

ALJ

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11317

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
March 23, 2004

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

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In the Matter of :  
: ORDER  
PUTNAM INVESTMENT :  
MANAGEMENT, LLC :  
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MAR 24 2004  
FIRST CLASS

I held a telephonic prehearing conference today, and counsel for the Division of Enforcement (Division) and Putnam Investment Management, LLC (Putnam), participated. Discussion focused on the issues raised in the parties' pre-hearing briefs.

The Securities and Exchange Commission (Commission) issued a Partial Settlement Order in this matter on November 13, 2003. The Partial Settlement Order set up a schedule for Putnam to make restitution to fund shareholders for losses attributable to the violations at issue. Under that schedule, the parties were to agree on the appointment of an Independent Assessment Consultant by December 15, 2003. The Partial Settlement Order also required the Independent Assessment Consultant to submit his determination and calculations to the parties by March 12, 2004. At today's prehearing conference, the Division advised that the parties have not yet even selected an Independent Assessment Consultant. At my request, the Division will file a written status report by March 26, 2004, explaining the lack of progress on this matter.

There are presently four motions pending. The first is a motion to quash a Putnam subpoena duces tecum, filed on March 16, 2004, by the Commission's Office of Compliance Inspections and Examinations. The second is a motion to quash a Division subpoena duces tecum, filed on March 18, 2004, by Putnam. The third is a motion to compel Putnam to produce documents, filed today by the Division. I advised the parties that I would issue written rulings on each of these three motions once the briefing process has been completed. As to the first two motions, replies are due March 25, 2004.

There is a fourth motion pending, as to which briefing has been completed. Pursuant to Rule 152(f) of the Commission's Rules of Practice, Putnam moves to strike certain passages in the Division's Pre-Hearing Brief. Putnam objects to the Division's assertion that it has "admitted" certain factual and liability issues. Putnam relies on Paragraph II of the Commission's Partial Settlement Order of November 13, 2003, which states that Putnam neither admitted nor denied the Commission's findings. Of course,

Paragraph IV.L of the Partial Settlement Order provides that Putnam will be “precluded from arguing that it did not violate the federal securities laws in the manner described” in the Partial Settlement Order and that “the findings” in the Partial Settlement Order “shall be accepted as and deemed true by the hearing officer” at any hearing to determine “the appropriateness and amount of [any] civil monetary penalty and other monetary relief.”


In its Opposition, the Division attempts to equate the findings in the Commission’s Partial Settlement Order, which the Partial Settlement Order precludes Putnam from challenging, with “admissions” by Putnam. The Division also asserts that, wholly apart from the Commission’s findings in the Partial Settlement Order, it will introduce evidence at the upcoming hearing to demonstrate that Putnam has, in fact, admitted certain misconduct at other places and times. Finally, the Division emphasizes that Putnam’s acceptance of the Commission’s findings in this proceeding are not intended to have any effect outside of this proceeding.

I agree with Putnam that the Division is guilty of using hyperbole and loose language in portions of its Pre-Hearing Brief. If the Division’s references to the terms of the Partial Settlement Order had been more precise, this tempest need not have occurred. The Division should use greater care in drafting future pleadings.

Rule 152(f) of the Commission’s Rules of Practice is an extraordinary remedy, and is limited to striking matters that are “scandalous or impertinent.” The challenged passages in the Division’s brief are neither. Putnam’s motion to strike is denied.

By agreement of the parties, another telephonic prehearing conference will take place on April 7, 2004, at 2:00 p.m. Eastern time. The Division will initiate the call and obtain a court reporter.

SO ORDERED.

  
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James T. Kelly  
Administrative Law Judge