; *see also* 28 U.S.C. § 2462.

remedy, the clear weight of authority supports our conclusion that Section 2462’s statute of limitations does not apply to disgorgement.”³

Grossman petitioned for review of our September 30 opinion and order in the United States Court of Appeals for the Eleventh Circuit.⁴ While his appeal was pending, the Supreme Court held in *Kokesh v. SEC*, a civil case, that “[t]he 5-year statute of limitations in Section 2462 . . . applies when the SEC seeks disgorgement.”⁵ Subsequently, the Commission requested “a limited voluntary remand to allow the Commission to consider in the first instance the effect, if any, of *Kokesh* on the Commission’s order requiring [Grossman] to disgorge the funds gained from his conduct.”⁶ The Commission argued that a “limited voluntary remand [was] appropriate so that the Commission may consider in the first instance the effect of *Kokesh* on the Commission’s order of ‘accounting and disgorgement’ in the administrative proceedings in this case.”⁷ On August 11, 2017, the Eleventh Circuit granted the Commission’s motion for a limited voluntary remand and ordered that “[t]he September 30, 2016, final order issued by the Securities and Exchange Commission in this matter is VACATED and the case is REMANDED for the Commission to reconsider its order of disgorgement in light of the Supreme Court’s decision in *Kokesh*.”⁸ On August 31, 2017, our Office of the General Counsel ordered, pursuant to delegated authority,⁹ that the parties file briefs limited to the appropriateness of the Commission’s “order of disgorgement in light of the Supreme Court’s decision in *Kokesh*.”¹⁰

The parties submitted a joint brief on September 28, 2017.¹¹ The joint brief noted that “[t]he parties do not dispute the applicability of *Kokesh* to this proceeding” and “stipulate[d] that

³ *Grossman*, 2016 WL 5571616, at *18 (citing cases).

⁴ Petition for Review, *Grossman v. SEC*, No. 16-16907 (11th Cir. filed Nov. 3, 2016).

⁵ *Kokesh v. SEC*, 137 S. Ct. 1635, 1644 (2017).

⁶ Motion of Respondent Securities and Exchange Commission for Limited Voluntary Remand at *1, *Grossman v. SEC*, No. 16-16907 (11th Cir. filed June 8, 2017).

⁷ *Id.* at *4.

⁸ Order, *Grossman v. SEC*, No. 16-16907 (11th Cir. Aug. 11, 2017).

⁹ See 17 C.F.R. § 200.30-14(g)(1)(vii).

¹⁰ *Larry C. Grossman*, Securities Act Release No. 10409, 2017 WL 3836591, at *1 (Aug. 31, 2017) (order scheduling briefs).

¹¹ After the parties submitted their joint brief, the Commission received from Marje Van Dyke, a non-party and one of Grossman’s former clients, a memorandum purporting to introduce “new” evidence pertaining to the statute of limitations. Rule of Practice 210(e) provides that a non-party “may make a motion seeking leave to file a memorandum . . . of his or her views,” which “may be included in the record.” Rule of Practice 210(e), 17 C.F.R. § 201.210(e); *Rules of Practice*, Exchange Act Release No. 35833, 1995 WL 368865, at *48 (June 9, 1995), 60 Fed.

. . . the statute of limitations bars the award of \$3,004,180.65 in disgorgement and \$757,853.75 in prejudgment interest against Grossman.” The parties asked “the Commission [to] vacate the Disgorgement Award,” but agreed that “[t]he remaining portions of the Commission’s [September 30, 2016 order]”—the industry bars and the order that Grossman cease and desist from committing or causing any violations or future violations of the securities laws—“are not encompassed by the Eleventh Circuit’s vacatur and remand, and thus remain in effect.”

Although the parties ask that the Commission vacate the disgorgement and prejudgment interest awarded in the September 30, 2016 order, the Eleventh Circuit has already vacated that order. The Eleventh Circuit remanded for the Commission to reconsider the “order of disgorgement in light of” *Kokesh*. The parties agree that disgorgement should not be imposed and that the industry bars and cease and desist order should remain in effect. We understand the parties to mean that the September 30, 2016 order should be reinstated except for the disgorgement and prejudgment interest award. While not bound by the parties’ agreement or the statements therein,¹² we find it appropriate to grant their request under the circumstances here.

Accordingly, IT IS ORDERED that the September 30, 2016 order is reinstated except for the part of that order requiring Grossman to pay \$3,004,180.65 in disgorgement and \$757,853.75 in prejudgment interest.

By the Commission.

Brent J. Fields
Secretary

(...continued)

Reg. 32,738, 32,759 (June 23, 1995) (explaining that Rule 210(e) is “particularly” suited for “individual security holders or members of the public” to express their views). We construe Van Dyke’s filing as a motion under Rule of Practice 210(e) and grant it. However, nothing in Van Dyke’s submission affects our conclusion in the September 30, 2016 opinion and order as to when Section 2462’s statute of limitations began running with respect to disgorgement.

¹² See, e.g., *Sanford’s Estate v. CIR*, 308 U.S. 39, 51 (1939); *NLRB Union, Local 6 v. FLRA*, 842 F.2d 483, 485 n.6 (D.C. Cir. 1988); cf. *George Salloum*, Exchange Act Release No. 35563, 1995 WL 215268, at *6 n.40 (Apr. 5, 1995) (“[s]tatements by our staff[] . . . do not necessarily bind this Commission”).