

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19510**

**In the Matter of**

**ALBERT K. HU,**

**Respondent.**

**JOINT PREHEARING CONFERENCE  
STATEMENT**

Pursuant to the Order Regarding Prehearing Conference dated April 12, 2021, counsel for the Securities and Exchange Commission’s Division of Enforcement (“Division”), and Respondent Albert K. Hu (“Respondent”) submit this Joint Prehearing Conference Statement.

Counsel for the Division and Respondent met and conferred by telephone on April 26, 2021, April 28, 2021, May 4, 2021, and May 7, 2021 regarding the topics outlined in Rule 221 of the Commission’s Rules of Practice, 17 C.F.R. § 200.221.<sup>1</sup> Respondent, who is not an attorney, is representing himself in this proceeding. Respondent acknowledged during the meet and confer

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<sup>1</sup> The April 12, 2021 Order states that the parties shall advise the Commission as to whether a prehearing conference was held in January 2020 (within 14 days of service of the answer) pursuant to the directive in the Order Instituting Proceedings. *See* Order at 1. Current counsel for the Division, Andrew J. Hefty, substituted in as counsel on January 13, 2021 following the prior Division counsel’s retirement in December 2020. *See* Division of Enforcement’s Notice of Change in Counsel. Respondent told the current counsel for the Division that he does not recall meeting and conferring with prior counsel for the Division with respect to a prehearing conference.

process his understanding that the April 12, 2021 Order gave him a choice of either filing a separate prehearing conference statement or a joint statement. Respondent requested that counsel for the Division file a joint statement that included Respondent's positions. Respondent thus acknowledges that this Joint Prehearing Conference Statement accurately reflects his positions on each respective topic, and that he authorizes its filing on his behalf.

The positions of the parties on the topics in Rule 221 are outlined herein and identified using the corresponding topic numbers in Rule 221.

**I. Simplification and Clarification of the Issues, and the Filing of any Motion Pursuant to § 201.250 (Topics (1) and (8))**

Division's Position: As set forth in Section II of the September 24, 2019 Order Instituting Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing ("OIP"), this matter is a follow-on administrative proceeding through which the Division seeks a bar pursuant to Section 203(f) of the Advisers Act based on the Judgment of Criminal Conviction in *United States of America v. Albert Ke-Jeng Hu, a/k/a Ke-Jeng Hu*, Case No. CR-09-00487-001-RMW, and the permanent injunctions imposed against Respondent pursuant to the Order Granting Plaintiff's Motion for Final Judgment Against All Defendants in *Securities and Exchange Commission v. Albert K. Hu*, Case No. C-09-01177-RMW.

The facts at issue are limited to those outlined in Section II of the OIP, and the relief sought is limited to whether a bar should be imposed against Respondent pursuant to Section 203(f) of the Advisers Act and, if so, the length of that bar. Given the limited factual issues and the relief

sought, the Division will seek to resolve this proceeding through a motion for summary disposition pursuant to Rule 250(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(b).<sup>2</sup>

Respondent's Position: Respondent intends to file an opposition to the Division's motion for summary disposition. Respondent understands, based on the meet and confer, that the only relief the Division seeks in this proceeding is a bar of unlimited duration pursuant to Section 203(f) of the Advisers Act, which Respondent opposes.

## **II. Discovery and Prehearing Matters (Topics (2), (3), (4), (5), (6), (10), and (14))**

Division's Position: Because the factual issues for determination in this follow-on proceeding are limited to those in Section II of the OIP, and the relief sought is limited to whether a bar should be imposed against Respondent pursuant to Section 203(f) of the Advisers Act and, if so, the length of that bar, this matter can be efficiently resolved through a motion for summary disposition brought by the Division pursuant to Rule 250(b) of the Commission's Rules of Practice. Thus, to conserve resources and avoid the time and expense of litigation steps that will not advance the disposition of this matter, the Division requests that the scheduling and occurrence of the following discovery and prehearing matters (identified using the corresponding numbers from Rule 221) be deferred until after the issuance of the final order on the Division's motion for summary disposition, at which point they can, if necessary, be addressed:

- (2) Exchange of witness and exhibit lists and copies of exhibits
- (3) Timing of expert witness disclosures and reports, if any

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<sup>2</sup> The OIP specifies that "[t]his proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250." OIP at 4.

- (4) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents
- (5) Matters of which official notice may be taken
- (6) The schedule for exchanging prehearing motions or briefs, if any
- (10) Determination of hearing dates
- (14) Depositions to be conducted, if any, and date by which depositions shall be completed

Respondent's Position: Respondent respectfully disagrees with the Division with respect to this issue.

Although the respondent also would like to conserve resources and avoid the time and expense of litigation steps as much or even more so than does SEC, the respondent has never had an SEC civil counsel to do discovery. Although in September 2009, Messrs. Alex Park and George Benetatos entered as the respondent's SEC civil counsel, they soon withdrew in about late 2009 or early 2010 when the respondent's financial resources suddenly dried up. There was never any discovery nor motion filed on the respondent's behalf ever.

In SEC's narrative, there were eight (8) victims. However, these eight (8) victims are not only highly accredited investors, in compliance with SEC rules; they are in fact fund managers, family office managers and experienced tech investors and tech executives. The details, never discovered, indicate that they and the respondent are members of a de facto investment club. Therefore, the governing case laws related to investment clubs should be used in the disposition of this case. Although the respondent subsequently lost the trial in the district court, it is well known that in many circumstances the requirement for SEC fraud conviction requires higher standard than does the criminal fraud.

