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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

THOMAS A. NEELY, JR.

Respondent.

Admin. Pro. File No. 3-15945

REPLY TO OPPOSITION TO MOTION FOR EXTENSION OF TIME

Respondent THOMAS A. NEELY, JR. (“Respondent”), by and through counsel, hereby files this his Reply to the Opposition to Respondent’s Second Motion for Extension of Time filed by the Securities and Exchange Commission (the “Division”) (Division’s filing referred to as “Division’s Opposition”) and states as follows:

ADDITIONAL TIME IS NECESSARY TO REVIEW AND ANALYZE THE DIVISION’S PRODUCTION

In the Division’s Opposition, the Division first stated that an extension in this matter is not necessary because there were no significant time delays caused as a result of the circumstances cited by the Respondent. (Division’s Opposition at pp. 2-3). The Division’s rationale for this assertion is that it acted promptly when alerted to the corruption issues and provided replacement files. (*Id.*). However, producing replacement files did not cure the underlying problem: the lack of time to appropriately review and analyze the Division’s production before the currently-scheduled Hearing setting. The process of replacing the corrupted files on the electronic review platform utilized by Respondent’s counsel was time-consuming in an already time-scarce scenario. The corrupted files included the fourteen (14) loan files that form the basis of the Division’s allegations against Respondent. Adequate review and analysis of these files is critical to

Respondent's defense in this matter. Corrupted documents in any circumstance would cause difficulties and delays, but given the critical nature of the corrupted documents in this matter, it was especially problematic.

As noted in Respondent's Motion and reiterated here, Respondent does not imply that these documents were purposely corrupted or that the Division was not responsive to these issues. Technical issues with the gathering, processing, and/or production of electronic information occur with some frequency in litigated matters, as do technical issues with implementing an efficient document review system that combines an electronic review platform with human document review and analysis. These technical issues become magnified in matters such as this one, which couple an enormous volume of production with an extremely compressed timeline. These are challenges that cannot possibly be fully anticipated by any Rule of Practice and, as discussed below, are not necessarily contemplated by the 300-day timeline set out in 17 C.F.R. § 201.360(a)(2).

DOCUMENTS FROM NON-PARTY SUBPOENAS ARE NECESSARY FOR RESPONDENT'S DEFENSE

The Division next stated that the 1.5 million pages that it produced are the documents on which the Division based its claims. (Division's Opposition at p. 3). The Division further contended that "it is difficult to understand" why the documents Respondent seeks through third party subpoena are "so critical to Respondent's defense that the hearing should be postponed." (*Id.*). The Division is arguing, in essence, that the 1.5 million pages of information on which the Division based its allegations against Respondent should be sufficient for Respondent to defend himself. The problem with the Division's argument is that the Division's production does not necessarily contain all the documents necessary for Respondent's defense. The documents contained in the 1.5 million pages produced by the Division were responsive to subpoenas issued by the Federal Reserve Board (the "FRB") and the Division, not subpoenas issued at Respondent's

request. Allowing the Division to obtain all the documents it believes necessary to prosecute its claims against Respondent but not allowing Respondent the same opportunity to obtain documents he believes necessary for his defense against those claims is inherently unfair. Presumably, that is at least part of the reason why the Court issued the subpoenas to Regions Financial Corporation (“Regions”) and Ernst & Young LLC (“E&Y”) at Respondent’s request.

The Division further stated that the third-party document subpoena process is moving along in accordance with the Rules of Practice. (Division’s Opposition at p. 3). The process might be proceeding in accordance with the Rules of Practice, but it is not “moving along” at a pace that necessarily comports with full production in advance of the currently-set Hearing date. Just yesterday, Regions asked for and was granted permission to file its second response to Respondent’s Motion to Compel. Likewise, initial documents produced by E&Y have been redacted beyond recognition, and Respondent currently anticipates filing a Motion to Compel against E&Y once its production is complete. Based on his experience working at Regions, Respondent has some understanding as to what responsive documents Regions and E&Y should have in their possession to produce in response to his subpoenas, and Respondent believes that those documents are critical to his defense. Accordingly, the current status of the third-party document subpoena process offers further support for Respondent’s Motion.

