

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11317

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 3, 2004

MAR 04 2004

FIRST CLASS

In the Matter of :
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PUTNAM INVESTMENT : ORDER
MANAGEMENT, LLC :
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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on October 28, 2003. Sixteen days later, before the time for answering the OIP had expired, the Commission issued an Order Making Findings and Imposing Partial Relief. Putnam Inv. Mgmt., LLC, 81 SEC Docket 2476 (Nov. 13, 2003) (Partial Settlement Order). The Partial Settlement Order imposes a censure, grants cease-and-desist relief, and directs Putnam Investment Management, LLC (Putnam), to comply with certain undertakings. It leaves the issue of a civil monetary penalty and disgorgement of ill-gotten gains to be decided by settlement or, if no settlement is forthcoming, after a hearing.

The Partial Settlement Order also sets up a schedule for Putnam to make restitution to fund shareholders for losses attributable to the violations at issue. Paragraph IV.E.1 of the Partial Settlement Order requires Putnam to retain the services of an Independent Assessment Consultant, acceptable to the Division of Enforcement (Division), by December 15, 2003. Paragraph IV.E.2 of the Partial Settlement Order requires the Independent Assessment Consultant to submit his determination and calculations to the parties by March 12, 2004. Paragraph IV.J of the Partial Settlement Order gives the Division discretion to extend these and other deadlines.

At a prehearing conference on December 2, 2003, the parties asked me not to schedule a hearing until after the Independent Assessment Consultant had completed the duties assigned under the Partial Settlement Order. I initially agreed to that request, but required the Division to file periodic status reports. The parties missed the December 15, 2003, deadline for selecting an Independent Assessment Consultant. They agreed to extend the selection deadline to January 5, 2004, then to January 16, 2004, then to January 30, 2004, then to February 13, 2004, then to February 26, 2004, and now to March 23, 2004 (Status Reports dated December 17, 2003, January 8, 2004, February 4,

2004, February 19, 2004, and March 3, 2004; Prehearing Conference of January 16, 2004, at 29).¹

I no longer believe that it is appropriate to postpone the hearing, consistent with my responsibility for bringing this matter to a timely conclusion. I advised the parties of this, and received no objections to scheduling the hearing. At a telephonic status conference on February 26, 2004, the parties agreed on the following schedule:

- Mar. 15, 2004: Division to file and serve a list of issues in dispute and a supporting brief;
- Mar. 19, 2004: Putnam to file and serve a list of issues in dispute and a supporting brief;
- Mar. 23, 2004: Telephonic status conference at 2 p.m. Eastern time, with the Division to initiate the call and obtain a court reporter;
- Apr. 2, 2004: Division to file and serve written direct testimony of proposed expert witnesses;
- Apr. 5, 2004: Parties to exchange lists of proposed fact witnesses and proposed exhibits;
- Apr. 9, 2004: Putnam to file and serve written direct testimony of proposed expert witnesses;
- Apr. 12, 2004: Parties to exchange supplemental lists of proposed fact witnesses and proposed exhibits;
- Apr. 14, 2004: Parties to submit any stipulations of fact; and
- Apr. 19, 2004: Hearing to commence in Boston, Massachusetts, and to continue to completion; estimated duration, three weeks.

On March 2, 2004, Putnam requested me to issue a subpoena that would require the Division of Enforcement and other Divisions and Offices within the Commission to produce eleven categories of documents by March 9, 2004. The Division of Enforcement promptly objected to the subpoena, characterizing it as unreasonable, oppressive, excessive in scope, and unduly burdensome. I held a telephonic prehearing conference today, and heard argument from counsel for the Division, Putnam, and the Commission's Office of the General Counsel, which would respond to the subpoena on behalf of all

¹ Paragraph IV.F.1 of the Partial Settlement Order also required the parties to agree on an Independent Compliance Consultant by December 15, 2003. On February 26, 2004, the parties advised that they have not yet selected an Independent Compliance Consultant, either.

Commission Divisions and Offices other than the Division of Enforcement. At that conference, Putnam agreed to limit the scope of its subpoena to documents created on or after January 1, 1999.

After consideration of the arguments presented at the conference, I have decided to deny Putnam's subpoena application in its present form because it is unreasonable, oppressive, excessive in scope, and unduly burdensome. See Rule 232(b) of the Commission's Rules of Practice. However, if Putnam is willing to revise and narrow the subpoena application in the manner described below, I will sign it.

Item 1 of the March 2, 2004, subpoena application is denied, because the Division's expert witness will provide the information sought on April 2, 2004. Item 2 of the subpoena application will be granted if resubmitted, as to communications occurring on and after January 1, 1999. Items 3, 4, and 5 of the subpoena application are denied. Items 6 and 7 of the subpoena application are denied, because the Division's expert witness will provide the information sought on April 2, 2004. Items 8 and 9 of the subpoena application are denied, insofar as they request "documents concerning communications," but will be granted if resubmitted, insofar as they request actual communications between the Commission and persons outside the Commission on and after January 1, 1999. Item 10 of the subpoena application will be granted if resubmitted, although the Division represents that it did not deny the opportunity in question and thus has no responsive documents. Item 11 of the subpoena application is denied, insofar as it requests "documents concerning communications," but will be granted if resubmitted, insofar as it requests actual communications between the Commission and shareholders on and after January 1, 1999. Putnam's requests for communications involve both communications flowing from the Commission to outsiders, and from outsiders to the Commission. I find these two-way requests to be reasonable, and will grant them if they are resubmitted.

Recipients of the revised and narrowed subpoena may file motions to quash within four business days after service, unless the parties agree to a later date. The return date may also be four business days after service, unless the parties agree to a later date.

SO ORDERED.



James T. Kelly
Administrative Law Judge