

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9875 / August 3, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75590 / August 3, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4153 / August 3, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31736 / August 3, 2015

ADMINISTRATIVE PROCEEDING
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 GRANTING IN PART AND
DEFERRING IN PART MOTION TO
ADDUCE ADDITIONAL
EVIDENCE AND REQUESTING
ADDITIONAL BRIEFING

On June 30, 2015, respondents John Thomas Capital Management LLC d/b/a Patriot28 LLC and George R. Jarkesy, Jr. filed a Motion to Adduce Additional Evidence and Conduct Further Discovery. They assert that additional evidence is needed to resolve their claim that their “right to a fair forum and an impartial and unbiased judge has been violated.” Respondents also contend that the manner of appointment of the administrative law judge who presided over this matter violates the Appointments Clause of the Constitution and request the opportunity to submit a supplemental brief pertaining to the issues “whether assuming ALJs are ‘inferior officers’ within the meaning of the Appointments Clause of the U.S. Constitution, their manner of appointment violates the same, and the appropriate remedy if such violation is found.” The Division of Enforcement does not oppose respondents’ request for briefing on the Appointments Clause claim; takes no position on the Motion insofar as it asks that the Commission take notice of the exhibits attached to the Motion; and opposes respondents’ other requests.

It appears appropriate to grant the Motion in part and defer ruling on it in part as forth herein. Accordingly, it is ORDERED that the exhibits attached to the Motion are hereby received into the record. The exhibits are: (1) a May 6, 2015 *Wall Street Journal* article containing comments attributed to a former ALJ of the Commission; (2) a transcript of proceedings in *Tilton v. SEC*, No. 15-cv-2472 (S.D.N.Y. May 11, 2015); (3) a May 12, 2015 *Wall Street Journal* article containing comments attributed to a former co-director of the

Division of Enforcement; and (4) an order by U.S. District Judge Leigh Martin May granting preliminary injunctive relief in *Hill v. SEC*, No. 1:15-cv-1801 (N.D. Ga. June 8, 2015).¹

It is ORDERED that the parties shall file simultaneous supplemental briefs, not to exceed fifteen double-spaced pages, by August 17, 2015. The briefs shall be limited to the issues whether the Commission's ALJs are inferior officers within the meaning of the Appointments Clause; whether their manner of appointment violates the Appointments Clause; and the appropriate remedy if such a violation is found.

The remainder of the Motion, including respondents' requests for discovery, is carried with the case and remains pending before the Commission to be resolved in due course.

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

Brent J. Fields
Secretary

¹ This order is not to be construed as expressing the Commission's views as to the substance of the statements identified in the newspaper articles, the disposition of the remainder of respondents' Motion, the materiality of the discovery sought therein, or the merits of respondents' underlying claims or defenses. *Cf. BDO China Dahua CPA Co., Ltd.*, Exchange Act Release No. 72140, 2014 WL 1871078, at *4 (May 9, 2014) ("We will defer assessment of the probative value that should ultimately be afforded the additional evidence until we have received the benefit of full briefing and argument, reviewed the record in its entirety, and resolved the merits of the petitions for review. Like any other ruling on admissibility, our ruling in this regard is by nature subject to revision until issuance of a final decision.").