**AN EXTENSION OF THE 300 DAY TIMELINE IS NECESSARY AND
APPROPRIATE IN THE PUBLIC INTEREST**

Finally, the Division, citing the 300-day timeline set out in 17 C.F.R. § 201.360(a)(2), noted that “[t]imely resolution of this case requires that the hearing go forward as scheduled, as further disruptions to the calendar are unwarranted.” (Division’s Opposition at p. 4). Even accepting at face value the Division’s contention that “the size of the investigative file in this case is not unheard of,” Respondent would further note that it is also “not unheard of” for this Court to issue its initial

decision outside of the 300-day timeline. Respondent respectfully submits that the complexity of this matter and serious nature of the allegations against him warrant thoughtful consideration of a request for extension pursuant to Rule 360(a)(3) of the Securities and Exchange Commission's Rules of Practice. Such an extension will allow Respondent's counsel full and fair opportunity to prepare for the Hearing and Respondent's rights to be protected, while simultaneously allowing sufficient time for this Court to issue its Initial Decision. An extension of time is necessary and appropriate in the public interest.

By way of recent examples of matters determined by this Court outside the 300-day timeline: *In the Matter of John J. Aesoph, CPA, and Darren M. Bennett, CPA*, File No. 3-15168, the Commission initiated the proceeding by an OIP on January 9, 2013. The Initial Decision was issued by this Court on June 27, 2014, some 534 days after the OIP was filed. The *Aesoph* decision indicates that only seven (7) witnesses were called¹ during the nine (9) day hearing; the witness lists in this matter name over seventy (70) witnesses, and the Hearing is currently scheduled for at least two (2) weeks. Similarly, *In the Matter of John Thomas Capital Management Group LLC, et al.*, File No. 3-15255, the Commission initiated the proceeding by an OIP on March 22, 2013, and the Initial Decision was issued by this Court on October 17, 2014, some 574 days after the OIP was filed. That hearing lasted for twelve (12) days over a multi-week period, and included the testimony of thirteen (13) witnesses.² While these two matters necessarily have factual, legal,

¹ The *Aesoph* Initial Decision indicates that “[t]he undersigned held nine days of hearing in Denver, Colorado, on October 7-11 and 28-31, 2013. The Division of Enforcement (Division) called five witnesses from whom testimony was taken, including Respondents and two experts. Respondents testified in their own cases and called two experts.” *In the Matter of Aesoph and Bennett*, File No. 3-15168, Initial Decision (June 27, 2014).

² The Initial Decision indicates that “[t]he undersigned held a twelve-day hearing in New York City and remotely on February 3-7 and 24-27, 2014, and March 7 and 13-14, 2014. Thirteen witnesses testified, including Jarkesy, and numerous exhibits were admitted into evidence.” *In the*

and procedural differences from Respondent's case, their timelines – which extend far beyond the 300-day timeline set out in 17 C.F.R. § 201.360(a)(2) – support Respondent's Motion.

As both the Respondent and the Division have noted, Respondent has expended an enormous amount of time and resources in readying this matter for Hearing. The Division's perspective on the production and review of over 1.5 million pages of documents is understandably different from the perspective of Respondent's counsel, given that the Division has had years to review the materials while Respondent's counsel has had only a handful of months. Respondent's counsel has worked diligently, and has enlisted the aid – and significant added expense – of contract attorneys to meet the current Hearing date. However, the reality is that much work remains to be completed and the amount of time remaining before the current Hearing date is too limited.

Respondent has no interest in having this matter extend any longer than is necessary for presentation of a fundamentally fair defense of the allegations against him. The Division has had years to develop its case against Respondent, and Respondent desires, and indeed, deserves, an adequate opportunity to develop and present his defense. The production issues raised in Respondent's Motion – regardless of whether they were intentional or how quickly they were addressed by Division counsel – as well as the overall vast volume of production have had an impact on Respondent's case. The totality of the circumstances weigh in favor of an extension of time in this matter.

CONCLUSION

Respondent is seeking an extension of only the amount of time necessary to adequately and appropriately prepare his case. Given the totality of the circumstances stated above,

Matter of John Thomas Capital Management Group LLC, et al. File No. 3-15255, Initial Decision (October 17, 2014).

Respondent submits that his case will be substantially prejudiced and he will be denied effective assistance of counsel unless the Court grants his Motion for Extension of Time. Respondent therefore respectfully requests the Court to extend the commencement of the Hearing until at least February 23, 2015, and that other deadlines be adjusted accordingly.

Respectfully submitted,

/s/ Rebecca G. DePalma

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