

SECURITIES & EXCHANGE COMMISSION  
HEARD FOR SERVICE

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-10933

DEC 11 2002

~~CITIZEN~~ 1st class only  
UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
December 11, 2002

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In the Matter of :  
: ORDER ON SUBMISSIONS  
: BY THE PARTIES  
: ERNST & YOUNG, LLP  
:  
:

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The Securities and Exchange Commission ("Commission") initiated this proceeding on November 13, 2002, pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange of 1934, and Rule 102(e) of the Commission's Rules of Practice ("OIP"). Respondent and the Commission's Division of Enforcement and the Office of the Chief Accountant (taken together the "Division") made a joint submission on December 6, 2002, that included: (1) Respondent's Answer, (2) a stipulation by the parties that Respondent's Motion For More Definite Statement ("Motion"), Respondent's Memorandum in Support of the Motion ("Memorandum"), the Division's Opposition to the Motion, and Respondent's Reply In Support, filed earlier in Administrative Proceeding No. 3-10786, should be considered as filed anew in this proceeding with the addendum that references to Rule 102(e) include Section 4C of the Exchange Act and Respondent is not waiving its affirmative defense that Section 4C cannot be applied in this proceeding; and (3) a procedural schedule for a hearing.

**Ruling**

I accept the Stipulation and make the following rulings.

**Motion For More Definite Statement**

Rule 200(b)(3) of the Commission's Rules of Practice requires that the OIP contain "a short and plain statement of the matters of fact and law to be considered and determined." 17 C.F.R. § 201.200(b)(3). It is settled case law that the Respondent has sufficient notice if he is informed of the nature of the charges against him so that he may adequately prepare his defense. See Charles M. Weber, 35 S.E.C. 79, 81 (1953); see also L. Logan & Co., 38 S.E.C. 827, 829-30 (1959); M.J. Reiter Co., 39 S.E.C. 484, 486 (1959). The OIP provides Respondent with sufficient information to prepare

its defense. In addition, under the proposed procedural schedule, which I will accept, Respondent will receive the names of the Division's witnesses, the identity of its exhibits, and testimony of its expert(s) by mid-January. This material, which Respondent will receive more than a month and a half before the hearing begins, will likely make clear what part or parts of Rule 102(e) the Division claims Respondent violated. However, I will ask whether the matter is still in doubt at the conclusion of the Division's direct case, and if it is, I will ask the Division to clarify its position on the record. (See Ernst & Young LLP, Ad. Proc. 3-10786, Prehearing Tr. 7-8, June 6, 2002.)

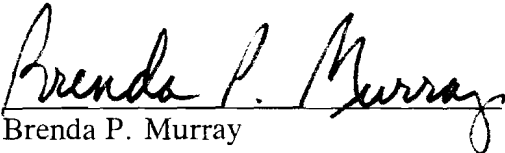
On these facts, I disagree with Respondent's claim that it is being deprived of due process because the OIP does not state "which of several alternative standards forms the basis for the Commission's charge that [Ernst & Young] engaged in 'improper professional conduct' within the meaning of Rule 102(e)." (Memorandum, 1, 9.) Accordingly, I deny the Motion.

### **Procedural Schedule**

I accept the proposed procedural schedule and order that:

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|----------------|---|
| Jan. 7, 2003   | Division will provide Respondent with the names of its witnesses, including expert(s), and identify its exhibits. |
| Jan. 15, 2003  | Division will provide Respondent with the written testimony of its expert(s).                                     |
| Jan. 24, 2003  | Respondent will provide Division with any objections to Division exhibits.  |
| Jan. 29, 2003  | Respondent will provide Division with the names of its witnesses, including experts, and identify its exhibits.   |
| Feb. 7, 2003   | Respondent will provide Division with the written testimony of its expert(s).                                     |
| Feb. 18, 2003  | Division will provide Respondent with any objections to Respondent's exhibits.                                    |
| Feb. 26, 2003  | Parties will file their pretrial briefs.  |
| March 4, 2003  | Prehearing conference by telephone at 10:00 a.m. EST.   |
| March 18, 2003 | Hearing at 9:30 a.m. in Room C150 at the Commission Headquarters Building, 450 Fifth St., Washington, D.C.        |

Inasmuch as the schedule allows the parties considerable time to prepare, the hearing date is firm and will not be extended. Finally, I cancel the prehearing conference scheduled for December 23, 2002.

  
Brenda P. Murray  
Chief Administrative Law Judge