Accordingly, the respondent respectfully requests that the scheduling and occurrence of the discovery and prehearing matters identified in topics (2), (3), (4), (5), (6), (10), and (14) proceed and not be deferred until after the issuance of the final order on the Division's motion for summary disposition.

**III. Service, Settlement, Amendments to Pleadings, Production, and Specification of § 201.202 Procedures (Topics (7), (9), (11), (12), and (13))**

The Division and Respondent also provide their positions with respect to the remaining topics set forth in Rule 221 of the Commission's Rules of Practice, identified using the corresponding numbers from Rule 221.

**(7) The method of service for papers other than Commission orders**

Division's Position and Respondent's Position: On May 12, 2020, the Division and Respondent filed a Stipulation and Notice of Parties' Agreement on Service of Papers, which states in relevant part that the parties "agree to waive paper service in these proceedings of all papers described in Rule 150(a) (the "Papers") and instead accept service of all Papers by email to the email addresses listed above." The name and email address of the counsel for the Division identified in the Stipulation is that of the prior counsel for the Division in this proceeding. Thus, the parties intend to enter into and file an amended stipulation that substitutes the name and email of the prior counsel for the Division with those of the current Counsel for the Division in this proceeding.

**(9) Settlement of any or all issues**

Division's Position and Respondent's Position: the parties discussed the topic of settlement in the meet and confer but arrived at no agreements.

**(11) Amendments to the order instituting proceedings or answers thereto**

Division's Position: The Division does not anticipate seeking to amend the OIP.

Respondent's Position: Respondent does not anticipate amending his answer.

**(12) Production, and timing for completion of the production, of documents as set forth in § 201.230, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 201.232**

Division's Position: Pursuant to Rule 230 of the Commission's Rules of Practice, on October 11, 2019, prior counsel for the Division sent Respondent a DVD containing (1) electronic versions of the pleadings in the *Securities and Exchange Commission v. Albert K. Hu* civil case; and (2) electronic versions in the Division's possession of the pleadings from the *United States of America v. Albert Ke-Jeng Hu* criminal case. The Division noted in its letter that it did not have a complete set of the electronic versions of the pleadings from the criminal case, and that those pleadings might be available through the [www.pacer.gov](http://www.pacer.gov) website.

Additionally, the Division previously produced to Respondent (through his counsel in the SEC civil action) (1) documents produced to the SEC during its investigation preceding the SEC civil action, as identified in Exhibit A to the SEC's Initial Disclosures in the SEC civil action; and (2) the transcript of testimony taken by SEC staff in the investigation preceding the SEC civil action, and the exhibits marked during that testimony, again as identified in Exhibit A to the SEC's Initial Disclosures in the SEC civil action. The Division will, however, by June 10, 2021 also make available to Respondent for inspection and copying the documents identified in Rule 230(a)(i), (ii), (iii), (iv), and (v) of the Commission's Rules of Practice, 17 C.F.R. § 201.230(a)(i), (ii), (iii), (iv), and (v), unless there is a ground to withhold any such documents pursuant to Rule 230(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.230(b).<sup>3</sup>

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<sup>3</sup> The Division is not aware of any "final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Trading and Markets, or the

The Division does not anticipate issuing any subpoenas duces tecum pursuant to § 201.232 given the limited scope of this proceeding. If any subpoenas duces tecum are issued by either party, the Division will attempt to meet and confer with Respondent regarding the prehearing production of documents in response to subpoenas duces tecum as set forth in § 201.232.

Respondent's Position: Respondent acknowledges receipt of the DVD containing documents that was sent to him by the Division on October 11, 2019. At this time, Respondent has no comments on the prehearing production of documents in response to subpoenas duces tecum as set forth in § 201.232.

**(13) Specification of procedures as set forth in § 201.202**

Division's Position: This proceeding is exempted from § 201.202, obviating the need to address the specification of procedures as set forth in § 201.202.

Respondent's Position: At this time, Respondent has no comments on the specification of procedures as set forth in § 201.202.

I, Andrew J. Hefty, declare that concurrence in the filing of this Joint Prehearing Conference Statement was obtained from Respondent Albert K. Hu.

Dated: May 10, 2021

Respectfully submitted,

/s/ Andrew J. Hefty  
Andrew J. Hefty  
Trial Counsel  
Division of Enforcement  
Securities and Exchange Commission  
44 Montgomery Street, Suite 2800  
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Division of Investment Management” pertaining to this matter, as referenced in 17 C.F.R. § 201.230(a)(vi).

I, Albert K. Hu, declare that I have reviewed this Joint Prehearing Conference Statement, that it accurately reflects my positions, and that I approve and authorize its filing on my behalf.

Dated: May 10, 2021

Respectfully submitted,

/s/ Albert K. Hu\_\_\_\_\_

Albert K. Hu

Respondent Pro Se






**CERTIFICATE OF SERVICE**

I, Andrew J. Hefty, certify that on May 10, 2021 a copy of the foregoing JOINT PREHEARING CONFERENCE STATEMENT was sent by email to apfilings@sec.gov, uploaded to the Securities and Exchange Commission's Electronic Filings in Administrative Proceedings ("eFAP") system, and served on the following person via email at the email address indicated below:

Albert K. Hu

  
Respondent Pro Se

*/s/ Andrew J. Hefty* \_\_\_\_\_  
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Trial Counsel  
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