UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9703 / January 20, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 74100 / January 20, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4002 / January 20, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31423 / January 20, 2015

Admin. Proc. File No. 3-15255

In the Matter of JOHN THOMAS CAPITAL MANAGEMENT GROUP LLC d/b/a PATRIOT28 LLC and GEORGE R. JARKESY, JR.	ORDER DIRECTING ADDITIONAL SUBMISSION

Respondents John Thomas Capital Management Group LLC d/b/a Patriot28 LLC ("JTCM") and George R. Jarkesy, Jr. filed their consolidated opening brief in this review proceeding on January 13, 2015.

On its own motion, the Commission has determined to direct that respondents file an additional submission in light of the requirements that Rule of Practice 450(b) establishes for the contents of briefs.[1] That Rule requires that "[e]xceptions . . . be supported by citation to the relevant portions of the record, including reference to the specific pages relied upon and by concise argument including citation" of such legal authorities as may be relevant.[2] It further provides that if an exception relates to an evidentiary ruling, the "substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the

1 17 C.F.R. § 201.450(b).

2 *Id.*

record."[3] In adopting the Rules of Practice, the Commission made clear that, "[u]nder Rule 450, the obligation to support claims made in a brief lies with the person submitting the brief."[4]

It appears that the sections of the opening brief enumerating respondents' exceptions to the initial decision's evidentiary rulings (Br. at 36-38), factual findings (*id.* at 39-45), and legal conclusions (*id.* at 46-47) do not contain *any* citations to portions of the record or to legal authorities. For example, the discussion accompanying each of the challenged factual findings consists essentially of the boilerplate assertion that the finding in question mischaracterizes the evidence, relies on unreliable evidence, and ignores contradictory evidence. In each instance, the only citation provided is to the page of the initial decision that recites that finding; no reference is made to the "relevant portions of the record, including . . . the specific pages relied upon" by respondents, as required by Rule 450(b).[5] The discussion accompanying each of the challenged legal conclusions is just as conclusory: It repeatedly asserts that the law judge mischaracterized the evidence, ignored contrary evidence, and misapplied the law, but without a single citation to record evidence or to any statute, regulation, or court or Commission decision.

The Commission has previously emphasized the importance of compliance with Rule 450(b). It has stated that "[a] filing may be rejected if it fails to meet the requirements of any rule or order" and, specifically, that filings "that fail to cite to the record as required by Rule 450 . . . could be found to be deficient."[6] It has also warned that "[b]riefs that fail to include appropriate citations to the record . . . may be rejected or subject to other sanction."[7] At bottom, the Commission (like any other administrative agency) is not obliged to independently sift through the record to identify and develop arguments that a party fails to advance with clarity.[8]

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3 *Id.*

4 *Adopting Release, Rules of Practice*, 60 Fed. Reg. 32738, 32778 (June 23, 1995).

5 17 C.F.R. § 201.450(b).

6 *Rules of Practice*, 60 Fed. Reg. at 32754 (discussing Rule of Practice 180, 17 C.F.R. § 201.180). Rule 180(c) provides that the failure of a party to make a required filing or to cure a deficient filing may be grounds for the entry of default, dismissal of the case, preclusion of evidence, or deciding the matter against the party.

7 *Id.* at 32778; *see also Robert D. Tucker*, Exchange Act Release No. 71972, 2014 WL 1512023, at *1 (Apr. 18, 2014) (dismissing review proceeding where respondent's filing, *inter alia*, "provide[d] no citations to the record," included no arguments, and referred merely to "inaccurate assertions"); *Trautman Wasserman & Co., Inc.*, Exchange Act Release No. 55989, 2007 WL 1892138, at *3 n.15 (June 19, 2007) (cautioning that filings that "fail[] to articulate legal theories, cite relevant legal authority, or marshal relevant facts . . . are not an appropriate use of the Commission's adjudicatory processes").

8 *See, e.g., Ark Initiative v. U.S. Forest Service*, 660 F.3d 1256, 1262 (10th Cir. 2011); *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 279 (D.C. Cir. 1997); *Durez Div. of Occidental Chem. Corp. v. OSHA*, 906 F.2d 1, 5 (D.C. Cir. 1990); *Northside Sanitary Landfill, Inc. v.*

(footnote continued . . .)

And it likewise is entitled to insist that parties comply with procedural rules that promote the just, orderly, and efficient disposition of administrative review proceedings.[9]

In view of the above circumstances, and to facilitate review of this matter, it is appropriate to require respondents to make an additional submission. Accordingly, it is ORDERED that respondents shall, by no later than February 3, 2015, file a submission setting forth, in a two-column format, the citations supporting each of the exceptions asserted in pages 36 to 47 of their opening brief. The first column shall reproduce verbatim each exception as stated in the opening brief. The second column shall contain citations, without discussion or commentary, to "relevant portions of the record, including references to the specific pages relied upon," and relevant "statutes, decisions, and other authorities" supporting that exception.[10] The citations shall identify precisely—*i.e.*, by page or Bates number or other similar designation—where the information can be found in the referenced materials and may, if respondents choose, be accompanied by parentheticals with pertinent quotations.

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(. . . footnote continued)

Thomas, 849 F.2d 1516, 1519 (D.C. Cir. 1988). Of course, the administrative record as a whole is before the Commission, and the Commission may, in its discretion, consider materials in the record not cited by any party and pass upon matters not raised by any party. *See generally* 5 U.S.C. § 557(b); Rules of Practice 411(a), (d), 460, 17 C.F.R. §§ 201.411(a), (d), 201.460.

9 *See, e.g.*, *Baptist Mem'l Hosp.-Golden Triangle v. Sebelius*, 566 F.3d 226, 228 (D.C. Cir. 2009); *Torres de la Cruz v. Maurer*, 483 F.3d 1013, 1022-23 (10th Cir. 2007); *Canady v. SEC*, 230 F.3d 362, 365 (D.C. Cir. 2000); *Brown v. NTSB*, 795 F.2d 576, 578-79 (6th Cir. 1986); *NLRB v. Izzi*, 343 F.2d 753, 755 (1st Cir. 1965). Indeed, the Commission has stressed that even parties "appearing *pro se*[] are obligated to familiarize themselves with the Rules of Practice," although it has considered the "fact that a person may [be] represent[ing] himself" or herself in determining whether to excuse technical or non-prejudicial deficiencies. *Rules of Practice*, 60 Fed. Reg. at 32754. JTCM and Jarkesy are represented by experienced counsel.

10 Rule of Practice 450(b), 17 C.F.R. § 201.450(b). Citation to a party's own proposed findings of fact does not constitute compliance with the obligation to provide record support. *See, e.g.*, *Casna v. City of Loves Park*, 574 F.3d 420, 424 (7th Cir. 2009); *Doeblers' Pa. Hybrids, Inc. v. Doebler*, 442 F.3d 812, 820 n.8 (3d Cir. 2006).

It is further ORDERED that the submission be accompanied by a certificate stating the total number of words in the second column of the submission.

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

Brent J. Fields
Secretary