

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3379 / December 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16155

In the Matter of

NICHOLAS ROWE

ORDER ON MODIFIED SUBPOENAS AND
PROCEDURAL MATTERS

At the request of Respondent Nicholas Rowe, I previously issued documentary subpoenas directed to several individuals including Jeff Spill and Eric Forcier, the deputy securities director and a staff attorney, respectively, of the New Hampshire Bureau of Securities Regulation. On December 2, 2015, I denied motions to quash filed by the Division of Enforcement and the Bureau; however, I modified the subpoenas that were directed to several individuals, and, as to the Bureau's employees, I implemented a modified procedure and schedule for compliance. *Nicholas Rowe*, Admin. Proc. Rulings Release No. 3364, 2015 SEC LEXIS 4919.

Yesterday, Rowe submitted modified subpoena forms directed to Spill and Forcier, in an attempt to narrow the scope of his production request. He also submitted an inquiry to my office via email about several procedural matters, including subpoena non-compliance.

The modified subpoenas directed to Spill and Forcier will be issued. However, my December 2 order remains in effect. Thus, the Bureau is still required to produce an index of its investigative file by December 9, 2015, along the lines of the records sought by Rowe's subpoena requests; the Bureau and Rowe shall mutually confer and strive to narrow the scope of the subpoenas by December 15, 2015, and report to my office if their efforts are unsuccessful; and the Bureau's production of responsive documents and submission of a privilege log are due by January 6, 2016. *See Nicholas Rowe*, 2015 SEC LEXIS 4919, at *11-12.

Turning to his inquiry on procedural matters, Rowe may move to enforce compliance with the documentary subpoenas. *See, e.g., Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1906, 2014 SEC LEXIS 3818 (Oct. 10, 2014) (order to show cause directed to non-compliant subpoena recipients). The motion may encompass those subpoena recipients who Rowe believes have failed to comply, such as by refusing to comply, providing only a partial response, or not responding altogether. Such motion should detail Rowe's efforts in attempting to secure compliance and identify the non-compliant individuals by name and what records have not been produced. Rowe's assertions regarding non-compliance should be filed by way of affidavit.

Rowe may give a subpoena recipient additional time to respond to his production request without my involvement, or he may file a motion seeking an order from me granting additional time. I encourage Rowe to first try to resolve the issue by mutual agreement.

Also, Rowe may reach out to potential non-party witnesses to secure their testimony at the hearing. However, the procedural schedule outlined in my October 14 order remains in effect, including the December 18, 2015, due date for Rowe to file his exhibit and witness lists and testimony designations, and the January 8, 2016, due date for Rowe to submit subpoenas requiring the attendance of witnesses at the hearing. *See Nicholas Rowe*, Admin. Proc. Rulings Release No. 3224, 2015 SEC LEXIS 4208. If Rowe obtains records as a result of his subpoena requests after December 18 that he wishes to offer into evidence at the hearing, he must promptly identify those additional exhibits and furnish them to the Division.

Rowe is reminded that any motion, brief, or request for any relief must be in writing and filed in hardcopy with the Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street N.E., Mail Stop 1090, Washington, D.C. 20549. Each filing must include a signed original and three copies, and a certification that a copy was served on the other party by mail, personal service, or other appropriate means. These requirements are detailed under Rules of Practice 150 to 152. 17 C.F.R. §§ 201.150-.52. The Rules of Practice are located online at <http://www.sec.gov/about/rulesprac2006.pdf>.

The parties may send electronic courtesy copies of any filing to alj@sec.gov. However, email does not substitute for the required hardcopy filing with the Office of the Secretary. Moreover, all parties must be copied on any email to the Office of Administrative Law Judges.

Lastly, Rowe shall serve a copy of this order on all subpoena recipients.

Jason S. Patil
Administrative Law Judge