

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)	
)	
Otto Bock HealthCare North America, Inc.,)	Docket No 9378
)	
a corporation,)	
)	
Respondent.)	

CERTIFICATION TO THE COMMISSION

I.

Trial in this matter is scheduled to begin on July 10, 2018. On July 19, 2018, pursuant to Rules 3.25(b) and (c) of the Commission's Rules of Practice, Respondent Otto Bock HealthCare North America, Inc. ("Respondent" or "Ottobock") filed a Motion to Withdraw Matter from Adjudication for Consideration of Proposed Settlement ("Motion"). Respondent submitted a Consent Proposal, which it asserts conforms to Rule 2.32, signed by Respondent, but not by Complaint Counsel. Respondent asks the Administrative Law Judge to make a written determination that there is a reasonable possibility of settlement and certify the Motion to the Commission with a recommendation that the Motion be granted. As set forth below,

within 5 days after the filing of the motion. The filing of a motion under paragraph (b) of this section and certification thereof to the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission shall so order. Upon certification of such motion, the Commission in its discretion may issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve for the purpose of considering the consent proposal.

16 C.F.R. § 3.25(c) (emphasis added)

Rule 3.25 does not define “reasonable possibility of settlement.”² Reasonable possibility of settlement is not logically interpreted to mean a reasonable possibility that Complaint Counsel will agree to the Consent Proposal. If Complaint Counsel had agreed to the Consent Proposal, a motion to withdraw from adjudication for consideration of the Consent Proposal would have been filed jointly, pursuant to the first clause of Rule 3.25(c).³ However, Rule 3.25(c) contains two mechanisms for a proposed consent agreement to be submitted to the Commission for consideration, thereby allowing the Commission to consider a Consent Proposal, notwithstanding Complaint Counsel’s lack of agreement. If “reasonable possibility of settlement” means that a party has made a diligent attempt to settle the issues raised in the complaint, and, in the case of a challenged acquisition, has proposed {
, and has presented sufficient, specific details to enable the Commission to evaluate the Consent Proposal, then there is a reasonable possibility of settlement in this case.

IV.

Having determined that there is a reasonable possibility of settlement, it is hereby ORDERED that, pursuant to Rule 3.25(c) of the Commission’s Rules of Practice, Respondent Motion to Withdraw Matter from Adjudication IS CERTIFIED to the Commission. So that the Commission may consider the proposed settlement, this certification is with the

² A Lexis search did not reveal any Commission cases interpreting this term. In the Federal Register notice accompanying the 2009 change to Rule 3.25, the Commission stated “[t]he previous ‘likelihood of settlement’ language imposed too strict a standard *given the important benefits that a consent agreement provides for an efficient resolution of a matter,*” and revised Rule 3.25 to require “that the ALJ shall certify the motions as he or she determines that there is a reasonable possibility of settlement.” 74 Fed. Reg. 20206 (FTC Final Rule) (May 1, 2009) at (R)-1. (u) .8 (e)4.2

